

'The Hidden Point of Intersection'

Rethinking the Relationship Between Sovereignty and Bio-politics in Foucault and Agamben

Abstract

The relationship between sovereignty and bio-politics has been frequently discussed and debated in the literature sounding the work of Michel Foucault and Giorgio Agamben. A number of commentators firmly align themselves with Foucault, charging Agamben with some combination of ahistoricism and reductionism in his account of sovereignty. They see Foucault as not guilty of these sins, and therefore preferable. Many of these critiques, however, arise from conflating two separate levels of analysis: history and power. By holding apart these two domains, I will attempt to offer a qualified defense of Agamben and subsequently show that he and Foucault are not as irreconcilable as often presented.

Framing the debate

Before attempting to bring Foucault and Agamben closer together, however, we must understand the debate that has led to so much distance being placed between them. The main issue at stake here is how the two theorists understand the relationship between sovereign power and bio-power. For Foucault, bio-power is central to the story he tells throughout his work, albeit in various ways, about the transition from the Classical Age to modernity. Unlike the epistemic shifts of his archaeological work, what is of concern for us here is a “profound transformation” of the “mechanisms of power” in the West.¹ Up to this transition period, Foucault tells us that power relations primarily took the form of sovereign power: “essentially a right of seizure: of things, time, bodies, and ultimately life itself.”² Sovereign power is the power of the king to appropriate the property, labor, or lives of his subjects.

1 Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. Robert Hurley, Reissue edition (New York: Vintage, 1990), 136.

2 Ibid.

With the shift from the Classical Age to modernity, there is a shift from sovereign power to bio-power. Rather than individual subjects, bio-power takes “man-as-species,” or at least specific populations, as its object.³ It is concerned with regularizing the biological characteristics of a population; it attempts to control the variables that determine statistics like birth rate, death rate, life span, etc; it wants to regulate, manage, and administer the multiplicity of bodies that forms a population. As Foucault says in *Society Must Be Defended*, sovereign power is the power to let live and make die, whereas bio-power is the power to make live (in certain ways and forms) and let die.⁴ The emergence and increasing dominance of bio-power over sovereign power is a signal event of Foucauldian modernity. As the famous inversion of Aristotle from volume one of *History of Sexuality* goes, “modern man is an animal whose politics places his existence as a living being in question.”⁵

Of course, this dominance must be qualified: modernity is not just the triumphal march of bio-power. Bio-power does not simply replace sovereign power: the two forms, along with disciplinary power, become imbricated, entangled, co-determining. We would lose key parts of Foucault's account of modernity and the normalizing society if we simply reduced it to the rise of bio-power. Nonetheless, it is clear that Foucault's bio-power is a historically contingent phenomenon, emerging during the transition from the Classical Age to modernity, which played a key role in both the development of Western states with large populations and the rise of capitalism: the accumulation of men and the accumulation of capital.

This brings us to Agamben's seminal work *Homo Sacer: Sovereign Power and Bare Life*, in which he famously attempts to 'correct or at least, complete' Foucault's account of modern

3 Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*, trans. David Macey, Reprint edition (New York: Picador, 2003), 246–247.

4 Ibid., 240–248.

5 Foucault, *The History of Sexuality, Vol. 1*, 143.

politics.⁶ Agamben's completion starts with two distinctions he takes from the Greeks: *zoē* versus *bios* and *oikos* versus *polis*. *Zoē* refers to the form of life common to all living things, whereas *bios* refers to a form life specific to an individual or group. Agamben highlights that no modern European languages have retained this distinction: English, for example, just has the single word 'life.' There is no distinction between the life that we share with squirrels and bacteria versus the life that we share as members of a political community or readers of an academic journal. Agamben's second distinction runs in parallel: *oikos* is concerned with managing a household and household economics, whereas the *polis* is concerned with developing the good life. Agamben tells us that, starting with Aristotle and the Greeks, the Western *polis* was founded by relegating *zoē* to the *oikos*. The *oikos* is concerned with the maintenance and reproduction of natural biological life, the *polis* is concerned with cultivating the *bios* of a community, and never the twain shall meet. This is why thinkers as varied as Foucault and Arendt have understood modernity as “the entrance of *zoē* into the sphere of the *polis* – the politicization of bare life as such.”⁷

Agamben's key thesis and intervention is to argue that, by constitutively excluding *zoē*, the *polis* actually includes natural life in its logic. This is what Agamben calls the inclusive exclusion, where an element is included solely by virtue of being excluded. He dovetails this with his understanding, which follows Carl Schmitt, of the sovereign decision: the moment of drawing the line between what is inside and what is outside, what is in the *polis* and what is in the *oikos*. Agamben's claim is that, since the Greeks, Western politics has been defined by its inclusive exclusion of natural life.⁸ For Agamben, then, modernity is not about the emergence of

6 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, 1 edition (Stanford, Calif: Stanford University Press, 1998), 9.

7 Ibid., 4.

8 Ibid., 1-12.

bio-power and the decline of sovereign power. Bio-power has always been implicated in sovereign power by the inclusive exclusion of natural life. Sovereignty is always already bio-political. This is what Agamben refers to when he speaks of an 'originary bond' between sovereignty and bio-politics, and we are now in a position to understand one of Agamben's main theses: "the production of a biopolitical body is the original activity of sovereign power;"⁹ or, alternately, "the production of bare life is the originary activity of sovereignty."¹⁰

This is the crux of the debate between Foucault and Agamben around sovereign power and bio-power. We have, it would seem, two radically different and incompatible accounts. For Foucault, the increasing conflation of biology and politics is a distinctly modern phenomena. For Agamben, it is the making explicit of what has been implicit in Western politics since Aristotle; bio-politics is built into the structure of sovereignty. Is bio-power, with Foucault, historically contingent, emergent, and originally separate from sovereign power, even if the two have become entangled during modernity? Or, with Agamben, are sovereign power and bio-power the two sides of a coin which was minted with the relegation of *zoē* to the *oikos*?

Historical phenomenon or model of power?

The first place to attempt to reconcile Foucault and Agamben is the question of models of power. Foucault's attempt to 'cut off the King's head' in political theory and reconceptualize power is well known. Foucault rejected a model of power based solely on sovereign or juridical power and chose instead to analyze power as a decentered network or chain of unstable, shifting relations that are coextensive with the social.¹¹ This is surely one of his most important

9 Ibid., 6.

10 Ibid., 83.

11 Cf. Michel Foucault, *Discipline & Punish: The Birth of the Prison*, 2nd Vintage ed (Vintage, 1995), 26–27; Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, Reissue edition (New York: Vintage, 1990), 92–94; Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*, Reprint edition (New York: Picador, 2003), 29.

contributions to social and political thought. There is a reoccurring suggestion throughout the literature on Foucault and Agamben that the latter rejects this theoretical move by the former. Tom Frost writes: “To make his move from Foucault clear, Agamben characterizes Foucault as having moved away from juridical notions of power, juridical notions which Agamben (re)introduces into biopower.”¹² Andrew Neal similarly argues that Agamben's project is open to Foucauldian criticisms because Agamben uses a model of power as sovereignty that Foucault convincingly rejected as inadequate.¹³ And Verena Erlenbusch, in an article on Foucault, Agamben, and Judith Butler writes, “Agamben believes that Foucault's account of power fails to acknowledge the fundamental importance of the traditional juridico-institutional model of sovereignty in the production of natural life itself.”¹⁴ We find the kernel of these critiques in *Homo Sacer* when Agamben writes that he is concerned with the “hidden point of intersection between the juridico-institutional and the biopolitical models of power.”¹⁵ But, it is key to point out that Foucault rejected sovereignty as a model for how power operated, not as a fundamental historical fact. Agamben may assert a greater historical role for sovereign power than Foucault does (more on this below), but this is not the same as advocating a return to sovereignty for the analysis of power. We must hold apart history and power as two separate levels of analysis.* The above commentators suggest that Agamben wants to give more historical importance to sovereignty, and therefore must want to return to sovereignty as the model for analyzing power.

12 Tom Frost, “Agamben’s Sovereign Legalization of Foucault,” *Oxford Journal of Legal Studies* 30, no. 3 (September 2010): 550.

13 Andrew W. Neal, “Cutting Off the King’s Head: Foucault’s Society Must Be Defended and the Problem of Sovereignty,” *Alternatives: Global, Local, Political* 29, no. 4 (August 1, 2004): 375.

14 Verena Erlenbusch, “The Place of Sovereignty: Mapping Power with Agamben, Butler, and Foucault,” *Critical Horizons* 14, no. 1 (January 2013): 48, doi:10.1179/15685160X13A.0000000003.

15 Agamben, *Homo Sacer*, 6.

* Obviously history and power are inseparable in many ways. For the genealogist, the study of history is the study of shifting power relations; conversely, there is no hypostatized Power, no power that exists outside of history – the study of power relations is always historical. My contention is simply that some writers conflate Agamben's assertions about the importance and logic of a historical phenomenon (sovereignty) with claims about how we should analyze and conceptualize power. In this sense, history and power are separate levels of analysis.

The latter was foreclosed as an option by Foucault cutting off the King's head, and so Agamben's project is a dead end. This argument, however, does not appear to be valid. Can we not simultaneously accept a Foucauldian understanding of the analysis of power *and* Agamben's claims about the history and logic of sovereignty?

Reconciling sovereign power, bio-power, and bio-politics

The next point of contention is whether or not Agamben reduces bio-power to sovereignty, and whether or not he reduces all power to sovereign power. Frost offers a fairly straightforward presentation of Foucault: "Biopower, disciplinary power and sovereign power manage to cover as large a surface of the population as possible, with all three forms of power exercising themselves over different areas of the population for different reasons in different ways."¹⁶ Mika Ojakangas suggests that Agamben, on the other hand, considers it impossible to distinguish between sovereign power and bio-power.¹⁷ Michael Dillon contends that "Agamben engages in a nomological manoeuvre that conflates sovereign with biopower."¹⁸ And Erlenbusch writes that, on Agamben's "account, the sovereign decision on the political inclusion of individuals by allowing for their execution eventually becomes the ultimate biopolitical gesture and biopolitics and sovereignty are indistinguishable, if not the same thing altogether."¹⁹ There is a standard reading that presents Foucault as holding apart sovereign power and bio-power as fundamentally different forms of power with different rationalities, bio-power being historically contingent and emerging centuries after sovereign power, whereas Agamben collapses and identifies the two. This is close to how I summarized the two earlier; I am happy with this

16 Frost, "Agamben's Sovereign Legalization of Foucault," 566.

17 Mika Ojakangas, "Impossible Dialogue on Bio-Power: Agamben and Foucault," *Foucault Studies* 2 (May 1, 2005): 7.

18 Michael Dillon, "Cared to Death: The Biopoliticised Time of Your Life," *Foucault Studies* 0, no. 2 (August 7, 2007): 38.

19 Erlenbusch, "The Place of Sovereignty," 49.

reading of Foucault, and there is a kernel of truth to its presentation of Agamben. As we saw, certainly one of the main theses of the first volume of *Homo Sacer* is that sovereign power, via the inclusive exclusion of natural life, is always already bio-political.

I want to suggest that this is not quite the same as equating sovereign power and bio-power, however, and that there is space here for reconciling Foucault and Agamben. Ojakangas' intervention is ironically useful in this context, despite the fact that he rejects virtually every single one of Agamben's conclusions in favor of Foucault and suggests that a dialogue between Foucault and Agamben on bio-power is impossible.²⁰ Ojakangas helpfully points out what at first appears to be an aporia or paradox. "Not bare life that is exposed to an unconditional threat of death, but the *care of 'all living'* is the foundation of bio-power."²¹ In other words, Ojakangas contends that Agamben does not understand or misconstrues Foucauldian bio-power. *Homo sacer*, the category of Roman law from which Agamben takes his project's title, refers to life that can be killed without committing homicide but which cannot be sacrificed.²² This is bare life, inclusively excluded by sovereign power: it is part of the legal order insofar as it is an exception to the legal order – bare life can be killed without homicide taking place. Bio-power, on the other hand, is concerned with productively managing and administering the life of a population.²³ Bare life, the life at issue for Agamben, does not seem to be bio-political. The object of bio-power is becoming, or life subject to the productive capacities of bio-power, not bare life that is to be killed.²⁴ "Instead of bare life, the life of bio-power is a *plenitude* of life, as Foucault puts it."²⁵ Agamben uses bare life to argue for an originary link between sovereign power and bio-power,

20 Ojakangas, "Impossible Dialogue on Bio-Power," 5.

21 Ibid., 6.

22 Agamben, *Homo Sacer*, 71–74.

23 Foucault, *The History of Sexuality, Vol. 1*, 139–143.

24 Ojakangas, "Impossible Dialogue on Bio-Power," 11–13.

25 Ibid., 13–14.

but it is not clear if bare life is actually bio-political.

Rather than precluding the possibility of dialogue between Foucault and Agamben, this contradiction identified by Ojakangas allows us to bring them closer together. First, I think we can reasonably break with Ojakangas' strict understanding of sovereign power as a power of deduction (i.e., subtraction of wealth, labor, or life from subjects) and bio-power as a power of production.²⁶ We can understand bare life as bio-political in that it represents “the politicization of life,” to borrow a phrase from Johanna Oksala.²⁷ This is the main thrust of Agamben's argument in *Homo Sacer*: via the inclusive exclusion, biological life is always already political. Hence, sovereign power is bio-political. I want to provisionally suggest a distinction between 'bio-politics' and 'bio-power', one that is not in Foucault or Agamben but one that I think is productive. 'Bio-political' implies the politicization of life, which Agamben argues is always already a part of the sovereign decision and the history of sovereign power. We can use 'bio-power', on the other hand, to refer to a specific deployment of power relations which emerged in the eighteenth century and which was carefully analyzed by Foucault.* This distinction between bio-politics and bio-power accomplishes two main goals. First, Ojakangas' contradiction is resolved. Bare life may not be the object of bio-power, understood as the productive administration of a population, but it is bio-political. Second, it clears the way to defend Agamben from charges of reductionism, to which we can turn now.

Many of the aforementioned commentators criticize Agamben for being reductionist or ahistorical. Neal is perhaps the most damning in this regard.²⁸ He argues that, “[a]though useful

26 Ibid., 6.

27 Johanna Oksala, *Foucault, Politics, and Violence* (Evanston, Ill: Northwestern University Press, 2011), 86.

* Foucault certainly uses 'bio-politics' to refer to what I am provisionally calling 'bio-power.' The distinction I am trying to make is not based on a careful exegesis of how Foucault or Agamben use 'bio-power' versus 'bio-politics,' and two other terms might be better suited for the phenomena I am attempting to differentiate.

28 See, e.g., Neal, “Cutting Off the King’s Head,” 375; and *ibid.*, 392–395.

and analytically precise, Agamben poses the problem of sovereignty in rather apolitical and entirely juridico-philosophical terms, thus emptying out the extremely complex principle and practice that is sovereignty.”²⁹ More pithily, Neal insists that “sovereignty is far more than a legal puzzle.”³⁰ Erlenbusch contends that Agamben reductively sees all of Western politics as being “structured by a logic of sovereignty”³¹ and that, while compelling in many ways, Agamben’s “analysis of modern power is nevertheless a problematic generalization.”³² Oksala comes down in favor of Foucault because he always historicizes, and does not make sweeping onto-political claims such as Agamben’s about sovereignty.³³ Again, I suggest that these critiques arise from misconstruing Agamben’s project and not holding apart different levels of analysis. Agamben is concerned with the paradox of sovereignty – the logics of the state of exception, the relation of ban, and the inclusive exclusion. There is nothing in this project that requires us to read every phenomena in Western history through this lens, or to say that sovereign power has remained unchanged since it emerged with the Greek *polis*. Indeed, Agamben does trace significant changes in the structure of sovereignty and bio-power throughout volume one of *Homo Sacer*. Modern bio-power is certainly not the same as ancient bio-politics, and Agamben locates a more recent break between Nazi bio-power and the even more radical bio-power stemming from advances in the life sciences that have occurred in the second half of the twentieth century.³⁴ Despite the worries of some writers, Agamben’s originary link between sovereign power and bio-politics does not foreclose all possibilities of historical specificity.

Furthermore, and here I may depart significantly from Agamben, I do not see any reason

29 Neal, “Cutting Off the King’s Head,” 375.

30 Ibid., 395.

31 Erlenbusch, “The Place of Sovereignty,” 46.

32 Ibid., 50.

33 Oksala, *Foucault, Politics, and Violence*, 100–101.

34 See, e.g., his discussion of the bio-politics of modern democracies and constitutional rights on Agamben, *Homo Sacer*, 126–135; his analysis of the characteristics of Nazi bio-politics on *ibid.*, 147–148; and his discussion of new categories of coma and redefining the lines between life and death on *ibid.*, 160–165.

why we cannot accept his thesis of an originary link between sovereignty and bio-politics and simultaneously posit the existence of other forms of power (e.g. pastoral, disciplinary, or a distinctly modern bio-power) a la Foucault. Bio-political sovereignty might indeed be the most decisive form of power in Western society, but that does not imply that no other forms of power can exist or have any impact whatsoever. To borrow a phrase from Marx, there may well be countervailing tendencies that act on Agamben's bio-political sovereignty. I agree with Foucauldian theorists who are wary of reducing the history of Western power to sovereignty, but I do not think that Agamben's project actually requires us to do so.

Conclusion

Contrary to a lot of debate surrounding Foucault and Agamben, I do not see them as hopelessly at odds. The main strand of Agamben's argument in *Homo Sacer* operates at logical and philosophical level, dealing with the reciprocal implication between the structure of sovereignty and *homo sacer*. I find nothing in his insights about sovereign power that require us to return to sovereignty as the model for doing historical research about power relations, or to read all of Western history as emanating from sovereignty. I hope to have shown that, with Agamben, we can understand sovereignty as being always already bio-political, while simultaneously understanding, with Foucault, modern bio-power as a contingent historical phenomenon among other forms of power. In this way, there would seem to be ample room for productive dialogue between Foucault's insights on the analysis of power and the histories of various forms of power in the West, and Agamben's theses on the structure of sovereignty. Constructing this *both-and*, as opposed to arguing *either-or*, seems to be the more interesting and important project.

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