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“A Zone of Indistinction”

– A Critique of Giorgio Agamben’s Concept of Biopolitics

Summary

This article reconstructs Giorgio Agamben’s concept of biopolitics and discusses his claim that the camp is the “matrix of modernity”. While this thesis is more plausible than many of his critics do admit, his work is still characterised by diverse theoretical problems. My critique will concentrate on the legalistic concept of biopolitics that Agamben endorses and on his formalistic idea of the state. This reading of Agamben leads to a surprising result. By focussing on the repressive dimensions of the state and the sovereign border between life and death, Agamben’s work remains committed to exactly that juridical perspective that he so vividly criticizes.

Until recently, the term “biopolitics” as developed by Michel Foucault was unknown beyond a group of experts and scholars.¹ As Foucault understood it, the term designates what “brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life” (Foucault 1979: 143). He distinguished historically and analytically between two dimensions of this “power to life”,

namely between the disciplining of the individual body, on the one hand, and the social regulation of the body of the population, on the other. According to Foucault, biopolitics marks the threshold of political modernity since it places life at the center of political order. In this theoretical perspective, there is an intimate link between the constitution of a capitalist society and the birth of biopolitics: “Society’s control over individuals was accomplished not only through consciousness or ideology but also in the body and with the body. For capitalist society, it was biopolitics, the biological, the corporal, that mattered more than anything else” (Foucault 2000: 137). Furthermore, the introduction of the concept of biopolitics by Foucault marks a theoretical critique of the “juridico-discursive” model of power (Foucault 1979: 82). In this model, power is assumed to be exercised as interdiction and repression in a framework of law and legality resting ultimately on the problem of sovereignty. In contrast, Foucault uses the notion of biopolitics to stress the productive capacity of power that cannot be reduced to the ancient sovereign “right of death”. While sovereignty mainly operated as a “subtraction mechanism” that seized life in order to suppress it, the new life-administering power is dedicated to inciting, reinforcing, monitoring and optimizing the forces under its control (see Foucault 1979).

1 Previous versions of this paper were presented at the conference *Bloßes Leben in der globalisierten Moderne. Eine Debatte zu Giorgio Agambens Homo Sacer* at the University of Hannover in January 2003 and at the *Nordic Summer University*, Laugarvatn, Island in July 2004. Thanks to participants of those occasions and Annika Balsler, and two anonymous reviewers for their comments and criticism.

Today, the term “biopolitics” is used more and more frequently in scientific literature and journalistic texts. Mostly it is employed as a neutral notion or a general category to point out the social and political implications of biotechnological interventions. This technology centred approach ignores the historical and critical dimension of the Foucauldian notion, how technological developments are embedded in more global economic strategies and political rationalities. There are two exceptions to this trend toward a simultaneous generalisation and depoliticisation of the notion of biopolitics. Both rely on the Foucauldian concept of biopolitics, but they do so in very different ways.

Michael Hardt and Antonio Negri (2000) attempt to give biopolitics a positive meaning. By synthesizing ideas from Italian neo-operatism, with poststructural and Marxist theories, as well as with Deleuzian vitalism, they claim that the borderline between economics and politics, reproduction and production is dissolving. Biopolitics signals a new era of capitalist production where life is no longer limited to the domain of reproduction or subordinated to the working process: “The subjectivity of living labor reveals, simply and directly in the struggle over the senses of language and technology, that when one speaks of a collective means of the constitution of a new world, one is speaking of the connection between the power of life and its political organisation. The political, the social, the economic, and the vital here all dwell together” (Hardt/Negri 2000: 405-6; see also 22-41). In Hardt and Negri’s account the constitution of political relations now encompasses the whole life of the individual, which prepares the ground for a new revolutionary subject: the multitude.²

The picture presented by the second approach is much more pessimistic. Giorgio Ag-

amben’s book *Homo Sacer* (1998) depicts the present not as the starting point for potential projects of liberation, but as the catastrophic endpoint of a political tradition that originates in Greek antiquity and leads to the National Socialist concentration camps. In this book and in the following publications like *Remnants of Auschwitz* (1999a) or *State of Exception* (2005) Agamben declares that the camp is the “biopolitical paradigm of the modern” (1998: 117). In the following I will argue that Agamben’s reformulation of the concept of biopolitics is only partially convincing. While his thesis of the central political significance of the camp is more plausible than many of his critics admit, his work is nevertheless characterised by diverse theoretical problems. Agamben not only fails to make important analytical differentiations, also his conceptual instruments do not allow him to account for essential aspects of modern biopolitics.

My critique will focus on the legalistic concept of biopolitics that Agamben endorses as well as his formalist idea of the state. On a number of points I will contrast Agamben’s juridical analysis with Foucault’s strategic account of modern biopolitics, often by referring to the area of biomedicine that Agamben turns to when he illustrates contemporary biopolitics.³ My main thesis is that while Foucault’s analysis and critique of the biopolitical project stresses the link between forms of subjectivation and political technologies, this important dimension is completely lacking in Agamben’s work. To put it shortly, Agamben subscribes to exactly the juridico-discursive concept of power that Foucault has shown to be insufficient for the analysis of modern biopolitics.

In the first part of my presentation, I reconstruct the main arguments of *Homo Sacer*.

2 I commented on Michael Hardt’s and Antonio Negri’s concept of biopolitics elsewhere (see Lemke 2002a).

3 It should be noted though that biopolitics in the Foucauldian sense is a much broader term since it also encompasses subject areas like hygiene, demography, social welfare and insurance systems.

Then I will discuss Agamben's claim that the camp is the "matrix of modernity". In the main part of my paper I shall critically analyse some theoretical problems, among them the neglect of socio-political aspects of the biopolitical problematic and the quasi-ontological foundation of Agamben's theory. I will end up with a résumé that sums up the argument.

1. Bare life and the rule of exception

Agamben's point of departure is a conceptual distinction that according to him characterises Western political tradition since Greek antiquity. He states that the main line of separation is not the difference between friend and enemy, but the distinction between bare life (*zōē*) and political existence (*bíos*), between the natural existence and the legal status of a human being. He claims that the constitution of sovereign power requires the production of a biopolitical body. Agamben holds that the institutionalisation of law is inseparably connected to the exposure of "bare life". In this light, the inclusion into a political community seems only possible by the simultaneous exclusion of some human beings who are not allowed to become full legal subjects. At the beginning of all politics we find – according to Agamben – the establishment of a borderline and the inauguration of a space that is deprived of the protection of the law: "The original political relation is the ban" (Agamben 1998: 181).

Agamben denotes this secret foundation of sovereignty with a figure from archaic Roman law. "Homo sacer" designated an individual that may be killed by anyone without being condemned for homicide since he or she had been banned from the juridical-political community. While even a criminal could claim certain legal rights and formal procedures, this "sacred man" was completely unprotected and reduced to mere physical existence. Since he or she was ascribed a status beyond human and

divine law, homo sacer became some kind of "living dead".

For Agamben the obscure figure of *homo sacer* marks the flip side of sovereign logic. As the sovereign is in a position above the law, bare life signifies a domain beyond his competence while at the same time it provides the basis for the rule of sovereignty. Bare life, that seems to be located at the very margin of politics, turns out to be the solid basis of a political body that decides not simply over the life and death of human beings, but who will be recognised as a human being at all. From this perspective, the production of *homines sacri* is a constitutive but unrecognised part of politics. Not a subject that remains outside of law, homo sacer is constituted by political-legal means "to personalize what it excluded from the protection of law" (Vismann 2001, p. 15). Therefore this rightless existence should not be conceived of as a pre-societal state. Quite the contrary, Agamben makes clear that the natural state to which *homo sacer* seems to be thrown back is not a residuum of the historical past but the result of social relations. Bare life does not refer to a natural, original or ahistorical nakedness but presents an artificial product, a concealing bareness that hides social markings and symbolisations (Agamben 1999b; Lüdemann 2001).

To be clear: Agamben does not use the figure of *homo sacer* for a historical reconstruction of legal procedures and institutions.⁴ Rather, he applies it as a theoretical concept that is supposed to inform political analysis. As a consequence, Agamben is less interested in the question whether in antiquity human beings were indeed confronted with this kind of ban; he is more concerned to display the political mechanism of rule and exception, bare life and political existence. He analyses the paradoxical structure of sovereignty that

4 For a comprehensive critique of Agamben's interpretation of ancient legal texts see Fitzpatrick 2001.

operates by a suspension of law: the decision about the exception of the rule.

Here we have to note the first difference from the concept of biopolitics as Foucault uses it. According to Agamben politics is always already biopolitics, since the political is constituted by the state of exception, in which bare life is produced. For Foucault, on the contrary, biopolitics is something much more recent: it marks a historical shift in the economy of power that dates back to the 17th and 18th century. While Foucault analytically distinguishes between biopolitics and sovereignty, Agamben insists on their logical connection: he takes biopolitics to be the centre of sovereign power. In this light, modernity is not marked by a break with the historical tradition, but it only generalises and radicalises what was always present in the beginning of politics. Nevertheless, modernity is different from pre-modern times insofar as bare life, which was once located at the margins of political life, is now occupying more and more space inside the political domain. As for the present, Agamben diagnoses a collapse of the rule into the exception and of politics into life.

Agamben’s reconstruction of the intimate relationship between sovereign rule and biopolitical exception leads to a disturbing result. Agamben’s thesis that the camp is the “hidden matrix of politics” (Agamben 2001a: 48) claims an inner link between the emergence of human rights and the establishment of concentration camps. In this light there is no safe and secure borderline that separates parliamentary democracies and totalitarian dictatorships, liberal states and authoritarian regimes. This is Agamben’s first provocation that we will discuss in more detail now.

2. The camp as the matrix of modernity

Agamben’s thesis that the camp is “the hidden paradigm of the political space of modernity”

(1998:123) implicitly refers to Foucault’s history of the prison and his analysis of the panopticon in *Discipline and Punish*: “By paradigm I mean something very precise, some kind of methodological approach to problems like Foucault takes for example the panopticum as a very concrete object while at the same time treating it as a paradigm to explain the larger historical context” (Agamben 2001b: 19). Like Foucault’s genealogy of the prison that is at the same time a history of the present, Agamben’s analysis of the camp does not refer to an archive of memories but to an “event that repeats itself on a daily basis” (Panagia 1999). In this perspective, the camp is not a historical fact or a logical anomaly but a “hidden matrix” (Agamben 1998: 166) of the political domain. Like Foucault, Agamben tries to make visible the underlying structure in order to better conceive the present political constellation. For him the camp is less a physical entity surrounded by fences and material borderlines. Rather, it symbolizes and fixes the border between bare life and political existence. In this view “camp” does not only refer to the concentration camps of the Nazis or the contemporary urban ghettos, in principle it denotes every single space that systematically produces bare life: “*The camp is the space that is opened when the state of exception begins to become the rule*” (Agamben 1998: 168-9; emphasis in orig.). In other words, Agamben fundamentally displaces the traditional meaning of “camp”. The camp that in the past was an expression of the difference between friend and enemy, symbolises, in Agamben’s work, the state of exception where law and fact, rule and exception overlap.⁵

“The stadium in Bari into which the Italian police in 1991 provisionally herded all illegal Albanian immigrants before sending them

5 In German the term for “camp” is “Lager”. The “overlapping” of fact and law may be translated as “sich überlagern”, the displacement of meaning as “verlagern”.

back to their country, the winter cycle-racing track in which the Vichy authorities gathered Jews before consigning them to the Germans, [...] or the *zones d'attentes* in French international airports in which foreigners asking for refugee status are detained will then all equally be camps. In all these cases, an apparently innocuous space [...] actually delimits a space in which the normal order is de facto suspended and in which whether or not atrocities are committed depends not on law but on the civility and ethical sense of the police who temporarily act as sovereign" (Agamben 1998: 174).

According to Agamben, modern biopolitics is "double-sided: the spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individuals' lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves" (Agamben 1998: 121). It is the same reference to "bare life" that in liberal democracies results in the pre-eminence of the private over the public sphere, while in totalitarian states it becomes a decisive political criterion of the suspension of individual rights. But even if both forms of government rely on the same political substance – bare life – it does not necessarily mean that they are equal in normative terms. Most commentators fail to see that Agamben neither diminishes the differences between democracies and dictatorships nor devalues liberal rights of freedom and participation. Rather, he wants to show that the democratic rule of law is by no means an alternative project to the Nazi regime or the Stalinist dictatorship, since the latter radicalise biopolitical tendencies that according to Agamben could be found in various political contexts and historical epochs. Thus, Agamben does not mean to reduce or negate these profound differences, but instead he tries to elucidate the common ground for these very different forms of government: the production

of bare life. While other philosophers and historians may insist that the camps of the Nazis are a logical exception or a historical epiphenomenon, Agamben searches for the rule, or the normality, of this exception and asks in what sense "bare life" is an essential part of our contemporary political rationality.

Here we are confronted with a second provocation. While for Agamben all politics is always already biopolitics, he claims that modernity is the biopolitical age par excellence, since it is only in modernity that exception and rule become ultimately indistinguishable. After the end of Nazism and Stalinism a new era of biopolitics comes into being. There is no simple historic continuity between totalitarian regimes and democratic states; instead Agamben notes an increasing aggravation of biopolitics. According to him, "biopolitics has passed beyond a new threshold" [...]: "in modern democracies it is possible to state in public what the Nazi biopoliticians did not dare to say" (Agamben 1998: 165).

While the Nazi biopolitics concentrated on identifiable individuals or specific subpopulations, "in our age all citizens can be said, in a specific but extremely real sense, to appear virtually as *homines sacri*" (Agamben 1998: 111). Clearly, Agamben assumes that the borderline that once separated individuals or social groups is now to be found inside the individual body. The line of separation between political existence and bare life "moved inside every human life and every citizen. Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being" (Agamben 1998: 140).

Unfortunately, Agamben leaves this aggravation of the biopolitical problem extremely vague. His thesis that rule and exception are marked by indeterminacy is coupled with a lack of conceptual differentiation. To be more concrete: Even if all subjects are *homines sacri*, they are so in very different ways. Agamben limits his argument by stating that everyone

is susceptible to being reduced to the status of “bare life” – without clarifying the mechanism of differentiation that distinguishes between different values of life. It remains woefully unclear to what extent and in what manner the comatose in the hospitals share the fate of prisoners in concentration camps; whether the asylum seekers in the prisons are bare life to the same degree and in the same sense as the Jews in the Nazi camps. Agamben privileges exaggerated dramatisation over sober evaluation, since he even regards people killed on motorways indirectly as *homines sacri* (Agamben 1998: 114; Khurana 2002). As I try to show in the following section, lacking the capacity to differentiate is not an accidental fault of the argument, but the necessary outcome of an analysis that systematically ignores central aspects of contemporary biopolitics.

3. Zone of indistinction or biopolitical continuum?

For Agamben the decision about life and death “no longer appears today as a stable border dividing two clearly distinct zones” (1998: 122). This sentence allows for two completely different readings. If the accent is placed on the first part of the phrase that stresses the dissolution of a clear demarcation line, the border is conceived as a flexible zone or a mobile line. Or – this is the second interpretation – if the accent is put on the last part of the phrase, the phrase seems to indicate that there is no longer a borderline at all, that both domains have become indistinguishable. This is probably the direction that Agamben takes when he speaks of a “zone of indistinction”, the tendency towards identity of life and politics (1998: 122 resp. 148).

But this leads into a blind alley. Agamben does not comprehend “camp” as an internally differentiated continuum, but only as a “line” (1998: 122) that separates more or less clearly between bare life and political existence. As

a consequence, he cannot analyse how inside “bare life” hierarchisations and evaluations become possible, how life can be classified and qualified as higher or lower, as descending or ascending. Agamben cannot account for these processes since his attention is fixed on the establishment of a border – a border that he does not comprehend as a staggered zone but as a line without extension that reduces the question to an either-or. In other words: Agamben is less interested in life than in its “bareness”, whereby his account does not focus on the normalisation of life, but on death as the materialisation of a borderline. For Agamben biopolitics is essentially “thanatopolitics” (1998: 122; Fitzpatrick 2001: 263-265; Werber 2002: 419).

In fact the “camp” is by no means a homogeneous zone where differences collapse but a site where differences are produced. Here again the contrast between Agamben and Foucault is instructive. For Foucault biopolitics is not a sovereign decision over life and death. The historical and political novelty of biopolitics lies in the fact that it focuses on the productive value of individuals and populations; the ancient sovereign power that was centred on death is reorganised around the imperative of life. In this perspective Foucault analyses modern racism as a vital technology since it guarantees the function of death in an economy of bio-power. Racism allows for a fragmentation of the social that facilitates a hierarchical differentiation between good and bad races. The killing of others is motivated by the vision of an improvement or purification of the higher race (Foucault 1997: 213-235). From this point, the second difference between Agamben and Foucault emerges. Agamben claims that from antiquity on there was a structural link between sovereignty and biopolitics, leading to an always renewed and ever more radicalised separation between bare life and legal existence. Foucault, on the other hand, makes an analytical distinction between biopolitics

and sovereignty, even though he notes their “deep historical link” (Foucault 1991: 102). Only the Foucauldian analytical frame allows the material limits and the historical specificity of sovereignty to become visible by presenting it less as the origin than as an effect of power relations.

Foucault shows that sovereign power is by no means sovereign, since its legitimacy and efficiency depends on a “microphysics of power”, whereas in Agamben’s work sovereignty produces and dominates bare life. For Agamben “*the production of a biopolitical body is the original activity of sovereign power*” (1998: 6; emphasis in orig.). The binary confrontation of *bíos* and *zoé*, political existence and bare life, rule and exception points exactly to the very juridical model of power that Foucault has criticized so convincingly. Agamben pursues a concept of power that is grounded in categories of repression, reproduction and reduction, without taking into account the relational, decentralised and productive aspect of power. In that it remains inside the horizon of law, Agamben’s analysis is more indebted to Carl Schmitt (1932) than to Michel Foucault. For Schmitt, the sovereign is visible in the decision about the state of exception, in the suspension of the law, while for Foucault the normal state that operates beneath, alongside, or against juridical mechanisms is more important. While the former concentrates on how the norm is suspended, the latter focuses on the production of normality. Schmitt takes as the point of departure the very sovereignty, that signifies, for Foucault, the endpoint and result of complex social processes, which concentrate the forces inside the social body in such a way as to produce the impression that there is an autonomous centre, or a sovereign source of power.⁶

4. Political economy of life

Agamben sees the novelty of the modern biopolitics in the fact that “*the biological given is as such immediately political, and the political is as such immediately the biological given*” (1998: 148; emphasis in orig.). In the political program of the Nazis, the preoccupation with life is at the same time a struggle against the enemy. While there are probably convincing reasons to state that in the present we are one step further on the way towards a politicisation of nature, there are at least two major problems that this conception of biopolitics fails to address. Firstly, Agamben does not take into account that the site of sovereignty has been displaced. While in the eugenic programs in the first half of the 20th century biopolitical interventions were mainly executed by the state that controlled the health of the population or the hygiene of the race, biopolitics today is becoming more and more a responsibility of sovereign subjects. As autonomous patients, active consumers or responsible parents they demand medical or biotechnological options. Today, it is less the state that regulates by direct interventions and restrictions, since the capacity and competence of decision-making is increasingly ascribed to the individual subject to make “informed choices” beyond political authoritarianism and medical paternalism. Decisions on life and death are less the explicit result of legal provisions and political regulations but the outcome of an “invisible hand” that represents the options and practices of sovereign individuals (Lemke 2002b; Koch 2002). Agamben’s analysis is too state-centred, or rather, it relies on a limited conception of the state which does not take into account important political transformations since the Nazi era. He does not take into account that in contemporary liberal societies political power is exercised through a multiplicity of agencies and techniques that are often only loosely associated with the formal organs of the state. The self-regulating capacities of subjects as

6 For a systematic comparison between Foucault’s and Agamben’s conception of biopower: Genel 2003; see also Nikolopoulou 2000.

autonomous actors have become key resources for present forms of government that rely in crucial respects on forms of scientific expertise and knowledge (Rose/Miller 1992).

Agamben’s concept of biopolitics is marked by a second weakness that also demonstrates his excessively legalistic approach. Biopolitical mechanisms confront not only those who have been deprived of elementary rights and reduced to the status of living beings. The analysis of biopolitics cannot be limited to those without legal rights, such as the refugee or the asylum seeker, but must encompass all those who are confronted with social processes of exclusion – even if they may be formally enjoying full political rights: the “useless”, the “unnecessary”, or the “redundant”. While in the past these ominous figures inhabited only peripheral spaces in the so-called third and fourth world, today in a global economy these forms of exclusion can also be found in the industrialised centres. As a result of the crisis of the welfare state and Fordist modes of social integration, more and different segments of the populations are effectively excluded not only from labour and the working process but from education, housing and social life (Castel 2000; Imbusch 2001).

By concentrating on questions of law and the figure of the sovereign ban, Agamben ignores central aspects of contemporary biopolitics. He takes for granted that the state of exception is not only the point of departure for politics, but its essence and destination. In this light, politics is reduced to the production of *homines sacri* – a production that in a sense has to be called non-productive since bare life is only produced to be suppressed and killed. But biopolitical interventions cannot be limited to registering the opposition of bare life and political existence. Bare life is no longer simply subject to death; it falls prey to a bio-economical imperative that aims at the increase of life’s value and the optimisation of its quality. Contemporary biopolitics is essen-

tially political economy of life that is neither reducible to state agencies nor to the form of law. Agamben’s concept of biopolitics remains inside the ban of sovereignty, it is blind to all the mechanisms operating beneath or beyond the law (see also Bröckling 2003).⁷

5. Conclusion: biopower and thanotopolitics

Our reading of Agamben leads to a surprising result. Following a binary code and a logic of subsumption that does not allow for differentiations, his argument remains committed to exactly the juridical perspective that he so vividly criticizes. He reduces the “ambiguous terrain” (1998: 143) of biopolitics by operating with a notion of politics that is at once too broad in its explanatory scope and too narrow in empirical complexity. On the one hand Agamben conceptualises the political as a sovereign instance that does not allow for an outside that would be more than an “inner outside” and an “exception”. On the other hand his presentation of sovereignty is completely limited to the decision on the state of exception and the killing of bare life.

As a consequence, Agamben presents a distorted picture. The main danger today may not be that the body or its organs are targets of a distinctive state politics (1998: 164-5), but – quite the contrary – that we are witnessing an important transformation of the state under the sign of deregulation, privatisation and liberalisation. It is more and more the scientific consultants, economic interest groups, and civil societal mediators that define the

⁷ Agamben also completely ignores to address the question whether the biopolitical production of „bare life” is also a patriarchal project. Indeed, the strict border line between natural life and political existence very much resembles the heterosexual order and a gendered division of labor that reduces women to “bare life” (for a feminist critique of Agamben’s account: Deuber-Mankowski 2002)

beginning, the end, and the value of life, in consensus conferences, expert commissions, and ethical counsels. This “withdrawal of the state” could itself be analysed as a political strategy, though one that does not necessarily refuse individuals legal rights. In a more moderate account of exceptionality the suspension of legal rights might remain important in determining who is allowed to become part of a community, who is eligible to legal rights at all. The political strategy, however, that shifts legal and regulatory competencies from the public and legal domain to the private sphere, will probably pose a much greater threat in the future. This tendency is already visible; for example, it is possible for private companies to own and exploit human body substances (see Andrews/Nelkin 2001). Moreover, this tendency can already be traced in examples that Agamben mentions, namely the admissibility of euthanasia and transplantation medicine. Here we can expect that a patient’s legal will and contract relations will take the place of explicit state prohibitions and regulation. We note that in some countries there is already a public discussion to provide financial compensations for individuals who donate organs, and there is a growing consensus in the legal community to accept the will of the patient not to prolong life under certain conditions.⁸

By the analytical focus on a formal and repressive conception of the state and the theoretical fixation on the sovereign border between life and death, Agamben fails to see the limits of his own argumentation. Not every

single form of exclusion needs to be grounded in legal regulations, or necessitate a suspension of law. Sovereignty does not only reside in political instances and state agencies, it also dwells in “life politics” (Giddens 1991: 209-31) of sovereign subjects who are expected to act in an autonomous way as individuals. We are not only subjected to political mechanisms that regulate and restrict our physical life; we are also inscribed in what Foucault called “arts of government” that direct how to reflect ourselves as moral persons and parts of collective subjectivities (see Foucault 2004a). In fact, Foucault regarded biopolitics as an essential part of the liberal art of government (see Foucault 2004b, pp. 3-28).

Yet, although the social dynamics of the relations between bare life and political existence, between technologies of the self and political rationalities, remain theoretically underdeveloped in Agamben’s work, his theory recognises that it is not sufficient to simply extend legal rights to those excluded. What is needed, however, is what Foucault called a “new right” (1997: 35) that suspends the difference between human being and citizen and overcomes a legal concept that permanently re-inscribes the separation between natural existence and political life.

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⁸ See Norris 2000: 52-3: „Though Agamben does not discuss it, one of the best examples of this collapse of the rule into the exception and of politics into life may be the corporate investigation and purchase of the human genome. The day is at hand when the decision on the human being will become the rule. The definition of the human being, like that of death, will become too fluid to serve as a guide for the judgement on its modifications, and lawyers, scientists, and political theorists will simply not be able to chart the expansion of our present boundaries into the dark seas that confront us.”

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