

ARTICLE

The End of Bio-power?

A Reply to My Critics

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In this reply to my critics, in order to clarify my argument, I would like to raise a new perspective on bio-power, namely a perspective relating to the *telos* of bio-power. In my article, I wrote that the foundation of bio-power is love (*agape, cura*), whereas the foundation of sovereign power – and hence, of the law – is violence. In this reply I will address the *telos* of the law and of bio-power, respectively. The *telos* of the law is justice. Its formula is: for each according to his or her deserts. The justice of law is always distributive. On the other hand, the *telos* of bio-power is welfare and happiness. This *telos* is not, however, merely an alternative to the one offered by the law; its intention is to *replace* the justice of law. Is bio-power then unjust? Yes, to some degree; to the extent that it does not distribute justice according to deeds but regardless of them, *without distinction*. Hence, it is not only the theme of love but also this indistinction, alien to the Greeks and Romans, that binds bio-power to its Judeo-Christian heritage:

For there is no distinction [*diastole*], since all have sinned and fall short of the glory of God, they are justified by his grace as a gift [*dorean* = without cause, in vain], through the redemption which is in Christ Jesus (Romans 3:22-24).

As a matter of fact, it is this indistinction (“there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus”, Gal 3:28), which constitutes the *Christian* foundation of bio-power inasmuch as the theme of love, although radicalised in the Gospel, was already present in ancient Judaism. Let us not forget what Foucault says about the shepherd in the Hebraic texts: “The shepherd’s role is to ensure the salvation of his flock.” But it is not only a matter of salvation. It is also a

matter of constant, individualized, and final kindness. Constant kindness, for the shepherd ensures his flock’s food; every day he attend to their thirst and

hunger. And individualized kindness, too, for the shepherd sees that all the sheep, each and every one of them, is fed and saved.¹

It is this Judeo-Christian sheep, the lost sheep, which is at stake in bio-power. It is this singular sheep who should be fed and taken care of.

The life of this sheep, of this originary figure of bio-power, is something completely different from the subject of the sovereign, or even the citizen of the “rule-of-law-republic.” However, this sheep is *diametrically opposed* to the *devotus*, which is the “clearest paradigm of Agamben’s *homo sacer*,” as Maria Margaroni puts it in her insightful analysis. The *devotus* is the man who has consecrated his own life to the gods in order to save the city from a grave danger. The *devotus*, in other words, is what René Girard calls the scapegoat. His death is not the result of any sovereign decision – although sovereignty *derives* from his death – but of his abandonment. He is, to use Margaroni’s words, “characterized by his separation from the community, his not (no longer) belonging.” As a matter of fact, this “not belonging” *constitutes* the community given that the simultaneous identification (which is always arbitrary) and expulsion (abandonment) of the scapegoat signifies that something stands out against a still unsorted multiplicity, thereby bestowing this multiplicity with a meaningful life in a well-ordered community. In other words, with the identification/expulsion of the scapegoat, or the “surrogate victim” the scapegoat becomes the transcendental signifier of the community, anticipating thus the appearance of the sovereign who comes to occupy this position once the death of the scapegoat/*devotus* is ritualised. In fact, like Agamben who understands sovereignty in terms of exception, Girard also emphasizes that the scapegoat must be understood from the perspective of the “model of the exception.”²

Excursus: The Law of the Nothing

In bio-political society, if such a thing exists, there is no transcendental signifier. Therefore, I cannot agree with Michael Dillon who in his interesting analysis insists that the problem of transcendence continues to confound the bio-political practices of modernity. This may well be the case, but not because of the deployment of bio-power, but instead because modernity is still fascinated by sovereignty. It is not bio-power but the persistence of the model of exception, as is evident in the work of Carl Schmitt, which brings

1 Michel Foucault, “‘Omnes et Singulatim’: Toward a Critique of Political Reason.” In James D. Faubion, ed., *Michel Foucault, Power* (New York: The New York Press, 2000), 302.

2 René Girard, *Things Hidden since the Foundation of the World* (Stanford: Stanford University Press, 1987), 100. Unfortunately, Agamben does not discuss Girard – and as far as I know, there exists no exhaustive comparative analysis on their theories.

about transcendence. In modernity, which is characterized by the death of the gods this transcendence can merely be a transcendence *within* immanence, and more precisely, a transcendence understood as a rupture or a void within the modern closure of immanence.³ Agamben understands this very well ceaselessly repeating that today the law is in force without signifying. To the extent that the law, which always operates according to the logic of sovereignty, is in force, there exists a transcendental signifier, but to the extent that this law is merely a void, that is to say, it is in force without signifying, its sense-creating function has come to an end. It signifies nothing, or better still, *it signifies the Nothing*.⁴ It is the relationship with this Nothing that constitutes what Agamben calls “the ban”.

Moreover, Dillon seems to identify Jacques Derrida’s messianism with that of Agamben, but actually their messianisms are antithetical. Only Derrida can be conceived as a truly messianic thinker, whereas Agamben’s thinking represents post-messianism. This difference between these two thinkers also becomes manifest in the case of “the ban”. Unlike Derrida who wants to preserve this “limit form of relation” by means of his infinitely deferred “justice”, Agamben’s politics of emancipation aims for its destruction.

3 See Mika Ojakangas, *A Philosophy of Concrete Life: Carl Schmitt and the Political Thought of Late Modernity* (Jyväskylä: Sophi Academic Press, 2004), 23-26.

4 In *Homo Sacer* Agamben mentions Immanuel Kant’s moral law as being the first such law signifying nothing – and I agree with him, at least partly (given the fact that we can already find this law in Luther). See Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 51-52. However, the paradigmatic case of the law without significance – as well as that of the ban – in modernity is not Kant’s moral law but rather Martin Heidegger’s *call of conscience*, although for some unknown reason Agamben does not mention him in this context in *Homo Sacer*. Nevertheless, it seems to me that it is precisely this call that Agamben has in mind when he writes: “The cipher of this capture of life in law is not sanction (which is not at all an exclusive characteristic of the juridical rule) but guilt (not in the technical sense that this concept has in penal law but in the originary sense that indicates a being-in-debt: *in culpa esse*), which is to say, precisely the condition of being included through an exclusion, of being in relation to something from which one is excluded or which one cannot fully assume. Guilt refers not to transgression, that is, to the determination of the licit and the illicit, but to the pure force of the law, to the law’s simple reference to something.” Agamben, *Homo Sacer*, 26-27. What else is at issue here but Heidegger’s call of conscience? “The call asserts nothing, gives no information about the events of the world, it has nothing to tell.” In other words, it is in force without signifying. This is not to say, however, that it has not effect whatsoever. In the case of Kant’s moral law this effect was respect (*Achtung*) but in Heidegger’s case it is precisely guilt (*Schuld*). The call of conscience “discloses *Dasein*’s most primordial potentiality-for-Being as Being-guilty.” Moreover, this guilt (Being-guilty) refers not to transgression, to the determination of the licit and the illicit; it is something that man always-already *is*, primordially and permanently: “*Dasein* as such is guilty.” Martin Heidegger, *Being and Time* (Oxford: Basil Blackwell, 1962), 318, 334, 331.

According to Agamben, this destruction is possible especially today because we now know that the law signifies the Nothing – because we now understand that it is not the law, the transcendental signifier, that creates meaning for the life of a community. Instead, it is the very life of a community, its immanent praxis, its “being-in-common”, that creates meaning. For this reason, Agamben’s philosophy is much closer to that of Jean-Luc Nancy than that of Derrida.

However, St Paul already knew that it is not the law that bestows meaning – that the law signifies nothing, or signifies the Nothing, capturing men and women in the relation of the ban: “Now before faith came, we were confined under the law, kept under restraint until faith should be revealed” (Gal 3:23). What else is the Pauline deconstruction of the *nomos* and his love without cause, than the operation which brought about the situation beyond the law, even that of the law not signifying? Life in faith, which is also life in Christ, is nothing but the immanent praxis of a community (“being-in-common”): “You are the body of Christ”, as Paul puts it in the first letter to Corinthians (12:27). Moreover, in this life, in this immanent praxis, also advocated by Agamben, there is nothing messianic in the sense that we are to wait for its arrival. It has already arrived. It is here – thanks not only to the deployment of bio-power but also to the Pauline revolution that made it possible in the first place.

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With regards to Margaroni’s argument, what is of importance here is that both the *devotus* and the sovereign are figures of sovereign power, not that of bio-power. Of course, it can be argued with Margaroni that in today’s global Empire sovereignty no longer exists and there is only “a pure relation of abandonment” in which people are “daily exposed to a ‘banal’ death that is not the product of a sovereign decision.” To some extent, I agree. However, although a “banal” death is not the product of a sovereign decision, it still does not escape the logic of sovereignty, because both abandonment and sovereignty are based on the relation of exception. This is not to say, however, that there is no relationship between sovereign power and bio-power. As I have argued, they are historically intermingled in many ways, but they also have a *de jure* relationship as alluded to earlier. The emergence of bio-political rationality must be seen as an attempt to *deconstruct* sovereign power and its model of exception. Bio-power does not need exceptions – in fact, it abhors exceptions. Bio-power is the power of non-exclusion and non-exception, or more precisely, power whose aim is to take care of each and everyone (*omnes et singulatim*), especially those who are at risk of becoming a *devotus*. In a bio-political society, children, old people, the handicapped, the unemployed, alcoholics, drug addicts, in other words potential or actual lost sheep, are the targets of special care.

This holds true even with regard to criminals. In a society of law, a criminal is excluded, and if not put to death then at least imprisoned or fined. This is the logic of a society of law: its justice. Bio-political justice is different. According to bio-political justice, a criminal is not a criminal but someone who has made a mistake (which is, in fact, the original signification of the word *hamartia*). Because the crime is merely a mistake, there is no reason to punish the wrongdoer. Instead of abandoning the criminal to a miserable life, the logic of bio-political justice demands that he or she be given the possibility of a better life. Bio-political justice does not take oaths in the name of law nor is it a doctrine of judgment. Taking oaths as such is alien to it. ("But I say unto you, Swear not at all", Matt. 5:34.) Bio-political justice is a justice of redemption. It wants to redeem life, "a life", with all its predicates. One of the most rigorous definitions of bio-political justice can in fact be found in the following statement by Friedrich Nietzsche:

As a community grows in power, it ceases to take the offence of the individual quite so seriously, because these do not seem to be as dangerous and destabilizing for the survival of the whole as they did earlier: the wrongdoer is no longer "deprived of peace" [*friedlos gelegt*⁵] and cast out, nor can the general public vent their anger on him with the same lack of constraint, – instead the wrong-doer is carefully shielded by the community from this anger, especially from that of the immediate injured party, and given protection. A compromise with the anger of those immediately affected by the wrong-doing; and therefore an attempt to localize the matter and head off further or more widespread participation and unrest; attempts to work out equivalents and settle the matter (*compositio*); above all, the will [*der Wille*], manifesting itself ever more distinctly, to treat every offence as being something which *can be paid off*, so that, at least to a certain degree, the wrong-doer is *isolated* from his deed – these are the characteristics imprinted more and more clearly into penal law in its further development. As the power and self-confidence of a community grows, its penal law becomes more lenient; if the former is weakened or endangered, harsher forms of the latter will re-emerge. The "creditor" always becomes humane as his wealth increases; finally, the *amount* of his wealth determines how much injury he can sustain without suffering from it. It is not impossible to imagine society *so conscious of its power* that it could allow itself the noblest luxury available to it, – that of letting its malefactors go *unpunished*. "What do I care about my parasites", it could say, "let them live and flourish: I am strong enough for all that!" . . . Justice, which began by saying "Everything can be paid off, everything must be paid off", ends by turning a blind eye and letting those unable to pay, – it ends, like every good thing on earth, by *sublimating itself*. The self-sublimation of justice: we know what nice name it gives itself –

5 According to Agamben, *friedlos* is the Germanic figure of *homo sacer*. See Agamben, *Homo Sacer*, 104.

mercy; it remains, of course, the prerogative of the most powerful man, better still, his way of being beyond the law.⁶

Of course, as such this aphorism does not entirely disclose the nature of bio-political justice. But if we replace the phrase “what do I care about my parasites, let them live and flourish: I am strong enough for all that” with this one: “for I have a duty to take care of my people that they may live and flourish, and I am strong enough for all that,” we would indeed understand something about bio-power and its “way of being beyond the law.” It is not a matter of “turning a blind eye” and “letting off those unable to pay,” but of opening our eyes in order to recognize this incapacity and to *cure* it.

Such is bio-political justice. Although a society based on this kind of justice does not actually exist, all the European nations are contaminated by its strange rationality. To the Greeks, this rationality would have been absurd, it would have been pure irrationality. However, we moderns, are not only descendants of the Greeks and the Romans but also of the Jews, not only the inheritors of Athens and Rome but also of Jerusalem: “‘Rome against Judea, Judea against Rome’: – up to now there has been no greater event than *this* battle, *this* question, *this* deadly contradiction,” writes Nietzsche in his *Genealogy*.⁷ For Nietzsche, this struggle has made Western man what he is. However, the emphasis must be put on the words “has made”, because *nowadays* Judea has triumphed – even if we are not aware of it:

The slaves’ revolt in morality begins with the Jews: a revolt which has two thousand years of history behind it and which has only been lost sight because – it was victorious.⁸

There are certainly problems with this statement, particularly in light of what Agamben has written about today’s situation. The slave condition in morality, that is to say, *cura materna*, is not the condition of morality – and thereby, of power – in the present-day global Empire. Indeed, bio-political considerations in relation to the welfare and happiness of individuals and populations have been increasingly replaced by the ruthless exploitation of these same individuals and populations who are abandoned when they no longer have any potentialities to be exploited. Whether this exploitation is carried out in the form of sovereign power, is not the issue here. Perhaps, this exploitation is the result of the *weakening* of power, of *all* power – at least if we believe Nietzsche who says that it is precisely weakness that produces the harshest forms of violence. However, one thing is clear: *the era of bio-political societies is coming to an end*. The fact that it is coming to an end precisely at the moment

6 Friedrich Nietzsche, *On the Genealogy of Morality*, translated by Carol Diethe, edited by Keith Ansell-Pearson (Cambridge: Cambridge University Press, 1994), II § 10.

7 Nietzsche, *On the Genealogy of Morality*, I § 16.

8 Nietzsche, *On the Genealogy of Morality*, I § 7.

when the nation-state is coming to an end, suggests that the exercise of biopolitics *presupposes* sovereignty, if not *de jure* then at least *de facto*. For this reason, Foucault's view according to which the nation-state has been a demonic combination of sovereign power and bio-power, is absolutely correct. In my opinion, however, Nietzsche's formulation above fits even better. The nation-state has been a "deadly *contradiction*" of the forms of power, represented by Rome and Judea, *patria potestas* and *cura materna*. It is out of this contradiction that a society as grotesque as that of the Nazi state could emerge.

In conclusion to avoid misunderstandings, I want to emphasize that it is not the question of good and evil, not even that of good and bad in relation to these forms of power. Sovereign power may be lethal but bio-power is suffocating. Consequently, bio-power may be kind but sovereign power allows for freedom.