

HAKEMLİ MAKALE

AGAMBEN'S CRITIQUE OF HUMAN RIGHTS*

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ABSTRACT

Since humanity has experienced different kinds of problems in a time of global wars, the Cold War and the post-Cold War era, the concept of human rights has provided a conceptual framework to discuss these problems and injustices, ranging from refugee crises to global poverty. However, human rights discourse has been criticised by some scholars due to its perceived use in the justification of imperialist interventions, as well as its having become a major tool for the biopolitical operation of power. In this context, Giorgio Agamben presents a strong critique of human rights, stating that human rights consolidate sovereignty by producing 'bare lives' that are becoming vulnerable to sovereign violence. In this article, we will analyse Agamben's criticism of human rights through his basic arguments and concepts.

Key words: *Human rights, Giorgio Agamben, Bare lives, Sovereignty*

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AGAMBEN'DE İNSAN HAKLARI ELEŞTİRİSİ

ÖZET

İnsanlık, küresel savaşlar, Soğuk savaş ve Soğuk savaş sonrası dönemde çeşitli sorunlarla karşılaşmış ve insan hakları kavramı, mülteci krizinden küresel yoksulluğa kadar uzanan bu sorunları ve adaletsizlikleri tartışmak için kavramsal bir çerçeve sağlamıştır. Bununla birlikte, insan hakları kavramı emperyalist müdahaleciliğin meşrulaştırılması ve iktidarın politik bir aracı haline gelmesinden dolayı bazı düşünürler tarafından eleştirilmiştir. Giorgio Agamben, insan haklarının, egemenliği, egemen şiddete karşı savunmasız hale getiren “çıplak hayatlar” üreterek güçlendirdiğini belirten güçlü bir insan hakları eleştirisi sunuyor. Bu makalede Agamben'in insan haklarına yönelik eleştirileri temel argüman ve kavramları ile analiz edilmektedir.

Anahtar Kelimeler: *İnsan Hakları, Giorgio Agamben, Çıplak hayatlar, Egemenlik*

I. Introduction

Human rights discourse has become very dominant in many fields such as law and politics. Since humanity has experienced different kinds of problems in a time of global wars, the Cold War and the post-Cold War era, the concept of human rights has provided a conceptual framework to discuss these problems and injustices, ranging from refugee crises to global poverty. However, human rights discourse has been criticised by some scholars due to its perceived use in the justification of imperialist interventions, as well as its having become a major tool for the biopolitical operation of power. In this context, Giorgio Agamben presents a strong critique of human rights, stating that human rights consolidate sovereignty by producing 'bare lives' that are becoming vulnerable to sovereign violence. In the article, we will analyse Agamben's criticism of human rights through his basic arguments and concepts.

Human rights have two main aspects, namely the institutional and the subjective.¹As institutional entities, they are subjects of laws, constitutions, conventions and court judgments. In the subjective sense, these rights should play a key role in constructing the individual as subject of law; in other words, human rights should allow us to define the meaning and power of humanity and to protect human beings against sovereign power. However, Agamben argued that human rights cannot help humanity, but that they rather participate in the production of the sovereign violence. In this sense, human rights loses its function and becomes a tool in the hand of the sovereign who uses it against its citizens. Accordingly, the concept of human rights needs to face this powerful criticism, otherwise it will serve the sovereign unwillingly.

This article consists of two chapters. The first chapter examines the theoretical underpinnings of Agamben's analysis of sovereignty to provide a background for his critique of human rights. The second chapter will discuss

¹ Costas Douzinas, *Human Rights And Empire* (1st edn, Routledge-Cavendish 2007), p. 7

Agamben's main arguments regarding human rights to understand how Agamben makes a huge contribution to the contemporary debate surrounding human rights.

II. Conceptual Background of Agamben's Critique

To understand an individual's thought, we should first focus on the basic concepts and structure of his argument. To do this, one should examine the purpose of the thinker; that is to say, it should be understood what the key problems of his thought are, how the thinker engages with these problems, and which concepts and arguments are preferred by the thinker in order to conceive of and solve the problem. In this process, firstly, the problem should be defined and clearly laid out in all its parts. Secondly, the thinker should create a conceptual framework by means of concepts and arguments in order to approach the problem correctly. Thirdly, the thinker may analyse the problem through his conceptual framework and attempt to reach a conclusion in which the problem is solved, or at least in which progress on the question is made. In this part, I attempt to follow this methodology to outline Agamben's analysis of sovereignty to provide conceptual background for a debate concerning his critique of human rights.

As a political philosopher, Agamben focuses on the relationship between humans and the state. Since humans maintain their life under the control of the modern nation-state, the relation between humans and the state is the most important aspect that affects our life. In this context, it is crucial to answer the question of what kind of power affects human life and what are the boundaries of that power; that is to say, whether it is bound by something such as law, or it is a sort of transcendent power. In the contemporary era, for the most part, we live in democratic nation-states in which we can choose the representative who in turn will decide how that power is used; the power is also bounded by law, which is created by representatives who are voted in by us. Moreover, some kinds of rights discourse (namely that of human rights, fundamental rights and constitutional rights) protect us against this power in order to ensure our lives. In addition to this, many

international conventions such as the Universal Declaration of Human Rights protect people against many kinds of discrimination ranging from poverty to violence. Despite all of these tools which should protect people against state power, the history of humanity has been one of many calamities and sufferings, including both world wars, the Cold War and issues of today, such as the refugee crisis, terrorist incidents and strict legal rules regarding the state of exception. Having considered all of these points, the problem can be identified as being why humanity cannot be freed from these calamities, and can also be problematised as the question of how modern democratic states turn into totalitarian states. At this point, Agamben analysed the power by means of creating a new conceptual framework to conceive the situation in which human beings maintain their life.

Agamben proposed a new theory of sovereignty which is characterised by power being based on the state of exception and the production of a bare life. He argues that sovereign power establishes itself by means of the production of a juridical order based on the exclusion of bare-naked life.² To do this, sovereign power enacts a state of exception in which the law is suspended; in this case, the legal status of a human being is withdrawn and transformed in relation to the sovereign power into that of a bare life. In other words, the state of exception permits sovereign power to encompass what is outside the law as 'human life', and this power also transforms life into a bare life which is stripped of legal status, political functions and rights.³ He maintained that "the rule, suspending itself, gives rise to the exception" – that is, the juridical order, suspending its own validity, produces the exception of bare life – "and, maintaining itself in relation to the exception, first constitutes itself as a rule."⁴ Therefore, human life as a bare life is captured through its relation to sovereign power in the state of exception. In this sense, Homo Sacer is one who has been reduced to bare life through the state of exception by the hand of sovereign

²Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998).

³Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) 11 *Contemporary Political Theory*.

⁴Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998).

power. A good example of this situation is the camp, in which sovereign power enacts the state of exception and produces the bare life, while bare life is also seized by the state in the most explicit way. The notion of the camp is used as the space of the exception and must be understood as an existing condition in potential within the political order; that is to say, human beings are living in a sort of gigantic camp but they do not even know it. For Agamben, exception is not only the conditions of Auschwitz but also the conditions of the contemporary political order.⁵ In other words, the realm of politics today has been transformed into the realm of bare life, the exception has been made real as a rule and “all citizens can be said... to appear virtually as hominessacri”.⁶ Having considered the general structure of Agamben’s conceptual framework, the following paragraphs will elaborate on concepts such as bare life, homo sacer and Agamben’s notion of the exception.

To understand the insidious effects of the power that transforms human life into bare life, Agamben began with Michel Foucault’s analysis of biopower. Foucault’s theory of biopolitics, in which human life becomes the aim of the power of the State, defined a transition in modernity. Foucault argued that the State incrementally took as its duty the care and regulation of human life itself. This process, for Foucault, began in the 17th century. He uses the term ‘biopower’ to describe the organising technology of power that ‘distributes the living in the domain of value and utility’,⁷ which indicates for him the emergence of a ‘biopolitics’ of the ‘human race’.⁸ This notion of biopower is distinguished from the archaic sovereign based on the threat of death and centralises the regulation and management of the biological life of individuals⁹. Biopower is also at the core of

⁵Giorgio Agamben, *Means Without Ends: Notes on Politics*, (University of Minnesota Press 2000) 6

⁶ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998).
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⁷Michael Foucault *History of Sexuality: Volume I: An Introduction*, (Translated by R. Hurley. New York: Vintage Books. 1988) 144.

⁸Michael Foucault, “*Society Must Be Defended*”: *Lectures at the College de France, 1975- 76*, (eds. Mauro Bertani and Alessandro Fontana, trans. David Macey. Picador: New York 2003). 243

⁹Michael Foucault, *History of Sexuality: Volume I: An Introduction*, (Translated by R. Hurley.

Agamben's analysis of sovereignty, but rather than positing biopowers distinct from sovereign power as Foucault does, Agamben argues that it is always implicated in sovereignty;¹⁰ that is, to the extent that sovereignty always consists in a decision on life, it is indeed inseparable from biopower. In other words, for Agamben, biopolitics is the essence of sovereignty and Foucault's thesis must therefore be 'corrected, or at least completed'¹¹ in such a way that "the production of a biopolitical body is the original activity of sovereign power".¹² In this context, Agamben draws on Carl Schmitt's famous definition of sovereignty as the decision on the exception. For Schmitt, sovereignty cannot ground itself in legal norms, as it requires an 'exteriority' or 'factuality' to ground itself.¹³ To examine the relation between the sovereign and this exteriority, Agamben turns to the etymology of 'exception' (ex-capere) which specifies that sovereign exception is not merely exclusion; it is more definitively an 'inclusive exclusion' which signifies a double movement, capturing at the very moment of excluding.¹⁴ On the foundation of this etymological thesis, Agamben asserts that the logic of sovereignty consists in capturing, taking in, what is outside the juridico-political order. In this case, the question of 'what is this 'exteriority' that is captured in sovereign law?' arises, and the simple answer is 'life'.¹⁵ The relationship between law and life is the main theme of Agamben's analysis of sovereignty. He maintains that this relationship paves the way for a 'bare life' that can be killed with impunity; that is to say, life can be involved in the sovereign sphere only in the form of an exclusion, or only once stripped of its legal and political status. In this way,

New York: Vintage Books 1988) 143

¹⁰ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998) 6-9

¹¹ i.b.i.d p.9

¹² i.b.i.d p.6

¹³ Carl Schmitt and Tracy B Strong, *Political theology: Four chapters on the concept of sovereignty* (George Schwab ed, University of Chicago Press 2006) 5

¹⁴ Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) *Contemporary Political Theory*.

¹⁵ i.b.i.d

sovereign power produces a 'bare life' and establishes itself as a biopolitical sovereign throughout Western history.¹⁶

As a philosopher of language, Agamben focuses on the Ancient Greek language to consolidate the relationship between 'life' and sovereignty.¹⁷ The Ancient Greeks expressed what they believed to be the meaning of life using two terms: *zoe*, which connotes the simple fact of whole living beings, and *bios*, which indicates the form of living peculiar to a single or individual group. To explain the term *bios*, Agamben turns to moral philosophy, noting that human beings always need to seek happiness in their living and that their life is irremediably assigned to happiness.¹⁸ In this case, the necessity of happiness, which is the main virtue of life, constitutes the political life, in which "a community [is] instituted for the sake of the living and the well living of men in it".¹⁹ In this context, *bios* can be understood to mean that human beings are inscribed into the juridico-political machinery of the state and also that their life can be defined as a community life in which they attempt to live in accordance with happiness, which is the main virtue of life. Human beings whose life can be identified as a *bios* can make an effort to reach to the main virtue of life. In other words, only the political form of life can give human beings the chance to live well. The term *zoe*, on the other hand, indicates a sort of animalisation or naturalisation of the form of life. It is this biopolitical division between political and natural life that produces remainders and turns certain categories of living beings into 'bare life'. Two styles of life are becoming intermixed and indiscernible in today's modernity. The concept of 'bare life' is the life produced as a result of sovereign decisions about what is distinctively human.²⁰ In this production process, *zoe* becomes the foundation of politics and is excluded, but is also included in a certain way by means of its exclusion: by excluding it, it is also recognised. This

¹⁶i.b.i.d

¹⁷ Giorgio Agamben. *Means Without Ends: Notes on Politics*, (University of Minnesota Press 2000) 3

¹⁸i.b.i.d p.4

¹⁹i.b.i.d p.4

²⁰ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998)

'inclusive exclusion' of life has been the permanent characteristic of biopolitical sovereignty. In this context, Homo Sacer is the man who can be killed with impunity, but he is also sacred in the sense that he has been removed from the social order and placed outside the state (a different sphere). In other words, Homo Sacer is not the same thing as *zoe*, but rather is the man from whom *bios* has been withdrawn and who has been reduced to the status of *zoe*.

In brief, Agamben combines Schmitt's definition of sovereign (i.e. "he who decides the exception"²¹) with Foucault's conception of biopolitics to argue that bare life is produced in a zone of indistinction in which law and sovereignty are blurred. Agamben's notion of the camp is "the hidden matrix and nomos of the political space in which we are still living"²², the zone in which the state of exception is materialised. Sovereign power manifests itself not only in historical incidents, such as the Auschwitz-Guantanamo-Gaza continuum, but everywhere. In this sense, the notion of the camp as a spatial metaphor is gradually universalised and all human beings become assumed Homo Sacer.²³ To be more precise, a distinguishing feature of the modern sovereign power is that natural life, or *zoe*, which was limited to the sphere of the *oikos* in the classical world, becomes the foundation of politics. The exception becomes the rule and captures the definition of life of every human being, blurring the distinctions between *polis* and *oikos*, *bios* and *zoe*, right and violence.²⁴ As it is examined, the notion of exception is the key feature of Agamben's thought. The notion of the exception will be elaborated in the following paragraphs.

In his complex thesis of the exception, Agamben mentioned the ideas regarding the state of exception and revealed his own position through these words:

²¹ Carl Schmitt and Tracy B Strong, *Political Theology: Four Chapters On The Concept of Sovereignty* (George Schwabed, University of Chicago Press 2006) 5

²² Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn., Stanford University Press 1998) 174

²³ Sammy Adelman, 'The Unexceptional Exception: Sovereignty, Human Rights And Biopolitics' SSRN Electronic Journal.

²⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998), p. 9.

“the state of exception is neither internal nor external to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with one another”.²⁵ In this case, he problematises “How can an anomie be inscribed within the juridical order?”²⁶ To understand this question, Agamben uses the genealogical method for the state of exception, initially citing Gratian, Thomas Aquinas and Dante as he notes with approval the medieval conception of the exception, which contributes not to ‘render to illicit licit’ but ‘to justify a single, specific case of transgression by means of exception’.²⁷ Secondly, Agamben notes that the modern formulation of the state of exception comes from a 1789 decree of the French constituent assembly, distinguishing a ‘state of peace’ from a ‘state of siege’ in which ‘all the functions entrusted to the civilian authority for maintaining order and internal policing pass to the military commander, who exercises them under his exclusive responsibility’.²⁸ In this case, the state of exception is gradually emancipated from its war context and is introduced during peacetime to obviate social problems and economic crises. Two points are crucial to understand Agamben’s theory of the state of exception: first, the modern state of exception is a product of the democratic tradition, not the absolutist one; second, the state of exception is characterised as ‘fictitious’, where a discourse of war is maintained metaphorically to legitimise the application of extensive sovereign power.²⁹

Having provided the background information, Agamben argues for a theory of exception as “the preliminary condition for any definition of the relation that binds and at the same time abandons the living being to the law”.³⁰ The state of

²⁵ Giorgio Agamben, *State of Exception* (2005) 27

²⁶ i.b.id p.27

²⁷ Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's State Of Exception' (2006) 17 *European Journal of International Law*.

²⁸ Giorgio Agamben, *State of Exception* (2005) 5

²⁹ Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's State Of Exception' (2006) 17 *European Journal of International Law*.

³⁰ Giorgio Agamben, *State of Exception* (2005) 33.

exception is the identification of what is outside the law, but it also encourages sovereign attempts to encompass the outside within the law. At this point, Agamben consults Schmitt's well-known definition of sovereign as 'he who decides on the exception' and argues that according to Schmitt, the juridical order is preserved even when the law itself is suspended. Agamben rejects Schmitt's position and puts forward that "the state of exception is not a 'state of law but a space without law, a 'zone of anomie'".³¹ Agamben maintained that Schmitt's formulation, which attempts to inscribe a legal vacuum into the order, is defined to privilege sovereign violence at all costs.³² Agamben counters Schmitt through the writer of the 'Critique of Violence', Walter Benjamin, who speaks of a 'pure' or 'divine' violence that is neither subject to nor preserving of law, that may appear as a flash of revolutionary transcendence and that Agamben reads as a 'cipher of human activity'.³³ In brief, Agamben argues that attempts like Schmitt's to legislate for anomie, namely to encompass the non-legal within the law, ignore the existence of that which is outside the legal reality; that is to say, the existing juridical order becomes total.³⁴ Lastly, Agamben follows the Roman relation of *auctoritas*, which means 'the power to suspend or reactivate the law', to the *potestas*, which means the power of a magistrate to execute the law. *Auctoritas* is located in the figure of authority and is a competence not of law but of life itself, deriving from the people of the republic and later from the emperor. It also exists in a binary relation, one 'at once of exclusion and supplementation', to *potestas*. Agamben argues that through Augustus' *auctoritas*, he 'legitimizes and guarantees the whole of Roman political life'.³⁵ Through this historical observation, Agamben provides us with a conceptual framework for his critique of human rights by means of the following words: "As long as the two elements [i.e. *auctoritas* and

³¹ I.b.i.d p.50-51.

³² Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's State Of Exception' (2006) 17 European Journal of International Law.

³³ Giorgio Agamben, *State of Exception* (2005) 59.

³⁴ Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's State Of Exception' (2006) 17 European Journal of International Law.

³⁵ Giorgio Agamben, *State of Exception* (2005) 79.

potestas or life and law] remain correlated yet conceptually, temporally and subjectively distinct... their dialectic... can nevertheless function in some way. But when they tend to coincide in a single person, when the state of exception, in which they are bound and blurred together, becomes the rule, then the juridico-political system transforms itself into a killing machine".³⁶

III. Agamben's Critique of Human Rights

The notion of sovereignty is very prevalent compared to other political principles in global politics.³⁷ Similarly, the concept of human rights is always used in various contexts such as refugee crises, poverty and the strict application of government. These two concepts face off against each other in the context of many political and legal issues. For instance, in 1945, the United Nations made reference to human rights, but its main purpose was to consolidate sovereignty as the higher principle of the international legal order.³⁸ The main function of human rights is, in my opinion, to make sovereignty accountable, but current political affairs indicate a trend in the reverse direction. In the war on terror, states of exception are normalised as the most preferable way of exercising sovereignty, and in this way governments can apply draconian rules and violate human rights law. Huntington's concept of 'clash of civilisation' and Schmitt's friend-enemy dichotomy are revived in the current political situation.³⁹ In light of these matters, human rights should at least be reconsidered in terms of their usefulness under modern sovereign power. In this sense, Agamben's critique of human rights is the most powerful critique, and unless

³⁶ *ibid* p.86

³⁷ Sammy Adelman, 'The Unexceptional Exception: Sovereignty, Human Rights And Biopolitics' SSRN Electronic Journal.

³⁸ The Preamble asserts "faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women", but Article 2.1 states that "The Organization is based on the principle of the sovereign equality of all its members." The scope of sovereignty is reinforced in Article 2.7: "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state".

³⁹ Sammy Adelman, 'The Unexceptional Exception: Sovereignty, Human Rights And Biopolitics' SSRN Electronic Journal.

human rights recover from this critique, it may lose its stable place in the political discourse.

To begin with, Agamben goes back to the 1789 Declaration of the Rights of Man and Citizen and argues that this declaration reinforced the biopolitical fracture between political and natural life at the centre of Western metaphysics and politics. Since this declaration made life the foundation of the nation-state, every aspect of life has become politicised and subjected to sovereign power⁴⁰. Therefore, human rights perpetuate the process in which life is reproduced as a 'bare life' through sovereign power. After his provocative examination of the 1789 Declaration, Agamben notes that "it is precisely bare natural life... that appears here as the source and bearer of rights".⁴¹ He concludes that these rights declarations represent a modern biopolitics in which bare life moves from the periphery to the centre of the political order⁴². Some other critiques of human rights from various scholars exist, but Agamben's critique is much more radical than others in terms of his conclusion, in which he argues that given the underlying assumptions of human rights, there is no possibility of reconceptualising them anew; instead, we need to imagine a politics beyond human rights so as to sever the tight link that holds human life in the grip of sovereign power⁴³.

Agamben's critique of the Declaration is affected by Hannah Arendt's critique of human rights. Both authors' critiques take the condition of refugees as their starting point, considering these problems not as a failed implementation, but rather examining the condition of refugees as a symptom revealing the deeply-

⁴⁰Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) 11 Contemporary Political Theory.

⁴¹ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998) 127

⁴²Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) 11 Contemporary Political Theory.

⁴³i.b.i.d

embedded paradoxes of human rights in a modern nation-state.⁴⁴ Arendt drew attention to this paradox by pointing out that this declaration assumes ‘man’ in his natural condition to be a source and bearer of innate rights, but also postulates the ‘man’ to be a ‘citizen’ with membership in a sovereign nation-state⁴⁵. Agamben begins from a similar starting point, but he proceeds differently and reaches distinctive conclusions. Arendt problematises this paradox as a historically contingent problem that draws our attention to questioning the concept of human rights; in short, her critique does not propose the abandonment of human rights, but rather a rethinking of this concept. Agamben, however, notes that the conceptual dilemma in the rights declaration is an example that reveals the biopolitical fracture, namely that between *bios* and *zoe*, which has defined Western politics and metaphysics for centuries. To be more precise, for Agamben, the modern nation-state attempts to enhance the biopolitical fracture between political (*bios*) and natural (*zoe*) life by providing a fictional unity between man and citizen, birth and nation. However, this leads to reducing almost everyone to bare life⁴⁶. Through this declaration, the question of which man is a citizen becomes basically political⁴⁷. These kinds of questions pave the way for opening ground to an intervening sovereign power with the desire to make decisions about people who inhabit the nation-state without their being entitled to political rights.⁴⁸ In brief, for Arendt, the condition of refugees and stateless people between the World Wars revealed the impotence of human rights at a time when they were most needed. Since refugees were deprived of the protection of membership of a political community, they had nothing except their intrinsic rights as human beings. Arendt concludes that stateless people lacked the fundamental ‘right to have right’, namely, the political

⁴⁴i.b.i.d

⁴⁵ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998) 128 and Hannah Arendt, *The Origins of Totalitarianism*. (New York: Harcourt. 1951) 291

⁴⁶ Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998) 128

⁴⁷i.b.i.d p.131

⁴⁸i.b.i.d p.130

and legal recognition that would come only from being a member of a political community.⁴⁹ However, Agamben goes beyond Arendt's critique and argues that human rights, in their current form, are not protecting us from sovereign power, but rather are merely biopolitical rights to inscribe us—on the basis of our 'bare life'—within the mechanisms of the biopolitical state, whose *raison d'être* is to regulate biological life.

Agamben's analysis of human rights shares some features with that of several other contemporary scholars, particularly Foucault's perspective⁵⁰. For instance, for both, rights are not protective shields protecting subjects against sovereign power; in fact, the more we invoke them, the more entangled we become with sovereign power. However, Agamben's critique becomes distinct in some points. For example, from a Foucauldian perspective, human rights as tactics of governmentality can be used in the regulation and management of population, therefore this perspective urges us to a new form of biopower over life and death instead of the archaic sovereign power.⁵¹ For Agamben, whose aim is to indicate the intersection of sovereignty and biopower, human rights participate in the production of sovereign violence that Foucault assumed to be in decline. That is to say, human rights situate life itself at a site of sovereign decision-making and have also paved the way for practices that blur the line between the politics of life and death.⁵² Furthermore, Agamben and Foucauldian critique also differ in terms of their conclusions. Agamben's critique requires the abandonment of human rights altogether in order to sever the bond between life and sovereign power, while from a

⁴⁹Hannah Arendt, *We Refugees* (Altogether Elsewhere: Writers on Exile Edited by Marc Robinson 1994)

⁵⁰Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) 11. Contemporary Political Theory.

⁵¹i.b.i.d

⁵² Giorgio Agamben, *Homo Sacer: Sovereign Power And Bare Life* (1st edn, Stanford University Press 1998) 122.

Foucauldian perspective such as that of Wendy Brown, it is still possible to rethink and invoke human rights in ways that contest sovereign power.⁵³

In conclusion, from Agamben's standpoint, human rights, because they define the human as a subject in terms of its 'bare life', situate humans in a politico-legal field identified by the ever-present possibility of the sovereign state of exception, in which the normal constitutional order is suspended and legal protection is withdrawn. In the condition of the state of exception, the subject is neither included nor excluded but held in a 'zone of indistinction' between two orders. This place is the location of 'homo sacer' as a subject of human rights which are doomed to reproduce sovereign violence, making any struggle for rights seem futile. Agamben notes that "The tradition of the oppressed teaches us that 'the state of emergency' in which we live is not the exception but the rule".⁵⁴ In this sense, exception becomes the rule, the camp becomes the paradigmatic structure to organise political space, and we have almost become homo sacer. As a result, any serious reflection on human rights must engage with these critiques if the concept is to recover itself.

IV. Conclusion

The notion of human rights plays a key role in modern global politics. In some contexts, this notion is seen as a 'universal religion'.⁵⁵ Every political matter can be discussed in the light of human rights. They are desired, claimed and believed in by many people. Not only people but also governments use them to legitimise their political action in international politics. Human rights are understood as a panacea to solve all problems of humanity. Under these circumstances, a critique of human rights is crucial in order to perceive modern political matters more deeply.

⁵³ Ayten Gündoğdu, 'Potentialities Of Human Rights: Agamben And The Narrative Of Fated Necessity' (2011) in *Contemporary Political Theory*.

⁵⁴ Giorgio Agamben, *Means Without Ends: Notes on Politics*, (University of Minnesota Press 2000)

⁵⁵ Daan Bronkhorst, 'The Human Rights Film' [2004] Amnesty International Film Festival.

Giorgio Agamben presents a very powerful critique in which he marks the biopolitical foundations of the modern states and the process by which life is integrated into the structure and mechanisms of sovereign power, where it is 'protected' and 'secured' by means of its nakedness in the context of sovereign exception. It can be noted that the pragmatic approach of human rights in which they function as life-protecting and life-enhancing is not adequate to understand the role of human rights today; rather, in Agamben's analysis, human rights are complicit in the practice of state violence and the consolidation of sovereign power. At first glance, this critique can be seen as very radical. However, from our perspective, when Agamben's conceptual background is taken into account, it can be said that this critique has a very strong basis.

To overcome any obstacle, the obstacle must firstly be defined at all points. In Agamben's discourse, this obstacle can be seen to be sovereign power. Sovereign power attempts to encompass our essence of 'life itself'. We have to overcome this obstacle in order to be human in the most profound sense. Initially, human rights can be seen as a saviour for those who wish to overcome the obstacle because human rights are presented as a pure and sincere concept. However, Agamben shows through the elucidation of the structure of sovereign power that this structure can transform everything that has a relation to it, and that human rights is one of these things. To be more precise, when the sovereign power builds a relationship to human rights, human rights is transformed and integrated into the mechanism of sovereign power. From this point on, the notion of human rights cannot function in the way we claim. We have to abandon human rights altogether in order to sever the relation between sovereign power and our life.

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