

The modern Democratic State and Capital: acts of exclusion, the creation of ‘bare life’, its identification, and its killing.

Martin Blanchard

This attempt at an understanding of ‘exclusion’ by the UK government was triggered by the debate around the current Assisted Dying (by suicide) Bill 2025

From: The Antigone of Sophocles by Brecht.

A version for the stage after Hölderlin’s translation.

ANTIGONE:

Oh, alas they are mocking me
Not yet gone below
Still in the daylight.
Oh city, oh you my city’s
Men of plenty! And yet one day
You must be my witness how I
Unwept by loved ones and in accordance with
What sort of laws
Must enter the opening dug for me
The unheard of grave. I am
Not joined with mortals
Nor with the shades
With life nor death.

Our economy is stagnant, we are outside our closest major market-the EU, our ‘special relationship’ has been soured for a while, and our health and care needs are growing. Our NHS and our End of Life services are underfunded, while an ageing population means that more people are dying than ever before. A recent State policy of ‘austerity’ resulted in hundreds of thousands of excess deaths, and now there is to be a law to enable Assisted Dying (by suicide) for those who request it, and who have an estimated life expectancy of 6 months or less.

This new law may indeed bring solace and protect both patient and carer who would choose to help their ‘loved one’ to die because of the unmanageable suffering that continued life involves. However, there are many people with longstanding disabilities and severe, enduring mental illnesses, and those who live in destitute circumstances, whose lives have been distressing for years, and perhaps have been so intolerable that they have made attempts at, or completed suicide. These people may now be even more concerned for their futures.

This essay briefly notes a history of human exclusion, and exclusion related to the British State; and then explores the way various philosophers believe that Western democracy has developed, and how our current Politics uses remnants of sovereign power to continue to exclude many people, even if it means they will die; and there is no consequence. Frequently the reason given and accepted is a ‘product’ of the current hegemonic ideology- ‘that for the country to survive we need an economy which affords private individuals and companies adequate profits’, and that therefore ‘resources are limited and difficult decisions about where money is spent need to be made’.

Meanwhile, though equality remains the professed intent, inequalities are as great if not greater than they have ever been¹.

Recent events seem to support the ideas of Foucault, and Agamben about the power of states, and the ‘hidden’ link between modern liberal democracies and totalitarianism. We are witnessing the increased control of society by powerful anti-democratic structures released from business restraints to use their State provided sovereign power to make decisions involving the futures of countries; and some warn us of the ‘spectre of the capitalist state’² itself, set to follow a quest for productivity. On our part perhaps, this would be a quest to innovate and to accrue enormous amounts of surplus value back to the US hegemon.

Having a legal framework for assisted death/suicide on the statute book is a significant step for our society; for the first time our State will publicly identify, name and enable a group of people to have an early death for health (*bios*³) reasons, albeit currently this will be done for the perceived benefit of the person and their families. This use of state juridical power may however change with circumstances, and it may also embolden the use of the remnants of sovereign power that already exists.

HISTORY

Ties- sacrificial deaths in early, non-industrial societies- if there was a lack of resource

Simone de Beauvoir in the ethnological section of her book ‘La viellesse’ or ‘The coming of age’, has detailed many societies where, in times of food shortage some older members would opt to die willingly, while others would be assisted to die (be killed) in a variety of quasi ‘ceremonial’ ways: such as a procession to a high cliff and then being helped to jump, or being carried out into deep water in a specially constructed cradle that they could not escape from, and then being held under the water until they drowned.

From the epic of the Narte, handed down from the Ossets to the Tcherkesse:

The head of the council for the killing of the aged asked, ‘which is the older of you two?’ ‘It is the old woman of course, that is the older,’ said the man between his teeth. At this the little old woman could bear it no longer and burst out, tossing in the cradle, so as to break the thongs. ‘Ah! God has struck me! Is it possible for a man to speak as you have spoken? Now it is the time for killing he says I am the older... If you do not believe me, look at our teeth: mine have not yet dropped out-he has lost his twice, three times...’ When the council looked at their teeth it was decided that the husband was the older. They took him away, muttering and complaining; they made him drink beer and they threw him into the valley.

¹ From jrf.org.uk Wealth inequality is high and rising and more marked than income inequality. In the UK, the bottom 50% of the population owned less than 5% of wealth in 2021, and the top 10% a staggering 57% (up from 52.5% in 1995). The top 1% alone held 23% (World Inequality Lab, 2022). The ratio of wealth to income has risen in the UK from 2.3 to 1 in 1948, to 5.7 to 1 in 2020 (in Savage et al., forthcoming). It has a significant impact on life chances and outcomes (Callaghan et al., 2021) and it generates high levels of poverty amongst those with no wealth assets to fall back on.

² Alami I and Dixon A. The spectre of state capitalism. OUP 2024 <https://academic.oup.com/book/57552>

³ Bio in biology comes from the Greek **bios**, which means “one’s life, course or way of living, lifetime”— in the sense of biography.

Colonialism, ‘primitive accumulation’ and the value of life (see Marx’s Capital vol.1 Chapter 33)

With imperialism, land in a subjugated colony was stolen and rented back to local workers; rent and goods had to be paid for in the colonisers’ legal tender, and so populations were used to generate surplus value as a form of bonded labour paid very little for the extraction of resources, and work done on the land such as in cotton or tea production. Life was seen as ‘cheap’ and many of those in the colony died prematurely; those that decided to rebel were killed or put into concentration camps,⁴ and the Empire grew.

During the ‘Great Hunger’ (1845-1852) in Ireland, roughly 1 million people died, and more than 1 million fled the country in the ‘coffin’ ships⁵. The famine was not entirely due to a potato blight, for Irish farms produced several other crops. The problem was that the colonial landowners exported most of these crops abroad for money -as payment for the farmers’ rent.

Post-colonial neo-liberal capitalism

Having read Tom Stevenson’s recent book,⁶ it seems that we still seem to need to have a pretence of Empire, even though hegemony is currently with the US-and China is their major competitor. Our economy along with many other OECD countries is stagnant⁷.

Bonded labour in the ‘home country’ could only ever be tolerated to a degree, and the old and physically incapable are living longer than ever before⁸, consuming resource but no longer available as human capital in what is viewed as the essential task of increasing our ‘productivity.’⁹

Notes on attempts at solutions to the ‘productivity’ problem and the consequences; how to increase productivity without precipitating a revolution?

Attempt to get the poor and unemployed to work

A new (Penguin) edition of Polanyi’s Great Transformation has just been published.¹⁰ His story line goes that the amendment of the 1834 Poor Law Act ended Speenhamland ‘outdoor relief’ from the Parish, which had been available to the rural poor since Elizabethan times; and from then on, any vital support for people without an income was only meant to be available if they entered what turned out to be the ‘horrors’ of the workhouse. In the Andover Workhouse the marrow from the bones that inmates crushed, as their work to make agricultural ‘bone meal,’ became their main source of nourishment for which they had to fight each other. Many died inside and outside the workhouse who before this time the Parish would have been allowed to support. For the

⁴ <https://www.theguardian.com/news/2016/aug/18/uncovering-truth-british-empire-caroline-elkins-mau-mau>

⁵ <https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliamentandireland/overview/the-great-famine/>

⁶ Someone Else’s Empire: British Illusions and American Hegemony. (Verso 2023).

⁷ <https://spectrejournal.com/the-persistence-of-global-capitalisms-long-depression/>

⁸ <https://pmc.ncbi.nlm.nih.gov/articles/PMC85057> Cylus J, Al Tayara, L. Health, an ageing labour force, and the economy: Does health moderate the relationship between population age-structure and economic growth?

⁹ <https://www.bbc.co.uk/news/articles/c24n10p7e4zo>

¹⁰ The Great Transformation. The political and economic origins of our time. Polanyi K. Penguin Classics 2024.

first time perhaps, death from precarity in the UK was seen as an acceptable cost in the capitalist endeavour to ensure surplus value and growth, and this was written into the law.

‘Kill-off’ the old and needy who are unable to partake in ‘productive’ work

From de Beauvoir we learn that the end of life is partly a ‘social construct’. Even recently the British government has deliberately killed by neglect. It was estimated by the Labour Party themselves that the absence of winter fuel allowance could kill 4,000 people prematurely¹¹. A lack of State provided care due to Conservative rule imposed ‘austerity’ (2010-2019) was associated with between 190,000-335,000 excess deaths¹²- there can be no doubt that they realised it would happen.

‘Kill-off’ those mentally unable to partake in ‘productive’ work (denial of having any ‘illness’ leads to denial of state care¹³)

The emptying and closing of the ‘asylums’ in the US¹⁴ of a calculated 813,390 patients lead to many people with severe and enduring illnesses and disabilities living on the streets, ending up in jails and prisons, and dying prematurely. The closing of the asylums in UK in the mid 1980s while not as immediately dramatic, was followed by the slow, almost invisible to most people, degradation of NHS community services and the involvement of private or charitable providers, and always with ‘promises of better’ that to date have never been delivered. Recently mental health employees are recognising and reacting as a group, to the increase in suicides and preventable deaths due to underfunded psychiatric care.¹⁵ An overwhelming emphasis on getting people back to ‘productive’ work has been generated by changes in the provision of health care as ‘value-based’ systems-as described in the Health and Care Act 2022.¹⁶ There is an intent that funding for care should be targeted at that which will improve ‘productivity’ across each healthcare system as if a fillip to the expressed urgent need to increase the number of people in employment, and National ‘productivity’. Such a priority in a constrained healthcare economy threatens the future lives of many people with severe, enduring mental and physical illnesses and disabilities.¹⁷

¹¹ <https://www.theguardian.com/politics/2017/jun/05/tory-winter-fuel-allowance-cuts-puts-4000-lives-at-risk-claims-labour>

¹² <https://lordslibrary.parliament.uk/mortality-rates-among-men-and-women-impact-of-austerity/>

¹³ Sedgwick P. *Psychopolitics*. First published 1982- new edition Pluto Press 2022.

¹⁴ <https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html> Deinstitutionalisation; a psychiatric ‘titanic’

¹⁵ <https://www.theguardian.com/society/2024/feb/19/it-might-have-been-different-how-norfolk-and-suffolk-nhs-foundation-trust-is-failing-mental-health-patients>

¹⁶ <https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted>

¹⁷ <https://www.disabilitynewsservice.com/prime-minister-suggests-all-those-on-sickness-benefits-should-look-for-work/>

Some further thoughts on Precarity

The idea of Precarity¹⁸ was mainly developed among European theorists and activists primarily in terms of wage and labour relations, and in this sense marking a contrast to the stable employment contracts that served as an ideal in the mid-20th century.¹⁹ Guaranteed labour contracts and laws that protect workers' rights have been progressively eroded, and workers forced to accept informal, short-term labour contracts. These labour arrangements have always been raced and gendered; but all sectors of the workforce are being affected by this trend, albeit in different ways and degrees. This use of precarity of labour is a powerful weapon in the 'grand arsenal' of neoliberalism. While a life with precarity is known to be physically and mentally harmful, increasing the need for healthcare including for chronic conditions later in life²⁰

Judith Butler²¹ described precarity as 'a politically induced condition in which certain populations suffered from failing social and economic networks of support more than others, and become differentially exposed to injury, violence and death.' She also proffered the idea of presence or absence of 'grievability' of certain populations. An 'ungrievable' life is one that cannot be mourned because it has never lived, in that it has never counted as a life at all. We can see in the media all the time the divisions across the world into the 'grievable' and 'ungrievable'. In given economic circumstances- such as a belief in potential economic collapse- it may be possible for what is normally viewed as a 'grievable' society to define elements of its population as actually not counting (*Le compte des incompatibles*), which are then excluded and become not worthy of our 'grieving'.²²

Necropolitics

Achille Mbembe's concept of 'necropolitics'²³ states that 'under the conditions of all types of (what he calls) 'necropower', the lines between resistance and suicide, sacrifice and redemption, martyrdom and freedom are blurred'. Mbembe is clear that 'necropolitics' is more than simply 'a right to kill (see Foucault below), and while it does in his view include various forms of political violence such as the rights to

¹⁸ Precarity, is a term that was first used by French philosopher **Pierre Bourdieu** to describe Algerian workers in temporary, unstable jobs.

¹⁹ A regulative ideal that existed as a reality only for a limited number of (generally male) industrial workers in the dominant countries.

²⁰ Taylor Muray E. et al. Health and place: how levelling up health can keep older workers working. Technical report Oct. 2022 UCL/The Health Foundation.

²¹ Judith Butler: Precariousness and Grievability. When is life grievable? 16 November 2015

https://www.versobooks.com/en-gb/blogs/news/2339-judith-butler-precariousness-and-grievability?srsltid=AfmBOorlUuiLkBKEm2WL_iQwWPiLcfyXD1p0NkWnYTALzEjLV2zqBEOK

²² Rancière J 'Ten theses on politics' 2001

<http://www.after1968.org/app/webroot/uploads/RanciereTHESESOPOLITICS.pdf>

²³ Necropolitics. Achille Mbembe. Translated by S. Corcoran. Duke University Press: Durham and London 2019

impose social²⁴ or civil deaths²⁵ and to enslave others, it is also about the right to expose other people (including a country's own citizens) to mortal danger and death. According to **Marina Gržinić**,²⁶ 'necropolitics' precisely defines the forms taken by neo-liberal global capitalist cuts in financial support for public, health, social, and education structures. To her, these extreme cuts represent intensive neo-liberal procedures of 'rationalization' and 'civilization'.

MICHEL FOUCAULT

According to Foucault, the classical privilege of 'sovereign power' is the 'right to take life or let live' with sovereignty manifesting itself as a right to kill when the sovereign's existence is in danger²⁷. But in current times, as Erlenbusch²⁸ explains, Foucault believed that 'the state is superstructural in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology, and so forth'.²⁹ Even if physicians, psychiatrists, prison officers, scientists, and even parents work in the service of the state, they do so not because their power derives from state sovereignty, but because their power has been brought under state control.

How we got to here

Alongside the authoritarian mode of 'sovereign power', new forms of power emerged in the seventeenth and eighteenth centuries that sought to manage, optimise, and increase life. These forms of power Foucault calls 'bio-power', and they developed in two main forms: i) an anatomo-politics of the human body of the individual; and ii) the 'body of humans as a species'. Together, as a 'biopolitics' of the population, they deployed regulatory controls to manage the processes of life such as reproduction, mortality, morbidity, life expectancy, and so on. The two technologies of bio-power relied on one another through a series of practices and relations to try to reduce mortality; but however, it should be noted that remnants of older 'sovereign power' remained.

Modern societies rely on practices of sovereignty, discipline, and biopolitics, which are made to work in concert. However, the practice of power traditionally attributed to

²⁴ Social death is the condition of people not accepted as fully human by wider society. It refers to when someone is treated as if they are dead or non-existent. It is used by sociologists such as **Orlando Patterson** and **Zygmunt Bauman**, and historians of slavery and the Holocaust to describe the part played by governmental and social segregation in that process. Social death is defined by "three aspects: a loss of social identity, a loss of social connectedness and losses associated with disintegration of the body." Examples of social death are: racial and gender exclusion, persecution, slavery, and apartheid; governments can exclude individuals or groups from society, such as Protestant minority groups in early modern Europe; ostracism in ancient Athens; Dalits (Untouchables) in India; criminals; prostitutes, and outlaws; institutionalization and segregation of those labelled with a mental illness; change in the identity of an individual- a major theme during the Renaissance (apparently).

²⁵ Civil death (Latin: *civiliter mortuus*) is the loss of all or almost all civil rights by a person due to a conviction for a felony or due to an act by the government of a country that results in the loss of civil rights. It is usually inflicted by the state on adults determined by a court to be legally incompetent because of mental disability.

²⁶ Necropolitics, Racialization, and Global Capitalism. Historicization of Biopolitics and Forensics of Politics, Art, and Life. **Marina Gržinić** and **Šefik Tatlić**, Lexington books, 2014. Quoted from European Center for Populism Studies <https://www.populismstudies.org/Vocabulary/necropolitics/>

²⁷ Foucault, M. 1990, The history of sexuality, vol 1 p. 136

²⁸ Erlenbusch V. 2015 From sovereignty to war: Foucault's analytic of power.

²⁹ Foucault, M., 1980. Truth and Power, in: Gordon, C. (Ed.), Power/Knowledge: Selected Interviews and Other Writings, 1972-1977. Random House, New York, p 123

sovereignty are modified because they serve a new purpose: ***once a society operates in a bio-power mode, killing can no longer be exercised in defence of the sovereign, but can only be justified if it serves the protection, defence, and salvation of the social body. That is, the power to kill is made subservient to the larger project of the administration of life.*** Foucault believed a major problem was that political theory failed to develop analytic tools appropriate to study both new forms of power and modified practices of old forms of power. Not only is the classical theory of sovereignty inadequate to account for a kind of sovereignty that is no longer indivisible, absolute, and supreme, but it also lacks any analytic models to theorise productive forms of power. Therefore, Foucault insisted that we must ‘study power outside the model of Leviathan... the field delineated by juridical sovereignty and the institution of the State’³⁰, and ‘what is needed is a political philosophy that is not erected around the problem of sovereignty or, therefore, around the problems of law and prohibition. We need to cut off the king’s head [in Political theory]’.³¹

But if an empirically more accurate understanding of contemporary relations of power requires political philosophers to give up on a notion of power moored in sovereignty, law, prohibition, and repression, then what principle can help us grasp power as it is actually exercised?

Foucault addresses this question in ‘Society Must Be Defended’ (2004)³⁰ where he examines a range of ‘historical discourses and practices’, according to which power was understood ‘first and foremost in terms of conflict, confrontation, and war’ (p15). Foucault shows that war is not a speculative philosophical principle, as it is for theorists such as Hobbes, but rather refers to a real war. Specifically, he demonstrates that war emerges as a principle of the intelligibility of power in the political struggles of sixteenth-century England and France, where it was deployed by subjugated groups to challenge the legitimacy of sovereign power. This historical discourse understood political relations as relations of domination resulting from bellicose relations between different **races**, by which he meant groups distinguished by language, religion, geographical origin, and custom, such as Normans and Saxons in England or Franks and Gauls in France. What appeared as right, law, and obedience from the perspective of the conquering race was instead domination, violence, and enslavement from the vantage point of the conquered.

The discourse of ‘race war’ deployed by the conquered races, in other words, served to demonstrate that the unity and legitimacy of state power established by the juridical theory of sovereignty was fictitious; instead, the power of the state was the product and, in fact, continuation of conquest and invasion and of the subjugation of one race by another.

The discourse of ‘race war’ challenged the classical theory of sovereignty and revealed its function as a theoretical tool to retroactively justify illegitimate

³⁰ Foucault, M., 2004. “Society Must Be Defended”: Lectures at the Collège de France, 1975-1976. Penguin Books.

³¹ Foucault, M., 1980. Truth and Power, in: Gordon, C. (Ed.), Power/Knowledge: Selected Interviews and Other Writings, 1972-1977. Random House, New York, p 121

relations of domination (see also Agamben G. 1998³²; Butler J. 2004³³; Erlenbusch, V. 2013³⁴, 2012³⁵).

Foucault's genealogy of the historical discourse of 'race war' reveals war as an analytically useful and empirically grounded principle for making sense of power relations, and offers an important, yet troubling insight about the persistence of war as a strategic mechanism of contemporary relations of power. **Foucault argues that the notion of 'race war' came to play a key role in reconciling old techniques of sovereign power with more recent forms of bio-power.**

Specifically, the discourse of 'race war' allowed for the justification of the old sovereign right to kill in biopolitical societies concerned with the optimisation of life. For one of the main challenges posed by the advent of forms of bio-power, Foucault argues, was 'how the power of death, the function of death, [can] be exercised in a political system centred upon bio-power'³⁰ p254. ***The solution, he suggests, was found in a modified form of the historical discourse of 'race war'.***

From 'race war' to biological and social 'racism' (in the Foucault sense)

Over the course of the eighteenth and nineteenth centuries, this discourse underwent two series of transcriptions, by which it was transformed into modern biological 'racism', on the one hand, and socialist 'racism'³⁶, on the other. These forms of 'racism' no longer distinguish between a race of oppressors and an oppressed race, but between humanity – or more precisely, a particular idealised image of humanity – and those elements who threaten its health and vitality: the sick, the disabled, the mad, the criminal, the sexually deviant, and so forth.

'Racism' acts as a 'principle of exclusion and segregation' meant to protect the social body against abnormal elements internal to it.³⁰ p.6. ***It is 'a way of introducing a break into the domain of life that is under power's control: the break between what must live and what must die'***³⁰ p. 254.

By identifying those who must die so that the people may live, Foucault's 'racism' understands social relations as war-like relations in which the old sovereign right to kill is waged in the name of the health of the population.

³² Agamben, G., 1998. *Homo Sacer: Sovereign Power and 'Bare Life'*. Stanford University Press, Stanford

³³ Butler, J., 2004. *Indefinite Detention*, in: *Precarious Life: The Powers of Mourning and Violence*. Verso, London, pp. 50–100.

³⁴ Erlenbusch, V., 2013. *The Place of Sovereignty*. *Crit. Horiz. J. Philos. Soc. Theory* 14, 44–69

³⁵ Erlenbusch, V., 2012. *The Concept of Sovereignty in Contemporary Continental Political Philosophy*. *Philos. Compass* 7, 365–375.

³⁶ Erlenbusch V. From race war to socialist racism: Foucault's second transcription. *Foucault Studies*, 22 pp 134-152 Jan 2017. Foucault does not understand modern racism as an "ethnic racism," but rather as a biologizing racism against the abnormal that is quite different from "traditional, historical racism". Contrary to common usage, racism in Foucault's sense is not a mode of oppression directed against other races external to a social body, **but a "principle of exclusion and segregation" deployed to protect the health of the population from abnormal elements internal to the social body.** Given this unconventional use of the term, it is legitimate to ask why Foucault opts for the term racism – rather than speaking of eugenics, white supremacy, classism, and so forth. One reason for Foucault's adoption of the term racism is that the form of modern racism typical of biopolitical societies has its conditions of possibility in a modification of a historical discourse of 'race war'.

While Foucault's use of the term racism is admittedly uncommon and controversial, it allows us to identify the tight connection and common aim of various forms of bio-political regulation and normalisation that are not usually regarded as connected.^{37,38,39}

Put differently, by describing what we might call ethnic racism, sexism, ableism, ageism, homophobia, transphobia, Islamophobia, and other forms of oppression as 'racism against the abnormal'⁴⁰ (p. 316), we can recognize their shared goal in the production of a pristine social body, protected from and purified of any elements considered dangerous. It is only in the name of this goal that the old 'sovereign' power's right to kill can be justified in an economy of power concerned with the investment, optimisation, and maximisation of human life.

To appreciate the continued relevance of Foucault's analysis, one only has to consider increased border security and vetting processes for asylum seekers in the context of the current 'refugee crisis' with refugees represented as a terrorism threat, a threat to Christian values, a threat to social, economic, and political stability, a source of antisemitism, and a threat to the rights of women and people's gender identity.

GIORGIO AGAMBEN⁴¹ and a 'spectre from ancient Rome'

Agamben rarely frames his political-philosophical reflections in Marxist terms, however his thought is in line with the construction of an anti-capitalist project that sees biopolitics as fundamentally linked to the 'society of the spectacle' (the 'total eclipse of exchange-value over use-value'). Agamben took up a utopian vision of life capable of overcoming the alienation of the spectacle with the restoration of an authentic experience. His work in this area theorises the link between the destruction of experience and the production of 'bare life' in our society that takes place at the intersection between the power of the State (law and institutions) and bio-power or Capital. This is where power's hidden centre takes the form of the 'sovereign' with the production of biopolitical bodies that escape the legal and political terrain of the State. When Agamben speaks about 'bare life' he does so in reference to both the terrain of the State and the terrain of Capital.

The exclusion of the 'simple natural life', or 'bare life'⁴² (*zoē*) from 'politics'.

Agamben starts by telling us that Aristotle, while he distinguished the 'contemplative life' of the philosopher from the 'life of pleasure' and the 'political life' in his writings on ethics, he would never have used the term 'zoē' (the 'simple natural life') because what

³⁷ Kelly, M., 2004. Racism, Nationalism and Biopolitics: Foucault's Society Must Be Defended. *Contretemps* 4, 58–70.

³⁸ McWhorter, L., 2009. Racism and Sexual Oppression in Anglo-America: A Genealogy. Indiana University Press

³⁹ Taylor, C., 2011. Race and Racism in Foucault's Collège de France Lectures. *Philos. Compass* 6, 746–756.

⁴⁰ Foucault, M., 2004a. *Abnormal: Lectures at the Collège de France, 1974-1975*. Picador

⁴¹ *Homo Sacer: Sovereign Power and 'Bare Life'*. **Agamben G.** (translated by D. Heller-Roazen) Stanford University Press (1998)

⁴² 'bare life' here refers to a conception of life in which the sheer biological fact of life is given priority over the way a life is lived. It has similarities with 'simple natural life' and 'simple living body'....

what was at issue for him was not this at all, but rather 'a qualified or a particular way of life'. However, Aristotle did express some awareness of the idea that natural life, or simple 'zoē' as such, could be a good in itself:

'This [life according to the good] is the greatest end both in common for all men and for each man separately. But men also come together and maintain the political community in view of simple living, because there is probably some kind of good in the mere fact of living itself. If there is no great difficulty as to the way of life, clearly most men will tolerate much suffering and hold on to life as if it were a kind of serenity [beautiful day] and a natural sweetness.'

In the classical world, however, 'simple natural life' was excluded from politics in the strict sense and remained confined, as merely reproductive life, to the sphere of the 'oikos' or home. For Aristotle it is the 'good life' that is intended for man by nature, as one lived in accordance with virtue and, in his *Politics*, he describes the role that politics and the political community must play in bringing about this virtuous or 'good life' in the citizens (the *Telos*⁴³ of politics).

Agamben- biopolitics

Agamben develops the ideas of Foucault: that for millennia, man remained what he was for Aristotle, a living animal with the capacity for a political existence; while modern man has become an animal whose politics now call his existence as a living being into question; and that society's 'threshold of [biological] modernity' is situated at the point at which the species and the individual as 'a simple living body' become what is at stake in the society's political strategies.

Agamben's major questions are why Western politics first constituted itself through an exclusion (which is simultaneously an inclusion) of the 'simple living body' or what he calls 'bare life'? And what is the relation between politics and life, if life presents itself as what is included by means of an exclusion?

To try to begin to explain this Agamben explores the ancient Roman idea of 'homo sacer' having discovered a definition in Festus:

'A [person] who is called sacer is stained with a real pollution which puts [them] outside human society: contact with [them] must be shunned. If someone kills [them], this does not count as homicide'⁴⁴.

Under the laws of the Roman Empire, a man who committed a certain kind of crime was banned from society and all of his rights as a citizen were revoked. He became what was called a 'sacred man' and could be killed by anybody- while his sacredness meant that he could not be sacrificed in any ritual ceremony. Although Roman law no longer applied to someone deemed to be a *Homo sacer*, they remained 'under the spell' of law through the threat of death. This meant that 'human life' was 'included in the juridical order solely in the form of its exclusion (that is, of its capacity to be killed)'. *Homo sacer* was therefore both *excluded* from law and *included* at the same time. *Homo*

⁴³ Telos has been consistently used in the writings of Aristotle, in which the term, on several occasions, denotes 'goal'.

⁴⁴ Benveniste É. Indo-European Language and Society. University of Miami Press 1973 (accessed via the University of Miami): '*homo sacer* is est quem populus iudicavit ob maleficium; neque fas est eum immolari, sed qui occidit parricidi non damnatur'.

sacer was the exact mirror image of the ‘sovereign’ who stood within law (so he could be condemned perhaps for treason, as a natural person) and outside the law (since as a body politic he had the power to suspend law for an indefinite time).

‘Homo sacer’; sovereign power and ‘Bare Life’

Modern democracy differs from classical democracy, in that it presents itself from the start as a vindication and liberation of ‘zoē’, and that it is constantly trying to transform this ‘bare life’ into a way of life, and to find so to speak the ‘bios’⁴⁵ of ‘zoē’. **This then is modern democracy’s specific internal contradiction or ‘aporia’:**⁴⁶ it wants to put the freedom and happiness of men into play in the very place—‘bare life’—that marked their subjection. Behind the long, difficult process that leads to the recognition of rights and formal liberties, stands the body of the sacred man with his double sovereign: his life that cannot be sacrificed yet he may, nevertheless, be killed without legal concern.

To become conscious of this internal contradiction is not to belittle the conquests and accomplishments of democracy. It is rather, to try to understand once and for all why democracy, at the very moment in which it seemed to have finally triumphed over its adversaries and reached its greatest height, proved itself incapable of saving zoē, to whose happiness it had dedicated all its efforts, from unprecedented ruin.

Modern democracy’s decadence and gradual convergence with totalitarian states in post-democratic societies may well be rooted in the internal contradiction which marks the beginning of modern democracy. This is evident initially with the writings of Alexis de Tocqueville⁴⁷ (‘soft despotism’ and ‘tyranny of the majority’) and finds its final sanction in the work of Guy Debord⁴⁸ (‘the consumer society’, ‘the spectacle as a social relationship mediated by images’, and ‘the spectacle subjugates living men to itself to the extent that the economy has totally subjugated them’).

Homo sacer

It is the life of ‘Homo sacer’ (sacred man) who may be killed and yet not sacrificed, whose essential function in modern politics Agamben wishes to assert. Homo sacer, this obscure figure of archaic Roman law, in which human life is included in the juridical order solely in its capacity to be killed, has offered a key ‘by which not only the sacred texts of sovereignty but also the very codes of political power will unveil their mysteries’. At the same time however this ancient meaning of the term *sacer* (as something ‘set apart’ or ‘out of bounds’ encompassing both the sacred and the cursed) presents us with the enigma of a figure of the sacred that, before or beyond the religious, constitutes the first paradigm of the political realm of the West.

⁴⁵ Bio in biology comes from the Greek **bios**, which means “one’s life, course or way of living, lifetime”—in the sense of biography.

⁴⁶ an irresolvable internal contradiction or logical disjunction in a text, argument, or theory: the celebrated aporia whereby a Cretan declares all Cretans to be liars

⁴⁷ Democracy in America (1835) Alexis de Tocqueville, Translated by Henry Reeve
https://en.wikisource.org/wiki/Democracy_in_America

⁴⁸ The society of the spectacle. Debord G, (trans. D. Nicholson-Smith) 1994 Zone Books

The politicisation of ‘bare life’

What then characterises modern politics is not so much the inclusion of *zoē* in the *polis*⁴⁹, which is in itself absolutely ancient, nor simply the fact that life as such becomes a principal object of the projections and calculations of State power. **Instead, the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of ‘bare life’-which is originally situated at the margins of the political order-gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, politically qualified life and ‘bare life’ (*bios* and *zoē*), right and fact, enter a zone of irreducible indistinction, such that, at any moment, ‘politically valid life’ can be transformed, in the eyes of the State, into ‘bare life’.** At once excluding ‘bare life’ from, and capturing it within the political order, ‘the state of exception’ actually constituted, in its very separateness, the hidden foundation on which the entire political system rests.

It is the indistinction that is the new characteristic of ‘capitalist modernity’. It is not ‘bare life’ itself but the decision on ‘bare life’ that is the supreme political principle of modernity. It follows from this that ‘politics knows no value (and, consequently, no nonvalue) other than life’ and until the contradictions that this fact implies are dissolved, Nazism and fascism- which transformed the decision on ‘bare life’ into the supreme political principle-will remain stubbornly with us (see later).

Agamben and Marx

In Marxist terms ‘bare life’ could be compared to the unwaged life that constitutes the inside-outside of capital- a permanent oversupply of labour made up of ‘redundant’ populations. The unwaged relations put them beyond the law (outside the official guarantees of exchange managed by the State), but it is the direct domination of the State that carries out violence against such racialised and gendered populations (security, carceral etc).

To clarify these ideas, when Agamben referred to the expansion of the of the ‘state of exception’ through the sacredness of biology and medicine during the Covid epidemic, he was highlighting a paradox at the heart of capitalist modernity: survival is and has always been what capitalism is all about. As an example, during the pandemic, the stop-gap measures used by States were representative of a series of paradoxical procedures that reproduced clearly recognisable ‘bare life’ (distinct from politically qualified life) and ‘killable’ without consequence. An example of this at work from the US was the statement made by the governor of Texas about the virus: ‘There are more important things than living’ which can be translated as ‘there are more important things than certain people living; namely, other people living’. So, once you have made the split and subsequent ‘becoming-indistinguishable’ of ‘bare life’ and ‘political life’ (or waged and unwaged life) the thing that defines modern power, the State will always have a need to assert its power through a decision about who can be killed. Of course, some form of a crisis is needed so that this kind of decision can be seen as appropriate and in measure with any objectively ‘extraordinary’ circumstances.

⁴⁹ Polis = A Greek state with its system of rule

‘Bare life’ and modern democracy....

When its borders begin to be blurred, the ‘bare life’ frees itself in the city, becoming both subject and object of the conflicts of the political order in the one place for both the organisation of State power and emancipation from it. **Everything happens as if, along with the disciplinary process by which State power makes man as a living being into its own specific object, another process is set in motion that in large measure corresponds to the birth of modern democracy, in which man as a living being presents himself no longer as an object but as the subject of political power.** These processes -which in many ways oppose and (at least apparently) bitterly conflict with each other -nevertheless converge insofar as both concern the ‘bare life’ of the citizen, the new biopolitical body of humanity.

.....and the threat of totalitarianism

Agamben however, perceives the exemplary places of biopolitics⁵⁰ and use of bio-power in modernity as: the concentration camp and the structure of the great totalitarian states of the 20th century. He sees the politicisation of ‘bare life’ as the decisive event of modernity signalling a radical transformation of the political- philosophical categories of classical thought; and the fact that politics today is passing through a lasting eclipse is because our politics has failed to reckon with this foundational event of modernity.

He believes that ‘the enigmas that our time has proposed to historical reason and that remain with us’ (Nazism being only the most disquieting among them) will only be solved by a reflection that thematically interrogates the link between ‘bare life’ and politics, the link that secretly governs the modern ideologies seemingly most distant from one another (viz. democracy and totalitarianism) and that brings the political out of its concealment, and returns thought to its practical calling.

Agamben believes ‘sovereign power’ has ‘a primary function not only to establish the law, but also to determine that which exceeds the law’; and ‘the state of exception’, which is for Agamben ‘the political point at which the juridical stops, and a sovereign unaccountability begins’-it is where the dam of individual liberties breaks, and a society is flooded with the sovereign power of the state. He argues that ‘the state of exception’ is more fundamental to sovereignty than the law itself.

‘Sovereign is he who decides on the ‘state of exception’’-Carl Schmitt. Nazi Party member and political theorist⁵¹

⁵⁰ As mentioned before, entailing the governance of populations as biological entities, with an emphasis on optimising their health, productivity, and reproductive capacities in manners conducive to broader political and economic objectives.

⁵¹ Carl Schmid was a German political theorist and prominent member of the Nazi party. He wrote extensively about the effective wielding of political power and emphasised the office of the President of Germany, which he saw as an effective element of the constitution because of the power granted to the President to declare a ‘state of exception’ *Ausnahmezustand*. This power was praised as being dictatorial and was seen as a response to Walter Benjamin’s (born 15th July 1892 and died 26th September 1940, a German-Jewish philosopher, cultural critic, media theorist, and essayist) concept of a ‘pure’ or ‘revolutionary’ violence which did not enter into any relationship whatsoever with right. Through the ‘state of exception’ Schmitt included all types of violence under right, in the case of the authority of

Hope for the future

Is it possible to have a political community that is ordered exclusively for the full enjoyment of worldly life?

Even if we reclaim what has been appropriated by the state, and even if we live in a community in which the social is no longer mediated by labour, in which we have no value-form, if all of our ethical categories still allow us to separate biological life from politically qualified life, we will still be within a regime that reproduces ‘bare life’. The possibility of any non-statist politics will be determined not just by questions of how to overthrow capital, but also, by our ability to invent a form of life within which living itself is at stake. Recognising that a politics must always consider itself in relation to life, in relation to ways of living collectively, beyond use-value and exchange-value, is an essential part of our process of imagining an anti-capitalist politics. Therefore, a return to Aristotle seems appropriate.

Aristotle may well have given the most beautiful formulation to the aporia that lies at the foundation of Western politics when he contrasted the ‘beautiful day’ (*euēmeria*) of simple life (*zoē*) with the ‘great difficulty’ of political *bios*. The 24 centuries that have since gone by have brought only provisional and ineffective solutions. In carrying out the metaphysical task that has led it more and more to assume the form of a biopolitics, Western politics has not succeeded in constructing the link between *zoē* and the *bios*, that would have healed the fracture. ‘Bare life’ remains included in politics in the form of the exception, that is, as something that is included solely through an exclusion.

The biopolitics of both modern totalitarianism and the society of mass hedonism and consumerism stand as the current answers to the question of how to politicise *zoē*. So, unless a new politics which is no longer founded on the exception of ‘bare life’ is developed, every theory and attempt at change will fail, and the ‘beautiful day’ of life will be given citizenship either through blood and death, or the perfect senselessness to which it is condemned by the ‘society of the spectacle’ and with the gross inequalities that it generates.

Our present direction of travel....

Digital Capitalism and Power in relation to the politicisation of ‘bare life’ as the foundational event of modernity.

Since Foucault wrote about the history and development of power in the State, and even since Agamben’s books on ‘*Homo sacer*’, the world has changed dramatically: technology, with enormous finance, has enabled the collection and storage of human data (*Bios*) on a vast scale, and this data can be used to describe in incredible detail the behaviours, the movements, the social interactions, the bodily functions, the genetics, the epigenetics, the metabolomics, the ‘almost everything’ of us all. As Deleuze predicted in his Postscriptum⁵² we are becoming ‘dividuals’ identified by our ‘*bios*’ which

Hitler leading to the formulation ‘The leader defends the law’. The use of the ‘state of exception’ supposedly with the intention to create a new constitution, enabled the continuous suspension of the constitution.

⁵² https://deleuze.cla.purdue.edu/wp-content/uploads/2023/09/Deleuze_Gilles-Postscript-on-the-Societies-of-Control.pdf

is stored and used as data, and we will be regularly updated and analysed on our new hyperscale computers.

Such huge amounts of data can also be used to train generative AI (or AI can train itself) in the discovery of disease mechanisms and management, and to predict our future health and well-being, and even our future behaviours. It can also be used to generate enormous amounts of wealth by whomever can store, manipulate, and extract the knowledge from it (i.e. Big Tech's current monopoly). Indeed, such resource to manage the data could also help Big Tech to control those markets as Big pharma has done for pharmaceuticals, and with damaging global consequences⁵³. Also, such wealthy monopolies could gain enormous influence and power in our democracy which always seems to be malleable to those bearing gifts such as solutions to a lack of 'productivity' (plus a few personal benefits). Without state-owned abilities to use our own population's data our State, with all its exclusions, will be subservient to the Big Tech corporations and the American State.



The history of power in modern States starts with the growth of biopolitics and with the politicisation of 'bare life', at which time 'sovereign power' is no longer wielded to protect the sovereign but can be used to protect the well-being of the population. This non-juridical power can also be used, and indeed has frequently been used, against those inside the population that are seen to be a threat to the well-being of the whole.

We live in a State that functions within the ideological framework of Capital and all of its forms of control.⁵⁴ There are claims that as a State we are facing financial collapse. Our State has a long history of imperialism/ 'race war'; it is considering the reduction and/or removal of benefits to those with disabilities or long term illnesses, and it is to date, refusing to increase, or is looking to reduce necessary State funding for our health, care and welfare services. Instead, it appears to be looking to the private sector for capital investment and 'productive' care, and to purchase private technology-based solutions which will, in truth, reduce the required number of qualified staff. These changes by our State will create and kill more 'bare life'.

The politicisation of biopolitics using detailed human data will increase the ability of the State to control the population and identify those to be 'excluded'. In a truly democratic state, the use of human data should increase the equality and 'fairness' of the democracy to include all; but by working through a pre-determined 'consensus', our democracy already excludes many.⁵⁵ Our human data should be owned by the state to

⁵³ <https://www.forbes.com/sites/robertpearl/2023/01/31/pharma-companies-a-conglomerate-of-monopolies/>

⁵⁴ Marcuse H. One-Dimensional Man. Studies in the ideology of advanced industrial society. Routledge 1964.

⁵⁵ 'The essence of consensus is not peaceful discussion and reasonable agreement as opposed to conflict or violence. Its essence is the annulment of 'dissensus' as the separation of the sensible from itself, the annulment of surplus subjects, the reduction of the people to the sum of the parts of the social body, and of the political community to the relationship of interests and aspirations of these different parts. Consensus is the reduction of politics to the police (order). In other words, it is the 'end of politics' and not the accomplishment of its ends but, simply, the return of the 'normal' state of things which is that of politics' non-existence. The 'end of politics' is the ever-present shore of politics [le bord de la politique] that, in turn, is an activity of the moment and always

use for all our benefits; but such data could also enable our current State to use sovereign power much more ‘effectively’ against members of our society. We have opted to require the cooperation, through employment, of corporations owned by American oligarchs who happen to have clear authoritarian views and indeed actions:⁵⁶ the ‘data grab’⁵⁷, surveillance contracts⁵⁸, military contracts⁵⁹, and Elon Musk and actions in Brazil⁶⁰. Right-tech envisages an AI administered utopian future which given the opportunity it will seize.

ADDENDA

The economics of dying and a new exclusionary ethics for healthcare:

Pure economics

The last six months of life are expensive with the last month accounting for 40% of costs. What can be done?

In a 2024 BMJ paper⁶¹ it was found that care costs for the last year of life increased with proximity to death, particularly in the last month of life with mean figures of £8000-£9000 with inpatient care accounting for 60% of total costs. In a 2024 paper from Norway⁶² an average of 46000 euros were spent in an individual’s healthcare in the last six months of life and 40% of all those costs were spent in the last month across all causes of death.

A new ethics of rationing healthcare in a defined population where resources are constrained

This would include the political decision to use ‘Value-based’ medicine....with a new ethics for the assigning of a politically determined limit of resources for the care of a defined population called the ‘Accountability for reasonableness’ as defined by Harvard-based ‘ethics and resource’ Professors Norman Daniels and James Sabin:

‘Accountability for reasonableness is the idea that the reasons or rationales for important limit-setting decisions should be publicly available. In addition, these reasons must be ones that ‘fair-minded’ people can agree are relevant to pursuing appropriate patient care (or otherwise) under necessary resource constraints’⁶³

provisional. 'Return of politics' and 'end of politics' are two symmetrical interpretations producing the same effect: to efface the very concept of politics, and the precariousness that is one of its essential elements. Rancière J. Ten theses on politics. <http://www.after1968.org/app/webroot/uploads/RanciereTHESESOPOLITICS.pdf>

⁵⁶ <https://www.theatlantic.com/magazine/archive/2024/03/facebook-meta-silicon-valley-politics/677168/>

⁵⁷ <https://blogs.lse.ac.uk/medialse/2024/05/02/data-grab-an-interview-with-nick-couldry-and-ulises-a-mejias-on-their-new-book/>

⁵⁸ Saura García, C. Digital expansionism and big tech companies: consequences in democracies of the European Union. *Humanit Soc Sci Commun* **11**, 448 (2024). <https://doi.org/10.1057/s41599-024-02924-7>

⁵⁹ <https://bigtechsellwar.com>

⁶⁰ <https://jacobin.com/2024/10/brazil-musk-twitter-digital-sovereignty>

⁶¹ Healthcare trajectories and costs in the last year of life: a retrospective primary care and hospital analysis Luta X. et al BMJ Supportive and Palliative Care.2024; Vol 14: e807-e815 <https://spcare.bmj.com/content/14/e1/e807#>

⁶² Michel, Y.A., Aas, E., Augestad, L.A. et al. Healthcare use and costs in the last six months of life by level of care and cause of death. *BMC Health Serv Res* **24**, 688 (2024). <https://doi.org/10.1186/s12913-024-10877-5>

⁶³ Daniels N, Sabin J. The ethics of accountability in managed care reform. *Health Affairs*. 1998;17:50–64. Available at <https://www.alnap.org/system/files/content/resource/files/main/%5Bdaniels--sabin-1998%5D-ethics-of-accountability-in-managed-care-reform.pdf>

This is their central thesis, and it needs some explanation. By ‘fair-minded’, they do not simply mean their friends or people who just happen to agree with them. They mean people (this will be members of the public in the defined ‘system’ population where resources are to be cut) who in principle seek to cooperate with others on terms they can justify to each other. Indeed, fair-minded people accept the ‘rules of the game’ – or sometimes seek rule changes – that promote ‘the game’s essential skills and the excitement their use produces’.⁶⁴

The decision to ‘reasonably’ deny or ration healthcare for some patients may be made with the support of members of the public who are told that resources for healthcare have to be limited for economic reasons, and who may have no notion of:

1. *any global ‘bigger economic picture’⁶⁵,*
2. *corporate demands for increased national economic competitiveness⁶⁶,*
3. *underfunding in relation to our OECD peers⁶⁷,*
4. *the decisions to use cost inefficient internal markets⁶⁸*
5. *the cost inefficiency of private provision and investments⁶⁹,*
6. *the profit generation by ‘healthcare corporations’⁷⁰,*
7. *global consultancies and global pharmaceutical companies, and of the wish to grow ever more capital by creating new markets and in so doing increase the unequal distribution of wealth⁷¹*
8. *the fact that wealth inequalities generate health inequalities⁷².*

Are these the ‘rules of the game’ and the reasonableness that people need to be ‘fair-minded’ about? The use of language and ideas to gain support for what are presented as ‘popular’, necessary changes whilst hiding the major reasons for such change is well described by Stuart Hall⁷³. The less wealthy and more needy in our society will have to go without elements of state funded health and social care services and agree to alter their behaviours and lifestyles; apparently this is in the ‘national interest’ – to keep us all from financial ruin.

⁶⁴ Daniels, N. and Sabin, J.E. (2008) Setting Limits Fairly, Learning to Share Resources for Health. Oxford University Press. (p.44). quoted in <https://www.hfma.org.uk/docs/default-source/our-networks/healthcare-costing-for-value-institute/value/0416-7---canada-ma-v3-arj>

⁶⁵ https://www.tni.org/files/article-downloads/23_msismvisualpresentations- what_is_msism.pdf

⁶⁶ http://www3.weforum.org/docs/WEF_HE_SustainabilityHealthSystems_Report_2012.pdf

⁶⁷ <https://www.kingsfund.org.uk/blog/2016/01/how-does-nhs-spending-compare-health-spending-internationally>

⁶⁸ <https://chpi.org.uk/papers/analyses/at-what-cost-paying-the-price-for-the-market-in-the-english-nhs/>

⁶⁹ <https://chpi.org.uk/wp-content/uploads/2018/10/CHPI-PFI-Options-Sep18-FINAL.pdf>

⁷⁰ <https://democracy.camden.gov.uk/documents/b27994/Supplementary%20Agenda%20-%20Deputations%2007th-Apr-2021%2018.30%20Health%20and%20Adult%20Social%20Care%20Scrutiny%20Commi.pdf?T=9> see deputation by Dr Brant Mittler JD MD

⁷¹ <https://thenextrecession.wordpress.com/2021/05/02/wealth-inequality/> Michael Roberts is an economist who worked in the City of London

⁷² <https://www.theguardian.com/inequality/2018/sep/18/kate-pickett-richard-wilkinson-mental-wellbeing-inequality-the-spirit-level>

Richard Wilkinson, Kate Pickett, *The Spirit Level: Why More Equal Societies Almost Always Do Better*. Allen Lane 2009.

⁷³ Hall S. ‘The Great Moving Right Show’, *Marxism Today*, January, 1979 access at http://banarchive.org.uk/collections/mt/pdf/79_01_hall.pdf

The Assisted Dying Bill and its debate: (there may be more since this)

Safeguards rejected so far:

Higher threshold for decision-making (Olney 35 and NCI)	Voted down 15-8
Exempt prisoners (Kruger 353)	Withdrawn after criticism
Exempt the homeless (Kruger 356)	Withdrawn after criticism
Prohibit "encouraging" someone towards assisted suicide (Paul 82)	Voted down 15-8
Prohibit "undue influence" prompting someone to choose assisted suicide (Bool 23)	Voted down 15-8
Prohibit "manipulating" someone to choose assisted suicide (Campbell 114)	Voted down 15-8
"Burden amendment": must be acting for one's own sake, not others' (Cleverly 94)	Voted down 15-8
Must have a meeting with a palliative care consultant (Maskell 281)	Voted down 15-8
Not "terminal illness" if the progress of the condition can be "controlled or substantially slowed" (Bool 9)	Voted down 15-8
6-month diagnosis must have "reasonable certainty" (Shah 48)	Voted down 15-8
Qualifying illnesses to be listed by Secretary of State (Bool 12)	Withdrawn after criticism
Not "terminal illness" if caused by stopping eating and drinking (backed by eating disorders charities) (Shah 402)	Voted down 15-8
Strengthen language to say disability and mental illness aren't eligible (Bool 11)	Voted down 15-8
Not "terminal illness" if result of comorbidities from disability or mental illness (Maskell 283)	Voted down 15-8
Raise burden of proof for capacity (Francis 322)	Voted down 15-8
Capacity must include understanding key details (Spencer 50)	Voted down 14-9
Capacity must be beyond reasonable doubt (Paul 398)	Voted down 15-8

The role of voice, language and metaphysics from Agamben-representation in democratic society

Agamben feels that it is not by chance that a passage in Aristotle's *Politics* situates the proper place of the *polis* in the transition from voice to language. The link between 'bare life' and politics is the same link that the metaphysical definition of man as 'the living being who has language' seeks in the relation between 'voice' (*phonē*)⁷⁴ and 'reasoned discourse' (*logos*)⁷⁵. Agamben quotes again from Aristotle:

'Among living beings only man has language. The voice is the sign of pain and pleasure, and this is why it belongs to other living beings (since their nature has developed to the point of having the sensations of pain and pleasure and of signifying the two) but language is for manifesting the fitting and the unfitting and the just and the unjust. To have the sensation of the good and the bad and of the just and the unjust is what is proper to men as opposed to other living beings, and the community of these things makes dwelling and the city'. [Aristotle; *Politics* 1253 a, 10-18]

Agamben proposes that the question 'in what way does the living being have language?' corresponds exactly to the question 'in what way does 'bare-life' dwell in the *polis*?' The living being has *logos* by taking away and conserving its own voice in it, even as it dwells in the *polis* by letting its own 'bare life' be excluded, as an exception, within it. *Politics* therefore appears as the truly fundamental structure of Western metaphysics⁷⁶ insofar as it occupies the threshold on which the relation between the living being and the *logos* is realised.

⁷⁴ *Phonē* is voice or light- as that which 'brings thoughts to light'

⁷⁵ For Aristotle, *logos* is something more refined than the capacity to make private feelings public: it enables the human being to perform as no other animal can; it makes it possible for him to perceive and make clear to others through reasoned discourse the difference between what is advantageous and what is harmful, ...

⁷⁶ Metaphysics, for Aristotle, was the study of nature and ourselves. In this sense he brings metaphysics to this world of sense experience—where we live, learn, know, think, and speak. Metaphysics is the study of being qua being, which is, first, the study of the different ways the word "be" can be used.

It is in the ‘politicisation’ of ‘bare life’-the metaphysical task *par excellence*-the humanity of living man is decided. In assuming this task, modernity does nothing other than declare its own faithfulness to the essential structure of the metaphysical tradition. The fundamental categorical pair of Western politics is not that of friend/enemy but that of ‘bare life’/political existence, *zoē/bios*, exclusion/inclusion. There is politics because man is the living being who, in language, separates and opposes himself to his own ‘bare life’ and, at the same time, maintains himself in relation to that ‘bare life’ in an inclusive exclusion.