

**Power's Two Bodies:
A Critique of Agamben's Theory of Sovereignty**

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Abstract: This article seeks to problematize Agamben's interpretation of sovereignty in light of the "archaeological method" he uses in his *Homo Sacer* project. In contrast to Agamben's exposition, which treats biopolitics as the original and ontological paradigm of Western politics, the essay discusses how, historically, sovereign power has been conceived as a "double body"—transcendent and immanent, sacred and sacrificial, absolute and perpetual—from whose tension conceptual and political metamorphoses of sovereignty arise. The first attribute of sovereignty—absoluteness, on which Agamben has often focused—should be seen as an ordering and essentially modern function of its second "body": the perpetuity of power. The article illustrates, then, how the retrospective projections through which the Italian philosopher constructs his ontological reading of sovereignty depend on some logical and epistemological lacunae that characterize his "archaeological method," which is based, essentially, on an arbitrary use of historical analogies.

KEYWORDS: Sovereignty, Carl Schmitt, Giorgio Agamben, Ernst Kantorowicz, duality, perpetuity, biopolitics

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If we look over the phenomena to find agreements with the theory, it is a mere question of ingenuity and industry how many we shall find.

– Charles S. Peirce (1960: 496)

La souveraineté est la puissance absolue et perpétuelle d'une République.

– Jean Bodin (1576: 152)

Introduction

Giorgio Agamben's ontological reading of sovereignty has had an enormous influence on the social sciences and humanities. For some, the Italian philosopher's interpretation of biopolitics can explain a large number of phenomena: from the proliferation of emergency measures after 9/11 to the detention regimes in Guantanamo and Abu Ghraib, from the creation of 'offshore processing sites' such as Nauru to modern euthanasia practices (see, e.g., Downey 2009; Jennings 2011 for a critical discussion). The heated debate triggered by Agamben's more recent interventions on the lockdown measures introduced to curb the COVID-19 pandemic is a sign of the malaise that lies at the heart of every general theory of politics, which attempts to understand the present historical situation through a rereading of some illustrious texts (see Agamben 2021;

Cerella 2020a; Castrillón and Marchevsky 2021 for a range of responses to Agamben's views). However, when a theory accounts for such different phenomena, we should seriously question its epistemological assumptions.

This article seeks to problematize Agamben's interpretation of sovereignty in light of the 'archaeological method' he uses in his *Homo Sacer* project. In recent years, critics' attention has been drawn to the Italian philosopher's readings of fundamental authors such as Aristotle, Benjamin, Foucault, Schmitt, and Arendt (see, e.g., Finlayson 2010, Salzani 2015, Blencowe 2010; Pan 2009; Owens 2009). Here, I follow the historiographical path indicated by Agamben himself by exploring the two foundational 'moments' through which he constructs his notion of sovereign power: the modern and medieval 'paradigms'.

The first section discusses Agamben's interpretation of sovereignty as a decisional power on the exception in light of his reading of Carl Schmitt's work. In contrast to Agamben's exposition, which treats biopolitics as the original and ontological paradigm of Western politics, I discuss how, for Schmitt, sovereign power is characterized by a 'double body or soul' – absolute and perpetual, transcendent and immanent – from whose tension conceptual and political metamorphoses of sovereignty arise. The first attribute of sovereignty – absoluteness, on which Agamben has often focused – should be seen as an ordering and essentially modern function of its 'second body': the perpetuity of power.

The second section follows these analytical trajectories via a short detour through medieval political theology. I critically examine Agamben's reading of Kantorowicz's magnum opus, *The King's Two Bodies* (1957), to demonstrate how the problem of the continuity of power is the beating heart of the doctrine of the double body of medieval kingship. The last paragraph shows how the retrospective projections through which

Agamben constructs his ontological vision of sovereignty depend on some logical and epistemological lacunae that characterize his ‘archaeological method’, which is based, essentially, on an arbitrary use of historical analogies.

The essay illustrates, therefore, how the interpretative mistakes and idiosyncrasies that affect Agamben’s theory of sovereignty are due to an ‘emanationist’ vision of history and of the ‘method’ used to interpret it. Under new guises, then, the old problem of the relationship between morphology and history resurfaces in the work of the Italian philosopher, which offers – *via negativa* – an excellent illustration of the *hiatus irrationalis* (Weber 2012: 12) that lies at the heart of the relationship between concept and reality, events and their historiographical reconstruction.

Two Figures of Exception

In the first of the four volumes of *The History of Sexuality*, Michel Foucault (1978: 135) argued that the power of the modern sovereign derives “no doubt from the ancient *patria potestas* that granted the father of the Roman family the right to ‘dispose’ of the lives of his children and his slaves.” Following this analytical trajectory, Agamben goes so far as to state that the political capture of life represents the original paradigm of the entire history of Western civilization.¹ By ignoring Foucault’s cautious remarks, however, Agamben has transformed a *formal* analogy into a *trans-epochal* paradigm.² For the Italian philosopher, the inviolability of the sovereign would be the specular and symmetrical figure of human *sacertus*, of the ‘bare life’ captured in the polis. As he puts it: “supreme power ... is always *vitae necisque potestas* and always founded on a life that may be killed but not sacrificed” (Agamben 1998: 100).

In summary, the fundamental dimensions of Agamben’s conception of sovereignty, as they emerge from his 9-volume *Homo Sacer* project, are at least three:

a) absoluteness; b) transhistoricity; c) exceptionality (see Agamben 2017). For, as we have seen, sovereignty is described by Agamben as an absolute power, whose origin can be traced back to figures of ancient Roman law. It articulates the relationship between life and death and reflects an archetypal paradigm – the exception – which is the logical “principle of every juridical localization” (Agamben 1998: 19).

At the origin of this interpretation lies the well-known Schmittian definition of sovereignty as the power to decide on the exception (Schmitt 1985: 5).³ In fact, it is from Schmitt’s conceptualization that Agamben begins his investigation into the ‘arcana’ of politics. Yet, one wonders whether this absolute and original character attributed by Agamben to sovereign power is not rather the result of modern political reflection. It is precisely the German jurist who, in *Die Diktatur*, seems to suggest this reading by showing how the conceptual structure and function of sovereignty are not immutable but rather undergo crucial transformations over the course of history.⁴ For, in tracing the genealogy of the concept and practice of dictatorship, Schmitt identifies a juridical-political threshold beyond which political power transforms itself and rearticulates its function. This essential criterion for understanding the nature and function of emergency powers is the difference between commissary and sovereign dictatorship, of which I offer here a synoptic reconstruction (see Schmitt 2014: 2).

According to Schmitt, the fundamental character of dictatorship is that of being a right of exception which finds its justification in that it “suspends the constitution in order to protect it” (Schmitt 2014: 118). This emergency power, however, is not entirely free from the law. On the contrary, the essence of the Roman dictatorship, from which all other conceptual articulations derive at least until the 17th century,⁵ is that of being a legal institution whose content, however, cannot be legally predetermined because “the exception depends on the concrete situation” (Schmitt 2014: 31). In other words,

the dictator is a figure suspended between law and history, norm and exception, ceremony and action, whose role is contemplated by law but whose action is decided by historical necessity. As Schmitt (2014: 112) argues, “the omnipotence of the dictator rests on his being empowered by an existing organ with constitutional authority.” And, precisely for this reason, his power is not perpetual, because otherwise “he would also become a sovereign and would no longer be a dictator” (Schmitt 2014: 31). This logic is exemplified by the commission given to Titus Larcus, the first dictator, who was entrusted with emergency powers to defend the security of Rome in a critical situation: the conspiracy of the thirty Latin cities (Livy 1919: 275).

In the Roman Republic, therefore, the dictator was not the sovereign but rather a figure of emergency who, in some exceptional circumstances (war, rebellion, secession), was entrusted with the power of *imperium*⁶ so that he could save the existence of the political order of which he represented an exception. It is for these reasons that Schmitt defines the pre-modern conception of dictatorship as ‘commissary’ because this office was not permanent and rested on a pre-established source of authority and legitimacy.

This original conception of dictatorship changes radically between the 17th and 18th centuries. It is at this historical juncture that a new type of emergency power, which Schmitt defines as ‘sovereign’, emerged. Unlike the commissary type, sovereign dictatorship does not rest on a constitutional organ and is not temporally limited. On the contrary, this new form of power is conceived of as a sort of permanent but latent energy that can always be activated to destroy – and recreate *ex nihilo* – the legal order. In the democratic theory of the state and, more precisely, in the writings of pre-revolutionary thinkers such as Rousseau and Sieyès, Schmitt identifies a new conception of sovereignty according to which the power of the people “is in principle

unlimited and can do everything, because it is not subject to the constitution: it provides the foundation for the constitution itself” (Schmitt 2014: 121).

By analysing the differences between commissary and sovereign dictatorship, therefore, Schmitt wants to underline a fundamental political and legal problem, namely that in modernity the source and representation of power merge and overlap to create an absolute abstraction: the people’s will. The constituent power of the people, as an attempt to concretize this formless abstraction, then becomes a sort of reserve of political energy, latent and perpetually legitimate, which can always be used to make a political clean slate (just as the National Convention did during the French Revolution, when, through a direct appeal to a popular mandate, it abolished the 1793 Constitution in favor of a new popular justice). According to Schmitt (2014: 125), the problem introduced by the new theory of the democratic state lies in the fact that precisely because “the content of the people’s will is not specific”, otherwise the source of power would be *constituted* and not *constituent*, the popular will is transformed into an abstract source – legally omnipresent and omnipotent – which must be put into form, that is, must be politically decided (through acclamation, referendum, or, simply, appropriation).⁷ In short, through this new practice and conception of popular sovereignty, “the *volonté générale* is elevated to the dignity of the divine” and transforms the people into “the primordial force of any state” (Schmitt 2014: 101, 123).

If, therefore, according to Schmitt’s analysis, the God of medieval political theology was conceived of as a transcendent source, outside of history, which however elicited historical dynamics through its representations, modern constituent power is instead the historical and immanent engine of a new political ontology: permanent revolution. In the medieval conception, God was still considered the transcendent source of power that gave life, through rituals, mediations and representations, to the

incarnations of sovereign power, while the modern popular will represents the secularized and immanent voice of a new divinity whispering through silent majorities. Schmitt describes the difference between these two paradigms in the following way:

[...] While the commissary dictatorship is authorised by a constituted organ and has an identity in the existing constitution, sovereign dictatorship exists only *quoad exercitium* [in relation to what it does], and it derives directly from the amorphous *pouvoir constituant*. It is truly a commission, not a refusal to pass it on to earthly representatives, as the appeal to the mission of a transcendent God would be. It appeals to the ever-present people, who can take action at any time and therefore can have immediate legal significance (Schmitt 2014: 127).

Figure 1. Essential differences between commissarial and sovereign dictatorship

Figure of exception	Source of power	Duration
Commissar	Constituted body	Limited
Sovereign	Unconstituted body	Unlimited

For Schmitt, therefore, contrary to what Agamben argues in his interpretation of the German jurist's work, sovereignty and the exception that characterises it have not always been conceived as absolute. Indeed, "only when a people appeared in its unmediated and unorganised mass, rejecting representation, did the new radicalism come into being" (Schmitt 2014: 19). When Agamben (1998: 42-48), then, in some famous pages, relates the Aristotelian conception of potentiality with Sieyès's notion of constituent power, as well as Schmitt's concept of sovereignty with Antonio Negri's political ontology, he is in fact retrospectively projecting the modern political paradigm onto the entire historical course, thus erasing all the genealogical transformations that

gave rise, according to Schmitt, to political modernity. This methodological problem is made explicit by the language Agamben uses to describe his analysis. For, he speaks of a *topological* and not genealogical analysis of the concept of sovereignty (Agamben 1998: 37-8; Agamben 2005: 36). But precisely because of this lack of genealogical sensitivity, or rather because of the overlooking of the contingencies that always afflict and change the historical course, Agamben misses the very fundamental difference, carefully described by Schmitt, between the source, execution, and representation of power.⁸

For Schmitt, as we have seen, sovereignty understood *à la* Agamben as absolute power over the exception, also and above all in reference to Nazi Germany, is only possible within modernity. The total suspension of law is made possible in a system in which justice and its execution rest on the same source (i.e., people's will) which can, in principle, be accessed immediately. It is no coincidence that acclamation and referendums became the fundamental practices of legitimation of Nazi power (see Zurcher 1935). The people and their alleged will are thus used as an instrument of legitimization of the state of exception produced through violence, terror, and propaganda.

In summary, *contra* Agamben, what Schmitt describes so skilfully in two of his most important works – *Die Diktatur* and *Verfassungslehre* – is the process of immanentization and flattening of the double body of sovereignty – its source and representation – onto a single, abstract, immediate, and unrepresentable plane: the constituent will of the people. In modernity, the perpetual and transcendent source of divine power – which needed to be represented and, therefore, constantly mediated by the church and the sovereign – is replaced by a *perpetual force from below*, the energy of the constituent power, which is conceived as a potency-in-act that does not require

mediation but only *implementation*. For Schmitt, this is the modern Absolute: “the substance of the state, the nation, can manifest itself at any time, *in the immediacy of its plenitude of power*” (Schmitt 2014: 125, emphasis added).

This fundamental historical caesura marks the transition between medieval political theology and the theory of the modern state. To understand its relevance vis-à-vis Agamben’s biopolitical reading of power, it is necessary to explore the medieval ‘paradigm’ and the doctrine of the double body of the king as they are masterfully presented in Kantorowicz’s work, which is the focus of the next section.

The King’s Two Powers: Uses and Misuses of Kantorowicz’s Work

Jean Bodin is often described as one of the founders of the modern conception of politics. Yet, as always happens in texts that mark a critical transition, echoes of the past resonate in his work. This is the case in his definition of sovereignty, which bears the signs of an archaic conception of power. Most scholars, including Agamben (1998: 101-2), have focused on the first section of Bodin’s famous definition of sovereign power, that is, on sovereignty understood as absolute power, thus losing sight of the most decisive aspect of the French jurist’s thought: the theory of perpetuity.

For Bodin, as Schmitt had realised, power – even when it is absolute – cannot be considered sovereign if it is not perpetual because otherwise it would be derived, “whereas the true sovereign does not recognise anyone above him but God” (Schmitt 2014: 21). For the French jurist, the absoluteness of power *descends* from its perpetuity, from its being a direct expression – and therefore incarnation – of a source that transcends the commission or mandate. As he explains: “I have described [sovereignty] as perpetual because one can give absolute power to a person or group of persons for a

period of time, but [when] that time expired they become subjects once more... The true sovereign remains always seized of his power” (Bodin 1955: 25).⁹

As we shall see, this chiasmic relationship between the temporality of power and the timelessness of the source that legitimizes it has its roots in a very ancient problem. By being actualised, sovereign power exposes its absoluteness and perpetuity to the problem of time, of its passage and decadence. For, to be effective, the perpetuity of sovereign power must be embodied, and that means that sovereignty is always affected by the caducity inherent to its mortal body. Without realising it, Bodin (1955: 26) perfectly portrays this paradox when he writes: “A perpetual authority therefore must be understood to mean one that lasts for the lifetime of him who exercises it.”

Historically, this relationship between the perpetuity of power and the discontinuity of its historical forms gave rise to a series of doctrines and rituals through which the sovereign – even in the most absolutist conceptions – had to periodically renew the link with the sacred sources of power. Two paradigmatic cases allow us to illustrate this essential point. It is known, for example, that in Mesopotamia the king was considered the intermediary par excellence between humans and gods, and that the royal sacredness, of divine origin, was reactivated every year through expiatory rituals which took place in the twelve days that preceded the New Year (see Eliade 1978: 73-6; Frankfort 1948: 122ff). Even in Egypt, where the pharaoh enjoyed a divine status, it was necessary to periodically restore the bond with the creative source of power of the original event. This is the case of the *sed* festival, which was celebrated thirty years after the first enthronement, and which served to revive the divine power of the pharaoh. Think, also, of the enthronement rituals of the new pharaoh, which reproduced the events of the life of Menes, the first God-king, who, as founder, represented the sacred

energy of the origin that had to be transferred to the new ruler (see Frankfort 1948: 26ff).

The examples could be multiplied endlessly. What is important to clarify is that, whatever the metaphysical conception of archaic kingship, the absoluteness of supreme power never rests on itself but always depends on a sacred source which, as absent, must be constantly actualized, embodied, and renewed. This is the essence of the pre-modern conception of representation (see Cerella 2020b: 17-43; Cerella 2022; Hocart 1970: 86-101).

It is this ancient problem that pulsates, under a new guise, beneath Bodin's conception of the double soul of power and the doctrine of the king's two bodies analysed by Kantorowicz. How is it possible to keep alive the immortality of sovereignty in the absolute immanence of its historical incarnations? Or, to speak more directly, how can the continuity of sovereign power be ensured within the discontinuity created by the death of its earthly representatives? Bodin resolves this tension by breaking the dialectic between spiritual source and temporal embodiment of power in favor of the immanent, absolute and, ultimately, modern plane of sovereignty. However, according to Kantorowicz, it was precisely this tension that gave rise to the doctrines and representations of the double body of the king, which thus became part of the medieval funeral ceremonies and political theatre. As the German historian argues: "Undoubtedly the concept of the 'king's two bodies' camouflaged *a problem of continuity*" (Kantorowicz 1957: 273, emphasis added).

Following this path, Kantorowicz convincingly argued that the corpse of the king represented his natural body, or the perishable and transitory aspect of power, while the funeral effigies symbolized the political body, or the immortal and eternal soul of sovereignty. It was thanks to this theatrical staging that sovereign power could be

conceived of as an infinite reserve of charisma, a sort of phoenix that constantly arises from its own ashes, in a dynamic of perpetual renewal that guarantees the perpetuity of power. As Kantorowicz put it:

The funerary procession itself demonstrated very clearly the concurrence of two heterogeneous ideas: the triumph of Death and the triumph over Death. There was the ecclesiastical ritual of the exequies and the general care attached to the dead king's body and soul; and there was the triumphal state ceremonial attached to the sempiternal glory symbolized by the effigy (Kantorowicz 1957: 429).

Through these ceremonial representations, what is not alive – the effigy – thus becomes a guarantor of the continuity of political order. The representation stages the glory and eternity of power. Thanks to his double, the king never dies – as the traditional formula ‘the king is dead, long live the king!’ witnesses.

In the Christian Middle Ages, therefore, this new solution to the old problem of the representation of power served to answer a practical challenge: how to combine the perpetual source of power with the transience of its historical incarnations, that is, how to fill the ‘dead time’ – the interregnum – opened by the death of the king. “It is always a question of TIME” – Kantorowicz (1955: 87) writes – “of perpetuity, which made the Deity comparable to the Fisc or to the Dignity or to the ‘King’s Body Politic’.”

It is surprising, then, that Agamben, in his reading of the German historian's work, has once again traced this medieval ‘paradigm’ back to a supposed pagan source and the doctrine of the double body of power to his notion of ‘bare life’. For, contrary to Kantorowicz's sustained argument, who found the analogies between the funeral effigies of English and French sovereigns and the pagan rituals provocative but

hazardous, Agamben (1998: 101) stressed the elements of continuity that would characterize the dialectic of the power's two bodies, and which would, in fact, show "the cipher of the absolute and inhuman character of sovereignty". For him, the double life of the sovereign – eternal and transient – would be nothing but the symmetrical, although reversed, figure of *homo sacer*, the paradigm of bare life that constitutes the arcanum of Western politics.

Yet what surprises in Agamben's analysis is the ease with which a formal analogy (the ritual use of effigies, the category of the double) is assumed to be a transhistorical and ontological paradigm. In doing so, the Italian philosopher does nothing but hypostatize, once again, the paradigm of *sacertus* and project it onto the historical course. For him, supreme power is always, everywhere, and only "*the capacity to constitute oneself and others as life that may be killed but not sacrificed*" (Agamben 1998: 101). What escapes Agamben, however, and which Kantorowicz instead forcefully stresses, is that the same dialectic between power's two bodies is exposed – like all doctrines – to continuous historical transformations due to the changing character of the constellations of problems that reoccupy it. For, a problem of a logical nature – i.e., the relationship between perpetuity and mortality – is constantly rethought by practical questions that change the meaning and genealogical direction of the problem. Even the metaphysical conceptions of time and space – and of the corporeality that inhabits these dimensions – constantly change, thus decisively modifying our perception of praxis and the concepts we use to describe it. In fact, as Kantorowicz has powerfully argued, the metaphysical understanding of duality that informed the pagan world is diametrically opposed to that of medieval times:

The *genius* or *numen* of an emperor, though an object of public worship, was not separated from the individual but was still an immanent component of the individual human being. It would, therefore, be difficult to maintain that the emperor became the *instrumentum numinis* or *genii* in the sense in which the late-mediaeval Prince became the *instrumentum Dignitatis* and the incarnation of his immortal office (Kantorowicz 1957: 502).

It would be anachronistic, then, to think that the doctrine of the ‘king’s two bodies’ expresses, as Agamben wrote (1998: 101), “the hidden tie to life that can be killed but not sacrificed,” and ultimately, the absoluteness of power. As we have seen, at the heart of this doctrine lies the ever-changing relationship between two essential dimensions of power: its perpetual and transcendent soul and its absolute and immanent body.

Furthermore, Agamben’s reconstruction of a presumed unsacrificeability of supreme power is highly problematic. In the pagan world, to which Agamben often refers, absoluteness and expendability were not polar dimensions but, indeed, intimately connected to the complex of power/kingship.¹⁰ To clarify this crucial point, I briefly analyse the sacrificial practice known as *devotio*, which is also central to Agamben’s reflection on power. As it is known, *devotio* was an extreme form of *votum* (vow, promise) in which, according to Livy’s account, a Roman general vowed to sacrifice his own life in battle to the gods of the underworld. Agamben, once again, has traced the figure of the *devotus*, the person who immolates himself to the gods, back to the paradigm of *sacertas* (Agamben 1998: 96-8).¹¹ In fact, there could not be a greater (conceptual and legal) distance between the two figures.

As Magdelain has masterfully shown, *devotio* cannot be practiced by just anyone. Only the holders of *imperium* – the highest public power – can activate this procedure.

Evidence of this can be found in one of the most difficult moments in the history of Rome: the Gallic invasion. When the Gallic forces are about to cross the borders of the eternal city, the old consuls, covered with the insignia, remain in the deserted city, pronounce the ritual formulas of *devotio* and allow themselves to be massacred. “The legal value of this sacrificial operation” – Magdelain has argued – “depends on an imperative principle: *devotio* can only be carried out by a holder of the *imperium*, whether he sacrifices himself or a soldier by proxy” (Magdelain 2015: 349).

The fundamental point is, therefore, that the ultimate sacrifice of one’s life was significant only if implemented by the holder of supreme power, the dictator or the emperor.¹² In other words, to be effective, this sacrificial practice required the exposure to death of the regent, the one who had been invested with the highest power (*imperium*). *Contra* Agamben, in the archaic period, sacrifice and absoluteness were not separate but, if anything, specular dimensions of power.

To be able to speak, as Agamben does, of an unsacrificable power that calls for the supreme sacrifice of one’s life to preserve the existence of an entity that is both abstract and concrete, emotional and territorial, we will have to wait at least until the 12th century. It is around that time that, through the rediscovery of Roman law and theological re-elaboration, an abstract and religious concept of ‘homeland’ was beginning to form. It is only at this very moment that, as Kantorowicz (1951: 491) has argued, “the ‘state’ in the abstract or the state as a corporation appeared as a *corpus mysticum* and that death for this new mystical body appeared equal in value to the death of a crusader for the cause of God.” For, the conceptual reoccupation and secularization of the doctrine of the king’s two bodies carried out a decisive reversal that escapes Agamben: the sacralization of the body politic strips Christianity of its ethos, thus promoting secularization and, at the same time, the absolutization of the new mortal

God, the state. As Kantorowicz (1955: 87) has it: “The reverse side of the application of theological language to secular institutions was, on the one hand, that the fisc and the state machinery eventually *did* become godlike, whereas, on the other hand, God and Christ were demoted to mere symbols of legal fiction in order to expound the ubiquity and eternity of the fictitious person called Fisc.”

Just as Schmitt had argued, then, for Kantorowicz too, secularization and absolutism go hand in hand, thus transforming the double body of power into the *macros anthropos*, the multiple-bodied giant which epitomizes the modern dilemma of representation described by Hobbes. The doctrine of absolute, non-derivable, omnipresent, and always-actualizable power is, therefore, also for Kantorowicz, an exclusively modern invention resulting from the continuous historical reoccupations of the double body of power.

Just like in the case of his reading of Schmitt, therefore, Agamben retrospectively projects his analytical lens on Kantorowicz’s work, thus sanitizing the historical course of its inevitable contingencies. The analogies that he finds between the various notions of duality are sometimes logical in nature, other times completely ahistorical and idiosyncratic because they are disconnected from social contexts and the ritual functions they perform. In sum, this arbitrary use of historical analogies is the distinctive methodological trait of Agamben’s ‘archaeology’ of biopolitics. The final section of this article focuses on this methodological lacuna.

An Archaeology without Archē

As we have seen, Agamben tends to superimpose a preconceived and idiosyncratic vision of power on his readings of illustrious authors and texts. The epistemic gesture through which this conceptual appropriation occurs is always the same: an arbitrary and

forced use of analogy as a tool for analysis and confirmation of a general hypothesis about political life: i.e., “that the inclusion of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power” (Agamben 1998: 9). By ‘concealed’ (*occulto*) here he means that no one before him had understood that there was a political ontology operating silently in various historical junctures and attributable to the paradigm of *sacertus*. As I have tried to demonstrate, this vision lacks genealogical sensitivity and, moreover, it is barely supported by what Agamben believes to be his analytical pillars: the theory of paradigms and that of signatures. As we shall see, these two strategies are interrelated. For, the theory of signatures is the tool through which it is possible, according to Agamben, to unearth examples of a potential paradigm which analogical reasoning then brings to fruition through historical comparisons. It is therefore necessary to critically interrogate these epistemological aspects of Agamben’s work to understand its methodological lacunae and idiosyncrasies.

According to the Italian philosopher, philosophical archaeology is a strategy that discovers the *archai* that operate throughout history. Through a critical regression, the archaeological gesture unveils the moment in which a fundamental split (i.e., conscious and unconscious, history and historiography, *bios* and *zoē*) was produced and, in doing so, frees the historical course from its latent operativity. However, this line of thought begs the question: How do you regress towards a point of emergence – any historical point in time – without knowing what you are looking for and what you are heading towards? Caught up in rhetorical justifications, Agamben does not offer strictly methodological pointers. But an answer might be sought in his theory of signatures.

According to the Italian philosopher, an *archē* can be unearthed through the signs it leaves in discourses, texts, and events. This position, however, only shifts the problem

slightly. For, how can we read these signs and trace them back to an original tendency – in the Agambian sense of a force operating in the historical course? It is at this point that Agamben brings his theory of signatures onto the scene: the signs left on the body of history by the *archai* are decipherable because power signs them, engraves them, so to speak, with a hint for interpretation. But this position, too, only shifts the question from signs to signatures: how do you read signatures without a pre-existing code of signification? In an intuitionist view of the sign, Agamben argues that meaning shines from the signs into the eyes of the brilliant researcher. This argument is not convincing because even accepting that sense can ‘shine’ from signatures, it would produce emotion and cognition but not meaning and understanding. Without a meta-semiotic framework, we could not even distinguish running from walking as Augustine reminds us in his questioning of Adeodatus (Augustine 1968: 14-5). In fact, the mere, inductive accumulation of ostensive signs cannot provide us with the meaning of a thing or an event (Eco 1984: 41). Without the support of an interpretative code, pure induction, as Max Weber wrote in a memorable passage, can only lead us towards the meaningless infinity of the world process, that is, to the fragmentation of experience into discrete and non-generalizable events. “For, how could we make one thing the signifying sign of another thing” – wrote one of Agamben’s main influences, Enzo Melandri (2004: 62) – “or, even worse, of a phenomenon the ‘symptom’ of something transphenomenal, if we did not have a code through which interpretation is defined?”

It would, therefore, appear that, although implicitly, the only underlying logic of Agamben’s so-called archaeology is abductive reasoning. A clue that this is the case is given precisely by Agamben’s discussion of the clue as signature. “The clue” – Agamben writes (2009: 70) – “represents the exemplary case of a signature that puts an insignificant or nondescript object in effective relation to an event (...a crime, in

Freud's case, a traumatic event) or to subjects (the victim, the murderer, the author of a painting)." So, the mystery is revealed. Logically, in fact, a clue can only be considered as such on the condition that a plane of signification, "in the light of which a sign will acquire its meaning", is posited (Eco 1984: 42). In other words, an event – e.g., a suspect's eye-blinking during an interrogation – can become a clue only if a hypothetical rule is posited – i.e., a suspect's eye-blinking during an interrogation means that the interrogated person is lying – which transforms the event into an example of such a rule. Paraphrasing Agamben, one could argue that the state of exception decided by Hitler in 1933 is a clue of a regularity – biopolitics – of which it represents an exemplary case. But then, how can we transform a clue of a rule into an empirical proof of its regularity? How can we move from the strictly semiotic level of meaning to the epistemological level of the certainty of the proof? How can biopolitics be transformed into the original paradigm of Western politics? This is where the weakest part of Agamben's archaeological method, the theory of the example or paradigm, comes into play.

Agamben (2009: 18) argues that "the paradigm is a singular case that is isolated from its context only insofar as, by exhibiting its own singularity, it makes intelligible a new ensemble, whose homogeneity it itself constitutes." In this sense, then, the logic of the example would then be distinct from both induction and deduction, because the paradigm follows neither the movement that goes from the case to the universal nor the one that goes from the universal to the particular, but it moves from the particular to the particular. But then the question arises: where does the probative force of the example come from if it is "impossible to clearly separate an example's paradigmatic character – its standing for all cases – from the fact that it is one case among others" (Agamben 2009: 20)? Agamben's response (2009: 27) is methodologically rather

weak: in the paradigm, he argues, “intelligibility does not precede the phenomenon; it stands, so to speak, ‘beside’ it.” But this is just another way of saying, as he had done with his theory of signatures, that meaning ‘shines’ from things and that “the ability to recognize and articulate paradigms defines the rank of the inquirer” (Agamben 2009: 32). This line of reasoning, however, does not explain the crucial problem of how it is possible to identify and, above all, articulate the paradigmatic singularity of an example.

The issue here is very simple if one considers the abductive logic already discussed above which, unfortunately, Agamben never took into account. The example or paradigm, in fact, is nothing more than a *heuristic* application of a historical phenomenon whose exemplarity is to be shown. The point is that to show the exemplarity of something, one must already have in mind a hypothesis or rule whose characteristics the historical singularity (the phenomenon) can exhibit, and in doing so, is then transformed into an exemplar or heuristic tool. Indeed, *contra* Agamben, if all the *historical characteristics* that constitute the singularity of a phenomenon were examined, it would become unusable as an example because it would inevitably be unique and singular compared to any other phenomenon. Yet a paradigm or example is not used historically but *heuristically*, i.e., by subtracting it from its historical locus (the conditions of possibility that produced it) in order to employ it as a conceptual tool for cognitive purposes. An example can help us understand this essential point.

As is well known, the *Panopticon* is a design of an institutional building developed by British philosopher and social reformer Jeremy Bentham in 1786 while visiting his brother Samuel in Russia. But this historical and singular vision of control can also be used to understand how a certain conception of power and security operated in late-eighteenth-century England. In other words, when this peculiar idea is abstracted

from the course of the events, it becomes something other than itself: it becomes ‘panopticism’, the heuristic twin concept by means of which one can investigate similar types and understandings of surveillance and disciplinary power. Indeed, the paradigm is nothing more than an ideal type raised by the researcher above the historical course to show the exemplary nature of a rule of which it is considered a case. This is precisely the logic that Charles Sanders Peirce called ‘abductive reasoning’.

In summary, what Agamben misses is the subtle but essential difference between the historical singularity of phenomena and their significance as heuristic tools (or ideal types). In believing, however, that once the ideal paradigm has been found one no longer needs methodological support to demonstrate its *plausibility*, Agamben ventured into a narrative in which his notion of biopolitics operates almost everywhere from the Roman world to the concentration camps, from Schmitt’s work to Aristotle’s metaphysics, from detention centres to the emergency measures taken to stem the spread of Covid-19. The means of transport used for this world tour/time travel is none other than the analogy, with all the presumed homologies and similarities that it can generate without regard for the conditions that make the formation of historical singularities possible.

The underlying problem of Agamben’s method in general – and of his conception of sovereignty in particular – is perfectly pictured by Enzo Melandri, who is undoubtedly the main source of Agamben’s epistemology. In his masterful work, *La linea e il circolo*, Melandri had offered a programmatic indication according to which analogical reasoning should become the *guiding principle* of philosophical archaeology. Agamben, unfortunately, transformed this principle into a *method*, that is, he used analogy as a tool for historical analysis and comparison. But, according to Melandri, this strategy does not allow us to make ‘critical’ history but, rather,

‘monumental’ history because, *if used as a method*, analogical reasoning is unable to unveil the conditions of possibility that determined the emergence of an *archē*. Indeed, if the genealogical gesture is always aimed at understanding how a division emerged in a specific historical moment (i.e., the traumatic motivation of its origin, as Melandri put it), Agamben’s archaeology does essentially the opposite because it wants to reveal, by analogies and homologies, the eternal return of the same: the biopolitical tendencies operating in Western civilization. Yet, Melandri himself had warned against this strategy:

It is a fact that a monumental history is always tendentious: not only because it ends up establishing an understanding of the historical fact on the basis of its repetitions or, better yet, *homologies* with other past or future events; but above all because it leads one *to consider as a fact what is instead the fruit of the chosen method of comparison, and to find in that the confirmation of one’s ideology* (Melandri 2004: 38, emphasis added).

Conclusion

This article has shown how Agamben’s reading of the concept of sovereignty is flawed by a fundamental shortcoming: the uncritical use of analogy. Once the thesis that biopolitics represents the original and arcane paradigm of Western politics has been posited, the Italian philosopher throws himself headlong into the search for parallels between the various archaic, modern, and medieval political ‘paradigms’, equipped with the only analytical tool of (apparent) similarities. In this way, however, Agamben ended up betraying the basic principles of the strategy that he himself claimed to

promote. Indeed, the genealogical operation from Nietzsche to Foucault, despite clear differences, has always implied an unveiling of the power relations that make the emergence of discourses, practices, and events – as well as their historical understanding – possible. By treating his capital notions in a completely ahistorical and metaphysical manner, Agamben instead took a path apparently parallel but substantially opposite to the genealogical one: through dehistoricized analogies, he deprived his cognitive tools of the conditions that determined their historical singularity or origin. Disconnected from their historical locus, ‘sovereignty’, ‘life’, ‘biopolitics’ float freely on the historical course to be used at will – emanationistically – in the creation of an empirical reality that has already been conceptually emptied.

This risky attempt to cross the chiasmus that divides the infinite multiplicity of the phenomenal world and the finiteness of the cognitive tools we use to map it is not new. Max Weber, in his powerful critique of the historical method, had already highlighted its limits. “The position of emanationism” – he writes – is to “construe empirical realities as emanation of ‘ideas’ from which the individual processes must necessary be conceptually derivable: the highest of these ideas must manifest itself as intuitively perceivable in the complex total process” (Weber 2012: 19). A critique of Agamben’s use of the concepts of sovereignty and *sacertas* – from which the meaning and genealogical direction of Western politics emanate – could not be expressed better. Yet, Weber (2012: 127) continues, “it must be admitted that nothing is more dangerous” than this mixing up of theory and history, because “ideas may be hypostatized as a ‘true’ reality that exists beyond the fleeting phenomena, as real ‘forces’ that work themselves out in history.”

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- ¹ See Agamben (2016: 264): “In the course of the study, the structure of the exception that had been defined with respect to bare life has been revealed more generally to constitute in every sphere the structure of the *archē*, in the juridico-political tradition as much as in ontology. In fact, one cannot understand the dialectic of the foundation that defines Western ontology, from Aristotle onward, if one does not understand that it functions as an exception ... The strategy is always the same: something is divided, excluded, and pushed to the bottom, and precisely through this exclusion, it is included as *archē* and foundation.”
- ² According to Foucault (1978: 135), the analogy between the power of the modern sovereign and that of the Roman *pater familias* is simply formal.
- ³ It is important to note that, in formulating his theory of sovereignty, Agamben does not discuss Schmitt’s *Dictatorship*, which is one of three decisive texts, according to the German jurist, to understand his work. On the relevance of *Die Diktatur*, see Mehring (2014: xv).
- ⁴ From a linguistic and specifically genealogical perspective, there is no doubt that the concept of ‘sovereignty’ is a product of Western modernity. On this, see, for example, Reinhard (2007: 56–64) and Strayer (1970: 42–3). As De Jouvenel (1957: 170) argued: “It is a mistake to suppose that over time Sovereignty has merely changed masters [...] That any human will whatsoever possessed an unlimited right to command the actions of subjects and change the relationships between them – that, for a whole thousand years, was something which was not only not believed but was not even imagined.” Agamben, for his part, uses the concept in a trans-epochal and, therefore, ahistorical way. But for Schmitt, as we shall see, the exception is a mechanism of the political order which, unlike Agamben, constantly changes function in relation to the changing structure of power and social relations.
- ⁵ In Schmitt’s reconstruction, the figure of Oliver Cromwell marks a point of transition between the commissary and sovereign practice of dictatorship. Cromwell, in fact, had the sovereign power to suspend parliament but he did so by still appealing to a transcendent source, God, and not to the people of whom he was Lord Protector. See Schmitt (2014: 113-117).
- ⁶ Here I use the concept of ‘*imperium*’ to refer to both the military power and the supreme political power which, according to the archaic *jus*, was entrusted by Jupiter to the first king of Rome. On this, see Magdelain (1968).
- ⁷ See Schmitt (2008: 131): “The natural form of the direct expression of a people’s will is the assembled multitude’s declaration of their consent or their disapproval, the *acclamation*.”
- ⁸ As Ullmann (1961: 20) clearly put it: “But who or what is the source of the law? Who is that *gubernator* that can shape and issue the law as an enforceable rule of action? What is it that makes the law binding? These questions concern nothing more or less than the location of original power. The problem of the seat of final jurisdictional, that is, law-creating power and competency, is the medieval problem of locating what would today be called political sovereignty. Where does, to use the terminology of ancient Rome, the power of creating law, the *potestas condendi*

leges, reside? The actual location of this power also answers the question of the origin of power.”

- ⁹ In fact, Bodin (1955: 25) continues, “If it were otherwise, and the absolute authority delegated by the prince to a lieutenant was regarded as itself sovereign power, the latter could use it against his prince who would thereby forfeit his eminence, and the subject could command his lord, the servant his master.”
- ¹⁰ I think of the vast literature that arose in the wake of Frazer’s work. For an overview, see Prescendi (2015).
- ¹¹ It is important to highlight that the example used by Agamben to analyse this ritual, the alleged *devotio* of Publius Decius Mus in 340 BC, is almost unanimously regarded as legendary. On this, see Magdelain (2015: 48, note 141) and Versnel (1976).
- ¹² This interpretation is also confirmed by Macrobius, *Saturnalia*, 3, 9: “*dictatores imperatoresque soli possunt devovere his verbis* (dictators and emperors alone can devote themselves to these words).”

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