

The exemplary exception

Philosophical and political decisions in Giorgio Agamben's *Homo Sacer*

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Of all the beings that are, presumably the most difficult to think about are living creatures, because on the one hand they are in a certain way most closely akin to us, and on the other are at the same time separated from our ek-sistent essence by an abyss.

Martin Heidegger, 'Letter on Humanism'

In *Homo Sacer: Sovereign Power and Bare Life* Giorgio Agamben draws upon metaphysics, philosophical anthropology, set theory and the philosophy of language to advance a number of radical politico-philosophical claims. In contrast to arguments that understand political community as essentially a common 'belonging' in a shared national, ethnic, religious, or moral identity, Agamben argues that 'the original political relation is the ban' in which a mode of life is actively and continuously excluded or shut out (*ex-claudere*) from the *polis*. The decision as to what constitutes the life that is thereby taken outside of the *polis* is a sovereign decision. Sovereignty is therefore not a historically specific form of political authority that arises with modern nation-states and their conceptualization by Hobbes and Bodin, but rather the essence of the political. Similarly, biopolitics is not, as Foucault sometimes suggests, incompatible with sovereign as opposed to disciplinary power; nor is it a distinctively modern phenomenon. Instead it is the original form of politics: 'the fundamental activity of sovereign power is the production of bare life as originary political element and as threshold of articulation between nature and culture, *zoe* and *bios*.' Attending to the etymology of the word 'decide' one can understand this sovereign decision as a cut in life, one that separates real life from merely existent life, political and human life from the life of the non-human. As this cutting defines the political, the production of the inhuman – which is correlative with the production of the human – is not an activity that politics might dispense with, say in favour of the assertion of human

rights. More specifically, the Nazi death camps are not a political aberration, least of all a unique event, but instead the place where politics as the sovereign decision on life most clearly reveals itself: 'today it is not the city but rather the camp that is the fundamental biopolitical paradigm of the West.'¹

The *Lager* is a threshold in which human beings are reduced to bare life; and the torture this life suffers is nothing else but its exclusion from the *polis* as a distinctively human life. The bare life that is produced by this abandonment by the state is not biological life; 'not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element'.² This is the *Muselmann* as described by Primo Levi in *If This is a Man*. One speaks of the Shoah as industrialized mass death, and of the camps as 'factories of death'. But the product of these factories is not death but, as Arendt puts it, a mode of life 'outside of life and death'.³ If for Arendt, however, the production of *Muselmänner* is anti-political, in that the camps are spaces in which plurality is foreclosed, for Agamben it is the emergence of the essence of the political.

Such claims are difficult for political philosophy to address, as they undermine so many of its guiding assumptions. Instead of asking us to construct and evaluate different plans of action, Agamben asks us to evaluate the metaphysical structure and implications of the activity of politics as such. Instead of asking us to consider the true or proper nature of political identity, Agamben asks us to consider a threshold state of the non-identical, the liminal. And far from bringing concepts such as rights, authority, public interest, liberty or equality more clearly into view, Agamben operates at a level of abstraction at which such concepts blur into their opposites. He takes this approach because, like Arendt, he believes that claims to justice can only be made if one understands the ground of the political upon which both justice and injustice stand. If Foucault's goal was 'to make the cultural unconscious

apparent',⁴ Agamben's is that of bringing to expression the metaphysics that our history has thus far only shown. He argues that, properly understood, what that history shows us is that politics is

the truly fundamental structure of Western metaphysics insofar as it occupies the threshold on which the relation between the living being and the *logos* is realized. In the 'politicization' of bare life – the metaphysical task *par excellence* – the humanity of living man is decided [*si decide*].... There is politics because man is the living being who, in language, separates and opposes himself to his own bare life and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion.⁵

What is perhaps both most intriguing and most problematic about Agamben's work is that – unlike, say, that of Philippe Lacoue-Labarthe and Jean-Luc Nancy – it brings these claims about metaphysics into dialogue with a specific set of quite concrete examples, including refugee camps, hospital wards, death rows and military camps. All of these are sites where, on Agamben's account, one can perceive the metaphysical negation that allows for the affirmation of distinctively human life: bare life, *nuda vita*.

One way to evaluate Agamben's claims is to consider how well they help us to describe and understand such examples.⁶ Another is to ask whether Agamben's claims are intelligible on their own account – to see, that is, whether they open themselves up to an immanent critique. This approach has a number of advantages, chief among which is that it does not demand that we simply choose whether to accept or reject Agamben's approach in a global way. Instead such an approach allows us to be open to a radically different way of thinking about politics and political philosophy while at the same time maintaining some critical distance from it. In what follows I want to pursue this option by way of considering Agamben's appropriation of the early decisionist political theory of Carl Schmitt. I will argue that Agamben's acceptance of Schmitt's central claims regarding political judgment make it impossible for him to weave together his suggestive reading of examples from philosophy and political history into a mode of political thought that fulfils his own ambition of 'returning thought to its practical calling'.⁷ Agamben's project hinges upon the paradigmatic status of the camp. But on his own account, there is an isomorphism between the exception and the example or paradigm. Given his acceptance of Schmitt's analysis of the former as the product of the sovereign decision, this makes Agamben's evaluation of the camp as 'the fundamental

biopolitical paradigm of the West' into a sovereign decision beyond the regulation of rule or reason. As this casts his readers as either subject or enemy, it is hard to imagine how the politics it might produce will serve as a real alternative to that which it contests.

The 'human'

It may be helpful, first, to say a bit more about Agamben's central claims and the sort of valency they have in the history of philosophy. In his insistence that the history of politics must be understood first and foremost as the history of metaphysics, Agamben clearly follows Heidegger. But Agamben's differences from Heidegger are as important as the similarities between them. Crucial here is the fact that Heidegger does not thematize bare life or its relation to the political.⁸ Indeed, his work would seem to echo the inclusive exclusion that on Agamben's account produces it. Consider one of Heidegger's more political texts, his 1947 'Letter on Humanism', in which he proposes to think 'the essence of action' in a more 'decisive' (*entschieden*) way than had been previously achieved. Human action – the essence of the political – is said by Heidegger to be thinking in language. Thinking does not make or cause; action is instead revelatory, it brings things out into the open. What it brings out is that human beings are related to Being in a completely different way to animal life. Animals lack language, as they have no world: 'Because plants and animals are lodged in their respective environments but are never placed freely in the clearing of Being which alone is "world", they lack language.' Human beings, then, will become what they really are only in so far as they make real this distinction within themselves between their animal life and their human dwelling in the house of being.⁹ Heidegger is aware of the potential difficulties this entangles him in, but he does not directly address the problem. Instead he only adds:

But in being denied language [plants and animals] are not thereby suspended worldlessly in their environment. Still, in this word 'environment' [*Umgabung*] converges all that is puzzling about living creatures. In its essence, language is not the utterance of an organism; nor is it the expression of a living thing.... Language is the clearing-concealing advent of Being itself.¹⁰

Without language, and yet not suspended in the absence of the clearing of Being that is world and whose advent is language, animal life is marginal life, life that only a decisive thought can distinguish from the human – which as history shows is itself all too easily collapsed into the oxymoron of the *animal*



rationale. Heidegger indicates the decision this thought will make when he writes that animal life is never ‘freely placed in the clearing of Being which alone is “world”’. This suggests that it will be placed there, of necessity, under coercion.¹¹ It is precisely the implications of this coercive, negative aspect of our relation to our own embodied life that fascinates Agamben.

Even Hannah Arendt, who sees that the camps force us to question the way we delineate the concepts of humanity and life, fails to break free of what we might term this logic of exuviation. As is well known, *The Human Condition* repeats variations of most of the gestures made by Heidegger in his letter on humanism: what has been obscured in modernity is the crucial importance to human life of action. Properly understood, action is speech; and speech is what makes possible a world. Speaking has a revelatory function, and what it reveals – in a public place that bears obvious resemblance to Heidegger’s clearing of Being – is a public person, as opposed to a private individual. The achievement of such personhood is freedom. What is less obvious is that Arendt repeats Heidegger’s marginalization – or, perhaps better, liminalization – of animal life. This is obscured by her seeming rejection of *Being and Time*’s analysis of being-towards-death: ‘since action is the political activity par excellence [and since acting involves making a radical new beginning], natality, and not mortality, may be the central category of political, as opposed to metaphysical, thought.’¹² But

this passes over the strange importance *immortality* retains for Arendt.

The Human Condition’s first chapter – which not coincidentally shares the title of the book – ends with a section entitled ‘Eternity versus Immortality’. Here Arendt argues that while participation in the infinite is the ideal of the philosopher, immortality is that of the political actor. The first is an atemporality that is available only to the individual contemplative, who on Arendt’s account experiences ‘a kind of death’ in thus leaving the world of men. Immortality in contrast is endurance in time. It is sought by human beings in so far as they are mortal:

Men are ‘the mortals’, the only mortal things in existence, because unlike animals they do not exist only as members of a species whose immortal life is guaranteed by procreation. The mortality of men lies in the fact that individual life, with a recognizable life-story from birth to death, rises out of biological life. This individual life ... *cuts through* the circular movement of biological life.¹³

It must do this, as ‘the distinction between men and animals runs right through the human species itself’. Hence Arendt silently accepts the judgement of the ancient Greeks that only those ‘who “prefer immortal fame to mortal things” are really human’.¹⁴ Noting this brings out the continuity of *The Human Condition* with the earlier *Origins of Totalitarianism*, which had argued that one of the ‘decisive step[s] in the [camps] preparation of living corpses [was] making

martyrdom, for the first time in history, impossible'. Arendt cites a camp victim: 'To demonstrate when death can no longer be postponed' – that is, to make one's own decision on this question – 'is an attempt to give death meaning, to act beyond one's own death. In order to be successful, a gesture must have social meaning.'¹⁵ Politics – where one struggles to become a public person distinct from the private self – is not merely a sphere in which plurality is celebrated. As a sphere in which one form of life gives birth to another, it is also one in which life is placed into question; 'as if', in Agamben's words, 'politics were the place in which life had to transform itself into good life and in which what had to be politicized were always already bare life. In Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of man.'¹⁶

Agamben's *Homo Sacer* proposed trilogy – of which only the first and the third volumes have as yet appeared – is devoted to the justification of and elaboration upon this claim. The title of the first volume names the three moments of Agamben's analysis: *Homo Sacer*, *Sovereign Power* and *Bare Life*. *Homo sacer* is a figure from Roman law, 'life that cannot be sacrificed and yet may be killed'.¹⁷ This life as exposure to death is what Agamben finds in the *Lager*:

The Jew living under Nazism is ... a flagrant case of *homo sacer*.... The truth – which is difficult for the victims to face, but which we must have the courage not to cover with sacrificial veils – is that the Jews were exterminated not in a mad and giant holocaust but exactly as Hitler had announced, as 'lice,' which is to say, as bare life.¹⁸

The term 'holocaust' describes the destruction of European Jewry as a sacrifice, suggesting that we compare the extermination camps to holy altars upon which burnt offerings are placed. It is for just this reason that Agamben rejects the use of the term as carrying with it an anti-Semitic history.¹⁹ The camps of the Shoah are better understood as sites for the production of *homo sacer*, life that is, as the etymology of 'sacred' suggests, both blessed and cursed, both included and excluded from the community – and ultimately both living and dead, both human and inhuman. In the "politicization" of bare life' in which 'the humanity of living man is decided', the threshold between the human and inhuman must be crossed, and the two distinguished. The camps are where this process is enacted most vividly: 'The *Muselmann* ... marks the threshold between the human and the inhuman.'²⁰ As his title suggests, Agamben seeks to explain the production of that threshold through the

concepts of sovereign power and bare life, concepts he draws, respectively, from Carl Schmitt and Walter Benjamin. I turn now to a discussion of Schmitt so as to put us in a position to ask what implications Agamben's appropriation of his work might have for Agamben's own project.

The exception and the border

Carl Schmitt presents his influential theory of sovereignty in *Constitutional Theory* and the first volume of his *Political Theology*.²¹ For Schmitt, any legal system rests upon a decision that cannot itself take the form of law. Both the origin and the border of the law require a political power that exceeds legal justification, and in a state of emergency this power must re-emerge from the system of positive norms appropriate to the normal situation. The state of emergency is, however, for Schmitt only an instance of the logic of the exception, which is the expression of a spatial understanding of concepts and conceptual borders as such. Since what is within the legal system (norms and laws) is made possible (defined as being within the system) by a distinction between inside and outside that as such exceeds the limits of the set of norms and laws, no norm can make these distinctions. Hence a unified legal system requires a political decision to give it (the system, not the territory to which it is applied) borders as well as a set of fundamental values. The decision on the exception is simply the re-emergence of this border-setting power, the ability to make the decisive distinction that can only be made by a sovereign authority. This is the true force of Schmitt's infamous dictum, 'Sovereign is he who decides on the exception' (*Ausnahmezustand*). Recognizing this makes plain why Schmitt describes the concept of the sovereign decision as 'a borderline concept' (*Grenzbegriff*) that as such pertains 'to the outermost sphere'.²²

Sovereignty operates at the outermost sphere; it is here, at the borderline, that it establishes and violates limits. If sovereignty decides upon its own limits, its decision 'must necessarily be unlimited' (*unbegrenzte*). The sovereign is the unlimited power that makes limits – or, in other words, the ungrounded ground of the law. Schmitt's sovereign is a creature of the border: 'although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who decides when the constitution needs to be suspended in its entirety'.²³ But while it seems to range back and forth over it, this movement is in fact the oscillation of the border itself. Though it makes sense in one way to speak of the sovereign overstepping the limits it lays down, in a deeper sense it *is* the limit, and

hence carries the limit with it in its movement as it carries itself. As Agamben notes, the exception – *die Ausnahme* – is what is taken outside; it is the inclusive exclusion.²⁴ The decision and the exception it concerns are never decisively placed within or without the legal system, as they are precisely the moving border between the two.

A state of emergency is the product of the collapse of the normal order; but the normal order is only the absence of a state of emergency. In Agamben's words:

The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule.... The sovereign decision of the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning.²⁵

Agamben concludes from this that 'What emerges in the limit figure is the radical crisis of every possibility of clearly distinguishing between membership and inclusion, between what is outside and what is inside, between exception and rule.'²⁶ Here the logic of borders is used to deny that borders can be confidently identified by anyone other than the sovereign, who does not identify borders so much as establish them by fiat. Having played upon a conception of the legal system as a unit defined by distinctions made between in and out, the Schmittian logic of the decision now proceeds to 'deconstruct' and hence fulfil itself by denying that there is a real distinction (to be made by anyone other than the sovereign) between the core and the marginal. For Schmitt, once the rule acknowledges that it gives rise to exceptions for which it cannot legislate, every case can, in principle, be understood in these terms. To avoid this conclusion one has to argue that, even in those cases where the rule cannot legislate, it still does legislate in some impoverished sense. One would have to argue, that is, that exceptional cases are clearly defined as such by the rule – itself a paradoxical position. Hence Schmitt concludes that 'all law is "situational law"'.²⁷ As Agamben puts it, Schmitt's analysis of the sovereign shows us that 'the law is outside itself', and that in its formalism it has *Geltung ohne Bedeutung* – validity without significance.²⁸

Though Agamben himself has not noted this, the author of this analysis of the aporias of law also advances one of the purest expressions of the logic of exuviation discussed above: *The Concept of the Political*. Here the decisive point is the relation between the way of life protected by the polity and the life demanded of the soldiers who serve in that protection.

For Schmitt, the concept of the political is defined by the criteria of friends and enemies, as the concept of the moral is defined by that of good and evil, and that of the aesthetic by beauty and ugliness. What makes friends friends and enemies enemies is something only the parties involved can recognize:

Only the actual participants can correctly recognize, understand, and judge the concrete situation and settle the extreme case of conflict. Each participant is in a position to judge [*entscheiden*] whether the adversary intends to negate his opponent's way of life and therefore must be repulsed or fought in order to preserve one's own form of existence.²⁹

In response to such threats the political unit has 'the right to demand from its members the readiness to die'. This is one of the most important features of the Schmittian state: It is 'by virtue of [its] power over the physical life of men [that] the political community transcends all other associations or societies'.³⁰ Where for Hobbes the common life comes into being in the service of the individual's embodied life, Schmitt follows Hegel in decisively subordinating the latter to the former. Given his non-Hegelian refusal to describe the goods advanced by the political entity, this produces the phenomenon described by Agamben in which the political 'way of life' is defined by its negation of bare life. The citizen gives his life in resistance to 'the public enemy' because his true life is the common *Art von Leben*.³¹ For Schmitt, in the absence of such a commitment life is reduced to mere life, an essentially animal existence. It is because he finds this a form of nihilism from which we need to be redeemed that Schmitt does not pursue his own suggestion that life might in itself attain a metaphysical status. He writes in *Political Romanticism*:

Today different and, indeed, mundane factors have taken the place of God: humanity, the nation, the individual, historical development, and even life for its own sake, in its complete spiritual emptiness and mere dynamic. This does not mean that the attitude is no longer metaphysical.... Metaphysics is something unavoidable.³²

But this suggestion is left undeveloped, and life's role in metaphysics is, in line with Agamben's analysis, that of 'an inclusive exclusion', the exuviation of which allows for the emergence of the political.³³

The camp and the law

The bare life that politics sloughs off is never precisely defined by Agamben. He focuses instead upon presenting examples of this 'inclusive exclusion' such as *Versuchspersonen*, Karen Quinlan, people in 'over-

comas', refugees, and so on. But his central example is the *Muselmann* of the Nazi death camps. '[T]oday it is not the city but rather the camp that is the fundamental biopolitical paradigm of the West' is the crucial claim for Agamben. It gives his work a great deal of pathos, and allows him to argue that the history of metaphysics is not an arcane subject worthy of dusty libraries, but in fact the most pressing and important ethical and political topic of our time. In reading his work, Agamben suggests, we are confronting the truth of 'the political' and of the most horrific events in modern history in a way that mere political actors never could. That one of his stated ambitions is 'to return thought to practical calling' implies that thought is now impractical, and that practice is thoughtless. Though this thoughtlessness can take many forms, on Agamben's account they all share a common essence that is exemplified by the Nazi death camps. All of politics, including liberal regimes devoted to human rights, is implicated in and can be *understood in terms of* the Shoah.³⁴ If this claim is not accepted one might turn one's attention to, say, people on Texan death rows, and argue that their marginal status is an institutional rather than a metaphysical problem. Or one might argue that the common element in most of the examples listed above is the quite formal distinction between life and the good life that founds Socratic ethics and Aristotelian politics. Agamben in contrast wants to reveal the limitations of these modes of philosophical reflection upon practice by implicating them in one of the greatest catastrophes of the twentieth century. Without the claim for the paradigmatic nature of the camps Agamben's arguments are marginalized, and politics and law become again a matter of communities, interests, conveniences, and so on. But what makes the camps and their victims the best examples of *homo sacer*? And what problems are raised for Agamben's analysis by the claim? Why, for example, aren't the camps of Stalin's Soviet Union the paradigm of the political?

Agamben uses the term 'camp' in a quite broad sense that suggests a deep commonality between the camps of Germany, the Soviet Union, the former Yugoslavia and other unspecified regimes. If this is an apparent acceptance of Arendt's maligned notion of totalitarianism,³⁵ it is made more problematic by the fact that Agamben, unlike Arendt, does not engage in any comparative analyses that might defend the claim of a substantial commonality. Almost all of his detailed analyses are of National Socialism, with occasional reference to the former Yugoslavia, where female bodies have been the focus of a political deci-

sion to commit mass rape. It remains, then, an open question how his schema might apply to, say, Pol Pot's Cambodia or Mao's China, both of which go entirely unmentioned. Of course, even if Agamben's analysis is not helpful in these cases, this would imply nothing about its potential explanatory power regarding National Socialism. However, if he were to narrow his focus he would obviously also have to adjust his analysis radically.

But this is not the only way of asking whether Agamben is right to make the camps the paradigm of the political. One might also wonder whether the camp system can exemplify a phenomenon that includes constitutional, legally governed polities. Agamben himself emphasizes that '*the state of exception ... comes to be confused with juridical rule itself*' in the Nazi state in part 'because the juridical basis for internment was not common law but *Schutzhaft*', a kind of state of exception.³⁶ This might suggest that what is needed is the *reinstatement* of legal protection rather than a critique of law – that it is the fascist imitation of law that results in the inclusive exclusion of life, and not law itself. Such suspicions are only heightened by Agamben's reliance on the erstwhile Nazi Carl Schmitt's account of the sovereign decision. So it might be helpful to note that one legal system of unblemished merit appears to produce much the same anomaly as the Nazis' *Schutzhaft*: John Locke's account of the God-given law of nature and reason. Here I have in mind not Locke's quite reasonable defence of executive prerogative, though that too is surely relevant to this question, but instead the way the logic of his argument drives Locke to allow for a horrific form of slavery even as he asserts that we are by nature free and can never consent to our own enslavement.

Locke begins the second of the *Two Treatises of Government* by identifying political power with '*a Right of making Laws with Penalties of Death, and consequently all lesser penalties*' for the preservation of property and the commonwealth '*for the Publick Good*'.³⁷ Locke grants this political power to all men in the state of nature, and argues that those who would violate these rights put themselves into a state of war with those they would subject. In judging when another has put himself in such a state of war with me, I should, according to Locke, look first to the defence of my liberty. Indeed, it is '*Lawful for a Man to kill a Thief, who has not in the least hurt him, nor declared any design upon his Life, any further then by the use of Force, so to get him in his Power.*' '*He that in the State of Nature, would take away the Freedom, that belong to any one in that State, must*

necessarily be supposed to have a design to take away every thing else, that *Freedom* being the Foundation of all the Rest.³⁸ This might be only a speculation on Locke's part as to what is likely to happen. But in fact it is closer to an identification of life with freedom. 'This Freedom from Absolute, Arbitrary Power, is so necessary to, and closely joyned with a Man's Preservation, that he cannot part with it, but by what forfeits his Preservation and Life together.'³⁹ This robust, normative identification of life with individual freedom is part and parcel of Locke's defence of our ability to recognize when a political ruler has put himself into a state of rebellion, and to depose him. And it sounds reassuringly far away from the bare life of the *Muselmänner*. But the hinge of freedom as life serves to open up a less familiar scene in Locke's political universe.

Because life is essentially freedom, 'a Man, not having the Power of his own life [which belongs to God], *cannot*, by Compact or his own Consent, *enslave himself* to any one'.⁴⁰ And yet, on precisely the same grounds, slavery is nonetheless possible. How can this be? Locke's reasoning is as follows: if someone tries to take away my freedom, he has as good as tried to kill me. Being guilty of (attempted) murder, he forfeits his life; that is, he enters a zone in which he has no power over his own life and *is in fact already dead*. As the living dead, he loses the rights and powers of the living, and may be treated as a slave:

Indeed, having, by his fault, forfeited his own Life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his Service, and he does him no injury by it. For, whenever he finds the hardship of his Slavery to out-weigh the value of his Life, 'tis in his Power, by resisting the Will of his Master, to draw on himself the Death he Desires.

Locke can speak of the slave as 'drawing on himself the Death he Desires' without contradicting his claim that man does not have the right to take his own life only because he is assuming that the slave *is already dead*. Like the *Versuchspersonen* of the camps, Locke's slave lacks 'almost all the rights and expectations that we characteristically attribute to human existence, and yet [is] still biologically alive'; it thus comes 'to be situated at a limit zone between life and death, inside and outside, in which [it is] no longer anything but bare life [*nuda vita*]'.⁴¹ Even a writer as profoundly out of temper with Agamben as Locke, and one who seeks to identify human life with a substantive vision of law-governed free activity, can become entangled

in what I have termed the logic of exuviation. Indeed, it is *because* Locke is loath to identify human beings with their bare life in a Hobbesian manner that he in the end reduces a class of people to that life.⁴²

If there is a moral here, it may be that simply asserting that we are not bare life and eschewing sovereign power as much as possible in favour of the rule of law will not allow us to avoid the dilemmas to which Agamben draws our attention. But there remains a more difficult problem, one that cannot be addressed by finding parallels between Agamben's claims and those of others in the tradition, since here his reliance upon Schmitt's decisionism is crucial.

Authoritarian decision

Early on in *Homo Sacer* Agamben makes explicit his commitment to what I have described as the spatial and etymological understanding of logical categories when he writes, 'The example is truly a paradigm in the etymological sense: it is what is "shown beside," and a class can contain everything except its own paradigm.'

What the example shows is its belonging to a class, but for this very reason the example steps out of its class in the very moment in which it exhibits and delimits it.... If one now asks how the rule applies to the example, the answer is not easy, since the rule applies to the example only as a normal case and obviously not as an example.⁴³

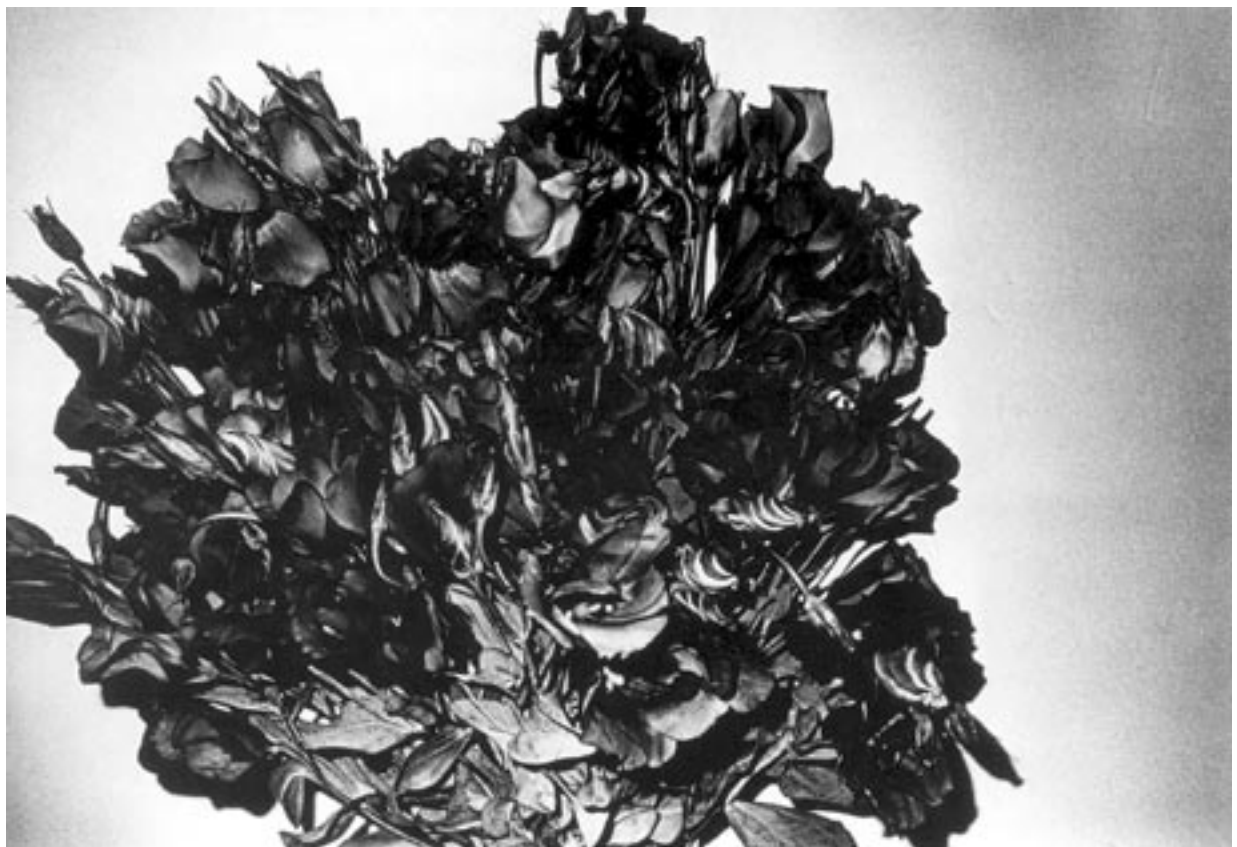
This is a very particular account of what it means to be exemplary. We can easily contrast it, for instance, with the *Critique of Judgment*'s enormously influential discussion of the exemplary status of genius and taste. Kant's genius 'lays down the rule' for future acts of genius by establishing a model that can be followed only by those who refrain from slavish imitation. But the rule is only demonstrated by the genius, not articulated into definite criteria. Hence Kant's reference to this rule is 'indeterminate' if not metaphoric: genius 'displays itself, not so much in the working out of a projected end in the presentation of a definite *concept*, as rather in the portrayal, or expression, of *aesthetic ideas*'.⁴⁴ Similarly, the necessity of the pleasure we take in the beautiful is *exemplary* in that it is 'a necessity of the assent of *all* to a judgment regarded as exemplifying a universal rule incapable of formulation'. The condition of this necessity is, Kant argues, the idea of a common sense. We are 'suitors for agreement from everyone else, because we are fortified with a ground common to all', a *sensus communis aestheticus*.⁴⁵ The flip side of this is that neither genius nor taste are features of determinate concepts or rule-governed

acts and institutions. Neither the moral agent nor the person successfully making cognitive claims needs to be a genius or to take her guidance from exemplars as opposed to precepts. In stark contrast, Agamben makes it plain that the exceptional status of the example as something taken outside the class in order to demonstrate that class is a necessary feature of classes as such, be they classes of the product of artistic genius or classes of rules. 'In every logical system, just as in every social system, the relation between outside and inside, strangeness and intimacy, is this complicated.' In every case 'belonging to a class can be shown only by an example'.⁴⁶ Examples precede classes just as, for Schmitt, decisions precede norms.

I have referred to Schmitt's logic of the decision as a spatial one because it conceives of concepts in terms of groups in space with borders that need to be defined and patrolled. This is significant because if concepts are seen, following Frege, as functions, it is much less obvious that they can be understood in these terms. It is not obvious, that is, that functions have borders that are revealed by being crossed. This may help explain our sense that Agamben's is a fairly problematic account of, say, set theory. But Agamben's position not only relies upon a metaphor of boundaries that is at the very least debatable; in so doing it undermines *itself*. The clear implication of Agamben's own explanation of what makes something exemplary or paradigmatic is that in claiming a paradigmatic status

for the camps he is *and can only be* making an unregulated decision which cannot be justified to his readers in a non-authoritarian manner. Since the example precedes and defines the rule, Agamben cannot appeal to an independent rule or standard to justify his claim that the camps are exemplary of anything. The determination that the camp is representative of the rule is one that is *made* and not in any substantive sense *recognized*.⁴⁷ The paradigm or example mirrors the structure of the exception: as the one is an inclusive exclusion, so is the other 'an *exclusive inclusion*'. Indeed, Agamben explicitly draws the inference that 'exception and example are correlative concepts that are ultimately indistinguishable'.⁴⁸ This directly implies that the claim that something is exemplary is as much a product of a Schmitt-style decision as is the claim that something is an exception. In each case the decision is primary and the rule is derived from it. For this reason in each case the decision, in Schmitt's words, 'becomes instantly independent of argumentative substantiation and receives an autonomous value'.⁴⁹

Here the contrast with the example of Kant is strong indeed. In Kant's judgements of taste there is a 'wooing' of the assent of others who share your common sense of the matter. In Agamben, there is a decision that is imposed upon others.⁵⁰ The third chapter of Agamben's 1990 *The Coming Community*, 'The Example', argues in Hegelian fashion that language involves 'an antinomy of the individual and the universal', in



that language tries to capture particular things with its general terms and in the attempt always loses their particularity. All linguistic reference involves the presentation of a particular as representative of a class and of other particulars, neither of which are *this* given particular. The example ‘escapes’ this antinomy in that it is ‘neither particular nor universal’ but

a singular object that *shows* its singularity. Hence the pregnancy of the Greek term, for example: *para-deigma*, that which is shown alongside.... Hence the proper place of the example is always beside itself, the space in which its undeniable and unforgettable life unfolds. This life is pure linguistic life. Only life in the word is indefinable and unforgettable. Exemplary being is purely linguistic being. Exemplary is what is not defined by any property, except by being-called. Not being-red, but being-called-red; not being-Jakob, but being-called-Jakob defines the example.⁵¹

The exception and the decision both go unmentioned in this text, and the suggestion is left open that something like Kant’s *sensus communis* allows us to recognize what ‘shows itself’ as being exemplary. Indeed, the use of the language of universals, particulars and singularities from Hegel’s logic suggests that the example is a concrete universal that displays itself as such to the highest form of reason, and not merely the sovereign decision.⁵² In part this reflects the fact that *The Coming Community* focuses upon the possibilities opened up by non-identical, liminal being, rather than upon the idea that the camps are where the best examples of such being is found.⁵³ It is only in *Homo Sacer* that Agamben relates this analysis of the example to the inclusive exclusion of the *Muselman*, and in so doing attempts to ground an analysis of the political upon the nature of the camps. Because the nature of language alone can hardly explain the historical emergence of the camps (life in which is considerably different from ‘life in the word’), Agamben appeals to a Schmittian decision. But since he remains committed to an etymological analysis of *example* (*l’esempio*) and *exception* (*l’eccezione*) in which there is an isomorphism between the exclusive inclusion and the inclusive exclusion, he is forced into the awkward position of deciding in an authoritarian fashion that politics is a matter of the decision on life as enacted in the camps.

It is one thing to suggest, as philosophers like Heidegger working in the phenomenological tradition are bound to do, that one is giving descriptions rather than arguments. It is quite another to say that the aptness or accuracy of a description is something that is appropriately determined only by a sovereign

decision. To say the latter is to say that we are not returning to the ‘things themselves’, but rather *constituting* them. It follows from this that if Agamben is correct about the logic of politics – a claim that I have already suggested may be too broad to be sustained – he cannot be right that this logic necessarily applies to or is enacted in philosophy as well. If he were, his philosophical claims about the political would be the expression not of the truth of the political, but of his own sovereign decision. This makes it impossible for Agamben to offer a genuine alternative to the bloody ‘*nomos* of the earth’ producing the potential ‘biopolitical catastrophe’ that he describes in such harrowing terms.⁵⁴ As a repetition of what it sets out to condemn, Agamben’s work falls into the trap that the closing sentences of *Political Theology* claim awaits all attempts to deny the *arche* of the decision:

Every claim of a decision must be evil for the anarchist, because the right emerges by itself if the immanence of life is not disturbed by such claims. This radical antithesis forces him of course to decide against the decision [*sich selbst entschieden gegen die Dezsion zu entscheiden*]; and this results in the odd paradox whereby Bakunin, the greatest anarchist of the nineteenth century, had to become in theory the theologian of the antitheological and in practice the dictator of an antidictatorship.⁵⁵

For Agamben to escape this unwelcome paradox he would have to relax the identification he asserts between philosophy and politics. He would, in other words, have to justify a mode of evaluation that escaped the limitations he attributes to logic.

Now, it is clear that the central features of Agamben’s project in the *Homo Sacer* trilogy are incompatible with the familiar distinction between philosophy as an arena of impartial rational argumentation and politics as one of potentially deceptive rhetoric driven by the interests of the various factions competing for power. His focus upon the first book of Aristotle’s *Politics* makes this plain enough: Aristotle argues there that the *polis* is the place where citizens can realize their *telos* as language users by deliberating and deciding together what counts for them as just. Politics, that is, does the work of Socratic philosophy.⁵⁶ And, as noted above, Agamben’s characterization of the transcendence of ‘mere life’ by the ‘good life’ of the *polis* is that politics ‘appears as the truly fundamental structure of Western metaphysics insofar as it occupies the threshold on which the relation between the living being and the *logos* is realized’. The *polis* is the site of the enactment of metaphysics. Consequently, Agamben cannot appeal to an Aristotelian philosophical discourse wherein he

might justify his claim for the paradigmatic status of the camps in a non-political (viz. non-decisionistic) way. But it remains open whether such discourse exhausts the resources of the philosophical.

Agamben himself suggests a distinction within philosophy between the metaphysical and the non-metaphysical: 'the "politicization" of bare life [is] the *metaphysical* task *par excellence*' (emphasis added). Given his close association with Heidegger and Jean-Luc Nancy, we might take the use of the word *metaphysical* here to suggest that true, non-metaphysical philosophy will be a variant of Heideggerian *Gelassenheit* – letting be. But while something like this is found in *The Coming Community*, this is not an accurate characterization of *Homo Sacer*. Moreover, what the above analysis suggests is not the need for a more poetic or poietic mode of thinking, but one that can escape the decisionist implications of Agamben's understanding of the logic of the political and still make judgements concerning what politics is and should be. This is something that the later Heidegger shies away from, and it is the return to the question of practice outside of philosophical reflection that makes Agamben's work appear as a revitalization of the Heideggerian tradition. Unfortunately, Agamben's acceptance of Schmitt's decisionism makes it impossible for his analyses to claim any general validity. Perhaps worse, it puts him in the position of deciding upon the camp victims one more time, thereby repeating the gesture of the SS in precisely the way he wishes to avoid.⁵⁷ If the parallels and correspondences to which Agamben's work draws our attention are to be more than suggestive – in particular, if they are to be the object of judgements that can carry any sort of authority – Agamben's own methodological commitments will have to be either radically modified or abandoned outright. This is a decidedly unwelcome conclusion for this style of political philosophy, for it implies that the very strength of its insights demands a mode of argumentation of which it is itself incapable.

Notes

I am grateful to Andrew Benjamin, Tom Dumm, Yasemin Ok, Simona Sawhney, Eric Wilson and the editors at *Radical Philosophy* for help with this essay.

1. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, Stanford University Press, Stanford, 1998, p. 181. Oritinal edition, *Homo Sacer: Il potere sovrano e la nuda vita*, Giulio Einaudi, Turin, 1995.
2. *Homo Sacer*, p. 88.
3. Hannah Arendt, *The Origins of Totalitarianism*, Harcourt Brace Jovanovich, New York, 1966, p. 444.
4. Michel Foucault, 'Rituals of Exclusion' (an interview

with John Simon), *Foucault Live*, Semiotext(e), New York, 1989, p. 71.

5. *Homo Sacer*, p. 8.
6. I have attempted this in my essay 'Giorgio Agamben and the Politics of the Living Dead', *Diacritics*, vol. 30, no. 4, Winter 2002.
7. *Homo Sacer*, p. 5.
8. On this point, see in particular the sixth chapter of Derrida, *Of Spirit: Heidegger and the Question*, trans. G. Bennington and R. Bowlby, University of Chicago Press, Chicago, 1989.
9. Agamben says that for Heidegger 'man is not a living being who must abolish or transcend himself in order to become human'. But he immediately goes on to say that Heidegger's work represents 'a radicalization without precedent of the state of exception', implying that Heidegger has not after all broken free of this demand for transcendence (*Homo Sacer*, p. 153).
10. Martin Heidegger, 'Letter on Humanism', *Martin Heidegger: Basic Writings*, revised edn, Harper, San Francisco, 1993, pp. 217, 230; *Über den Humanismus*, Vittorio Klostermann, Frankfurt, 1991, pp. 5, 17–18.
11. Compare the discussion of man's essential violence in the earlier *Introduction to Metaphysics*, trans. R. Manheim, Yale University Press, London, 1959, especially pp. 146ff.
12. Hannah Arendt, *The Human Condition*, University of Chicago Press, Chicago, 1958, p. 9.
13. *Ibid.*, pp. 18–19, emphasis added. This 'life-story', as the term implies, emerges in language. Compare Heidegger in *On the Way to Language*: 'Mortals are they who can experience death as death. Animals cannot do so. But animals cannot speak either. The essential relation between death and language flashes before us, but remains unthought' (trans. P. Hertz, Harper, New York, 1971, p. 107). These lines are cited by Agamben in the opening pages of *Homo Sacer*.
14. *The Human Condition*, p. 19. Arendt may have also been influenced here by her friend Walter Benjamin's 1936 essay 'The Storyteller', which discusses the decline of both the thought of death and 'communicability' (*Mitteilbarkeit*), Arendt's privileged term for the analysis of political judgement – a capacity she famously describes as also being in decline. See Walter Benjamin, 'The Storyteller', in *Illuminations*, ed. H. Arendt, Schocken, New York, 1969, sections IV and X.
15. *Origins of Totalitarianism*, p. 451. The best discussion I have seen of this aspect of Arendt is the exchange between George Kateb and Fred Dallmayr, 'Death and Politics' and 'Public or Private Freedom?' *Social Research* 54, no. 3, Autumn 1987.
16. *Homo Sacer*, p. 7.
17. *Ibid.*, p. 82.
18. *Ibid.*, p. 114.
19. *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen, Zone Books, New York, 1999, pp. 28–31.
20. *Ibid.*, p. 55.
21. My discussion of Schmitt's decisionism follows that of my article, 'Carl Schmitt's Political Metaphysics: On the Secularization of the Outermost Sphere', *Theory and Event*, vol. 4, no. 1, Summer 2000.
22. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, MIT Press, London, 1985, p. 5; *Politische Theologie*, 7th edn, Duncker & Humblot, Berlin, 1996.
23. *Ibid.*, p. 7.
24. *Homo Sacer*, p. 18. One could speak of the difference that makes a difference, playing upon the root of *differ* in *differre*, to carry apart. The way in which Arendt's

- nality remains within this compass is brought out if one reflects upon the root *bher* as carrying, bearing children.
25. Ibid., pp. 18, 19.
 26. Ibid., p. 25.
 27. *Political Theology*, p. 13.
 28. Giorgio Agamben, 'The Messiah and the Sovereign: The Problem of Law in Walter Benjamin', in *Potentialities*, trans. and ed. D. Heller-Roazen, Stanford University Press, Stanford, 1998, pp. 161, 170.
 29. Carl Schmitt, *The Concept of the Political*, trans. George Schwab, University of Chicago Press, Chicago, 1996, pp. 26, 27; German references are from *Der Begriff des Politischen*, Dunker & Humblot, Munich, 1932.
 30. Ibid., pp. 46, 47.
 31. Ibid., p. 28; this is not the dominant interpretation of Schmitt. I defend it in 'Carl Schmitt on Friends, Enemies, and the Political', *Telos* 112, Summer 1998.
 32. Carl Schmitt, *Political Romanticism*, trans. Guy Oakes, MIT Press, London, 1986, pp. 17–18.
 33. To some extent this lack is made good by the suggestions of Walter Benjamin, of whose collected works in Italian Agamben is the editor. If it is Schmitt who furnishes Agamben with the basic structure of his analysis of sovereignty, it is Schmitt seen through the prism of Benjamin. Benjamin's often-cited but incredibly opaque and inconclusive 1921 'On the Critique of Violence' introduces the concept of mere life that Agamben's work develops. Unfortunately, it is impossible to say what Benjamin means by this phrase.
 34. This is argued most directly in the third part of *Homo Sacer*, 'The Camp as Biopolitical Paradigm of the Modern'.
 35. For a witty version of the many attacks on this idea, see Slavoj Žižek, *Did Somebody Say Totalitarianism?*, Verso, London, 2001.
 36. *Homo Sacer*, pp. 168, 167.
 37. Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge University Press, Cambridge, 1963, p. 268.
 38. Ibid., p. 279.
 39. Ibid., p. 284.
 40. Ibid.
 41. *Homo Sacer*, p. 159.
 42. The irony of this is compounded when one observes the similarities between Locke's slave and the subject of Hobbes's 'despotic dominion'.
 43. *Homo Sacer*, p. 22.
 44. Kant, *Critique of Judgment*, trans. J.C. Meredith, Clarendon Press, Oxford, 1989, p. 180.
 45. Ibid., pp. 81–3.
 46. *Homo Sacer*, p. 22.
 47. The Schmittian sovereign is *he* who decides on the exception. This decision must be made by a single person because there is no common sense among members of the community as to when the constitution needs to be suspended in its entirety. Hence Schmitt does not write 'We are sovereign when we agree to decide upon the exception.' Peter Fitzpatrick's suggestive argument that Agamben misleadingly downplays the ubiquity of law is vitiated by his attempt to elude this and make the activity of Schmitt's sovereign more like common law precedent than it is. For Schmitt it is not true that 'the exception ... becomes unexceptional' (Fitzpatrick, 'Bare Sovereignty: *Homo Sacer* and the Insistence of Law', *Theory and Event*, vol. 5, no. 2, 2001, para. 16). That said, Fitzpatrick's argument that *homo sacer* is a legal category (para. 5) confirms features of the argument I make here concerning the limits of the extra-legal decision.
 48. *Homo Sacer*, pp. 22, 21.
 49. *Political Theology*, p. 31. Alain Badiou's polemic against the general use of the Shoah as the unique and privileged example of radical evil suggests another reason for this unfortunate result in Agamben's case. On Badiou's account, the assertion of the exemplary status of the Shoah asserts both that it is the standard by which evil is to be judged in our time and that, as the paradigm, it is beyond such comparison with other, less radical forms of evil. 'As a result, the extermination and the Nazis are both declared unthinkable, unsayable ... yet they are constantly evoked.... The measure must itself be unmeasurable, yet it must constantly be measured' (Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. P. Hallward, Verso, London, 2001, pp. 62–3).
 50. This difference is not noted by Steven DeCaroli in his otherwise interesting 'Visibility and History: Giorgio Agamben and the Exemplary', which follows Agamben's own earlier discussions of the topic. Though DeCaroli refers in passing to Agamben's discussion of refugees, the sacred, and the camps, there is no specific reference to either of the *Homo Sacer* texts, and there is no consideration of Agamben's application of the logic of the inclusive exclusion to these political horrors. Instead the emphasis is on eighteenth-century aesthetics and Renaissance humanism; ironically, it is for this very reason that DeCaroli does not see how different Agamben's analysis is from Kant's, to which he compares it. 'Unlike moral rules or normative principles', DeCaroli writes, 'what the example promises cannot be adequately legislated and, therefore, one's response to the exemplary cannot be a simple matter of rational obedience – a mere adherence to reasonable principles.' Nothing this mild could be said of the decision for the camps, which is far indeed from anything like Kant's common sense. DeCaroli, 'Visibility and History: Giorgio Agamben and the Exemplary', *Philosophy Today*, vol. 45, no. 5, 2001, p. 11.
 51. Giorgio Agamben, *The Coming Community*, trans. Michael Hardt, University of Minnesota Press, London, 1993, p. 10; *La comunità che viene*, Giulio Einaudi, Turin, 1990.
 52. On the commonalities between the Kantian and Hegelian approaches, see Robert Pippin, 'Avoiding German Idealism', in his *Idealism as Modernism*, Cambridge University Press, Cambridge, 1997.
 53. 'These pure singularities [of what in the example escapes linguistic classification] communicate only in the empty space of the example, without being tied by any common property, by any identity.... [T]hey are the exemplars of the coming community' (*The Coming Community*, pp. 10–11).
 54. *Homo Sacer*, pp. 38, 188.
 55. *Political Theology*, p. 66.
 56. I discuss the confluence of the Socratic and Aristotelian and its significance for Agamben's work in 'Giorgio Agamben and the Politics of the Living Dead', pp. 44f.
 57. *Remnants of Auschwitz*, pp. 63–4.