Agamben’s Messianic Politics: Biopolitics, Abandonment and Happy Life

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*Human life is politicized only through an abandonment to an unconditional power of death.*

In his account of biopolitics in *Homo Sacer,* Giorgio Agamben argues that the biopolitical capture of life is fundamentally co-existent with the operations of sovereignty. Drawing simultaneously on Aristotle, Carl Schmitt and Walter Benjamin as well as the obscure figure of sacred man or ‘*homo sacer*’ from Roman law, Agamben argues that life captured within the sovereign ban is bare life, and as such, is life irreparably exposed to the force of death that characterizes sovereignty. Further, Agamben argues that the originary relation of the law to life is not application, but abandonment. In formulating a response to the dangers of biopolitical capture discussed in *Homo Sacer,* Agamben concludes this text with an elusive gesture toward a new ‘form-of-life’ as the ground of a coming politics over and against the bloody nexus of sovereign violence and biopolitics. While this gesture has not yet been read in critiques of *Homo Sacer,* it is in fact one of the key moments in the text. In particular, Agamben’s gesture to a new form of life highlights the specifically messianic aspect of his work, in which he argues for the total overturning of the condition of abandonment, understood as imperfect nihilism, as the necessary condition of redemption from biopolitical capture.

In this paper, I trace the influence of Walter Benjamin on Agamben’s theorization of law and his engagement with the theory of sovereignty posed by Carl Schmitt to consider Agamben’s theorization of the biopolitical capture of life and messianic redemption. Agamben’s work on biopolitics can in fact be read as an attempt to extend or perhaps fulfill Benjamin’s critique of Schmitt’s theory of sovereignty, developed in his “Theses on the Philosophy of History” for instance.
Agamben’s understanding of sovereignty, law and violence works between, on the one hand, Schmitt’s theorization of sovereignty as the decision on the exception and on the other, Benjamin’s critique of Schmitt in his eighth thesis on the philosophy of history, where he claims that the exception has increasingly become the rule. Tracing Agamben’s mediation of this conflict also helps situate his work in relation to that of other theorists with whom he is frequently associated, particularly Jean-Luc Nancy and Jacques Derrida, and specify his disagreements with them. To bring these out, I compare the ‘weak messianics’ of Jacques Derrida with Agamben’s position, which I call ‘strong messianics’. In this comparison, I focus particularly on the essays in which Derrida provides an interpretation of Benjamin’s messianics and the status of the law, these being “Force of Law’ and “Before the Law,” as these texts are closely paralleled in Agamben’s work.

It is worth noting at this point I have reconstructed Agamben’s argument in Homo Sacer in a form that may initially seem at odds with the ethos of his work. One of the difficulties that Agamben’s work presents for interpretation lies in his fragmentary and iterative style, which means that the reduction of summary is a particularly difficult task that can too easily give the impression of a greater systematicity than there is in the original work. Yet while Agamben’s work is densely interwoven in fragments, ‘thresholds’, and short essays, there is nevertheless an internal consistency of argumentation and it is this that I am concerned with here. Hence, my reconstruction of Agamben’s argument does not attempt to either replicate or to simply obscure his stylistics but instead attends to the rigorous conceptuality that gives such a style its critical theoretical force. In doing so, I have also drawn from essays and fragments in several other books that complement the often dense and enigmatic claims made in Homo Sacer.

**Bare Life and the Sovereign Exception**

The starting point for Agamben’s discussion of sovereignty is the apparent paradox of sovereignty, wherein the sovereign is simultaneously inside and outside the juridical order, a situation encapsulated in the notion of the sovereign exception. Taking up Carl Schmitt’s thesis that “sovereign is he who decides on the exception,” Agamben argues that what is at stake in the state of exception is the very possibility of juridical rule and the meaning of State authority. According to Schmitt, in deciding on the state of exception—a process in which the sovereign both includes and excludes itself from the purview of law— “the sovereign “creates and guarantees the situation” that the law needs for its own validity.” He argues that since the exception cannot be codified in the established order, a true decision is required in order to determine whether it is an exception, and thus, whether the rule applies to it. Sovereignty resides in this decision...
on what constitutes public order and security, and hence, whether the social order has been disturbed. He claims that “the exception is that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specific juristic element—the decision in absolute purity… Therein resides the essence of the state’s sovereignty… which must be juristically defined… as the monopoly to decide.” Further, because the sense of the legal order rests upon the existence of the normal situation, the form of the sovereign decision is a decision on the norm and the exception. Thus, sovereignty is the ‘border-line concept’ of order and the exception, where the sovereign decides whether the situation that confronts it is truly an exception or the normal order, such that sovereignty itself becomes apparent in that decision.

In his interpretation of Schmitt, Agamben takes up the notion of the sovereign as borderline or limit concept to argue that the defining characteristic of sovereignty is that the sovereign determines when law is applicable and what it applies to, and in doing so, must also create the conditions that are necessary for law to operate since the law presupposes normal order for its operation. As Agamben states, “what is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity.” The sovereign thus operates as the threshold of order and exception, determining the purview of the law. This means that the state of exception is not simply the chaos that precedes order. For Agamben, it operates both as a condition of law’s operation and an effect of the sovereign decision such that the exception is not simply outside the realm of the law, but is in fact created through the law’s suspension. The sovereign determines the suspension of the law vis-à-vis an individual or extraordinary case and simultaneously constitutes the efficacy of the law in that determination.

But Agamben adds the crucial caveat that while the law might be suspended in relation to the exception, this does not mean that the exception is without relation to the rule; rather, the state of exception is such that what is excluded from the purview of the law continues to maintain a relation to the rule precisely through the suspension of that rule. That is, the exception is included within the purview of the law precisely through its exclusion from it. The effective consequence of this is that the exception confirms the rule by its being other than the normal reference of the rule. Agamben concludes from this structure of the exception that “the rule applies to the exception in no longer applying, in withdrawing from it.” With regard to juridical rule, then, the state of exception that characterizes the structure of sovereignty is not simply inaugurated through an interdiction or confinement, but through the suspension of the validity of the juridical order, wherein the rule withdraws from the exception and applies to the exception in that withdrawal. As Agamben states, “the exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular force of law consists in this capacity of law to maintain itself in relation to an exteriority.”

Following Jean-Luc Nancy, Agamben suggests that the term most appropriate to the capacity of the law to apply in no longer applying is that of the ban. That which is
excluded is not simply set outside the law and made indifferent or irrelevant to it, but rather abandoned by it, where to be abandoned means to be subjected to the unremitting force of the law while the law simultaneously withdraws from its subject. As Nancy states ‘the origin of ‘abandonment’ is a putting at bandon’, where

*bandon* is an order, a prescription, a decree, a permission and the power that holds these freely at his disposal. To abandon is to remit, entrust, or turn over to such a sovereign power, and to remit, entrust, or turn over to its ban, that is, to its proclaiming, to its convening, and to its sentencing… the law of abandonment requires that the law be applied through its withdrawal… abandoned being finds itself deserted to the degree that it finds itself remitted, entrusted, or thrown to this law.\(^\text{10}\)

Agamben claims from this that the position of being in abandonment correlates to the structural relation of the exception: “the relation of exception is a relation of ban.”\(^\text{11}\) Just as with the exception that is included only through its exclusion, the subject of the ban is not simply excluded from the realm of the law, set outside and untouched by it, but is given to the law in its withdrawal. This correlation between the exception and abandonment means that it impossible to say clearly whether that which has been banned is inside or outside the juridical order.\(^\text{12}\) And taking cue from both Benjamin and Schmitt, Agamben argues in *Homo Sacer* that what is captured within the sovereign ban is life itself. He states that “life… [is] the element that, in the exception, finds itself in the most intimate relation with sovereignty.”\(^\text{13}\) Or again, since the “law is made of nothing but what it manages to capture inside itself through the inclusive exclusion” it finds its own existence in the “very life of men.”\(^\text{14}\)

Further, in the state of exception, the law effectively coincides with life itself, such that fact and norm enter into indistinction, and the form of law can be understood as “being in force without significance.”\(^\text{15}\) Addressing a disagreement between Benjamin and Judaic scholar, Gerschon Scholem on the status of law in Franz Kafka’s writings,\(^\text{16}\) Agamben argues that the formulation ‘being in force without significance’ proposed by Scholem perfectly describes the status of law in the state of exception. Agamben takes this phrase to describe the situation in which “the law is valid precisely insofar as it commands nothing and has become unrealizable.”\(^\text{17}\) In being in force without significance, the law is not absent, but is emptied of positive content or meaning and suspended in its application. It is not that the law no longer applies as if in a state of lawlessness, but rather that while applying the law cannot apply in any concrete or immediate sense since it has lost any apparent meaning or intelligibility.

But in taking up Scholem’s phrase, Agamben also proposes that Scholem misses the fundamental importance of Benjamin’s objection that the law that has lost all content is indistinguishable from life.\(^\text{18}\) By the indistinguishability of life and law, Benjamin appears to mean that the law is reduced to the ontic conditions of existence and cannot rule over life through claims to transcendence. Correlatively, there is no possibility of interpretation of
the law from the position of life, since life is itself indistinguishable from law. Agamben concludes from these opposed positions that there is an essential correlation between life under a law in force without significance and life in the sovereign exception in that neither situation allows that life and law be distinguished: in the state of exception, law without significance passes into life while life always subsists in relation to the law.

Importantly, Agamben is not simply suggesting that natural or biological life provides the foundation for the existence of law. Rather, the principle protagonist in the inclusive exclusion that founds the law is bare life, or “life that is irremediably exposed to death”. As he states “not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element.” Agamben notes that the qualitative distinction made by Aristotle in his treatise on the formation of the state between biological life (zoē) and political life (bios) effectively excluded natural life from the polis in the strict sense and relegating it entirely to the private sphere, as the basic life of reproduction. The category of bare life emerges from within this distinction, in that it is neither bios nor zoē, but rather the politicized form of natural life. Immediately politicized but nevertheless excluded from the polis, bare life is the limit-concept between the polis and the oikos. And in being that which is caught in the sovereign ban, bare life indicates the exposure of natural life to the force of the law in abandonment, the ultimate expression of which is the sovereign’s right of death. Thus, neither bios nor zoē, bare life emerges through the irreparable exposure of life to death in the sovereign ban.

Agamben’s return to Aristotle to describe the ontological foundations of politics has several implications worth mentioning here. First, it allows him to argue that bare life is not a modern invention but, instead, stands in an originary relation with Western politics. Hence, in a provocative formulation, he suggests that “in Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men [sic].” Second, this claim indicates the tight integration between sovereign power and biopower that Agamben sees in contrast to the historical succession of sovereignty and biopower that Michel Foucault at least appears to posit at times.

Against Foucault, Agamben claims that “the inclusion of bare life in the political realm constitutes the original—if concealed —nucleus of sovereign power. It can even be said that the production of a biopolitical body is the original activity of sovereign power. In this sense, biopolitics is at least as old as the sovereign exception.”

This also means that modern politics does not represent a definitive break from classical sovereignty but rather the extension and generalization of the state of exception that founds sovereign power. Hence, Agamben argues that the biopolitical regime of power operative in modernity is not so much distinguished by incorporating life into politics as Foucault claimed, but by the fact that the “state of exception comes more and more to the foreground as the fundamental political structure and ultimately begins to become the rule.” Or again, “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, bios and zoē, right and fact, enter into a zone of irreducible indistinction.”
Importantly, the theoretical point of inspiration for this claim comes from the eighth fragment of Benjamin’s “Theses on the Philosophy of History,” where he writes that:

The tradition of the oppressed teaches us that the “state of emergency” in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight. Then we shall clearly realize that it is our task to bring about a real state of emergency, and will improve our position in the struggle against Fascism.27

Taking up the first theoretical provocation in this thesis, Agamben generalizes the sovereign exception such that it no longer appears as the exceptional case, but as the norm. This means that the capture of bare life within the exception is a general condition of existence, such that the rule and the exception, inclusion and exclusion, and right and violence are no longer clearly distinguishable. Agamben claims from this that under a regime of biopolitics all subjects are potentially homo sacers. That is, all subjects are at least potentially if not actually abandoned by the law and exposed to violence as a constitutive condition of political existence.28 As empirical evidence of this politico-philosophical claim, he cites the figure of homo sacer, genocidal violence, the apparently ever-expanding phenomenon of concentration camps—which he argues reveal the ‘nomos of the modern’—as well as the redefinition of life and death in the categories of the ‘overcomatose’ or brain dead, and neo-morts. Agamben has been heavily criticized for his apparently eclectic collection of empirical evidence and the rendering of these examples as ‘indistinguishable’. Yet, what unites the examples Agamben selects is the thesis on the generalization of the exception and the correlative indistinction of fact and norm in Western politics and philosophy.

Even so, one should not conclude from the rejection of Foucault’s more historically and empirically restrained theses on the emergence and institutionalization of biopower that Agamben sees no substantive difference between classical and modern democracy. Rather, Agamben suggests that what distinguishes modern democracy from classical democracy is that the former “presents itself from the beginning as a vindication and liberation of zoē, and that it is constantly trying to transform its own bare life into a way of life and to find, so to speak, the bios of zoē.”29 Thus the raison d’être of contemporary political power is the annulment of the distinction between bios and zoē; that is, a total politicization of biological life that undercuts the distinction between bios and zoē and therefore eradicates bare life. At the same time though, Agamben also claims that modern democracy has consistently failed in the endeavor to reconcile bios and zoē, such that “bare life remains included in politics in the form of the exception, that is, as something which is included only through an exclusion.”30 While modern politics is increasingly played out on the level of biological life, in its attempt to discover the bios of zoē it nevertheless produces bare life as the excrescence of its failure, thereby preventing the overcoming of the sovereign exception and the violence that conditions bare life. This situation leads to an aporia specific to modern democracy: “it wants to put the freedom and happiness of
men into play in the very place—“bare life”—that marked their subjection.”

This account of the aporetic violence of modern democracy provides the starting point for the particular formulation of political futurity that Agamben develops. For according to Agamben, this aporia stymies any attempt to oppose biopolitical regimes from within the framework of bios and zoë. Such projects will tirelessly repeat the aporia of the exception, the danger of which lies in the gradual convergence of democracy with totalitarianism. In other words, the condition of abandonment indicates a fundamental aporia for contemporary politics, where attempts to overcome the capture of life within the sovereign exception through recourse to natural life necessarily repeat and reinstall that capture in their politicization of natural life. Thus, Agamben rejects Foucault’s gesture toward a ‘new economy of bodies and their pleasures’, claiming that “the body is always already a biopolitical body and bare life, and nothing in it or the economy of its pleasure seems to allow us to find solid ground on which to oppose the demands of sovereign power.” He argues instead that:

Until a completely new politics—that is, a politics no longer founded on the exceptio of bare life—is at hand, every theory and every praxis will remain imprisoned and immobile, and the “beautiful day” of life will be given citizenship only either through blood and death or in the perfect senselessness to which the society of the spectacle condemns it.

The reference in this passage to the ‘beautiful day’ of life not only gestures toward the distinction Aristotle makes between the great difficulty of bios and the natural sweetness of zoë, but offers the key to the foundation of the coming politics that Agamben proposes.

I have argued that Agamben’s diagnosis of contemporary politics as a condition in which the exception has become the rule draws on Benjamin’s formulation in his “Theses on the Philosophy of History.” It is also important to note the second part of this formulation here though, in which Benjamin calls for the inauguration of a real state of exception as a means of forestalling Fascism. For Benjamin, the normalization of the exception merely amounts to a virtual state of exception, a condition which is fundamentally nihilistic. What is required then, he suggests, is the inauguration of a real state of exception to overturn the virtual suspension of the rule.

Analogously, for Agamben, the overcoming of the sovereign ban that characterizes modern politics can only take place through the inauguration of a ‘form-of-life’ or ‘happy life’ that supersedes the distinction between bios and zoë. As he states in Means Without End:

The “happy life” on which political philosophy should be founded thus cannot be either the naked life that sovereignty posits as a presupposition so as to turn it into its own subject or the impenetrable extraneity of science and of modern biopolitics that everybody tries in vain to sacralize. This “happy life” should be rather, an absolutely profane “sufficient life” that has reached the perfection of
its own power and its own communicability—a life over which sovereignty and right no longer have any hold.\textsuperscript{35}

Thus, Agamben points toward a new conception of life, described as ‘happy life’ or a ‘form-of-life’, in which it is never possible to isolate bare life as the biopolitical subject. The happy life will be such that no separation between \textit{bios} and \textit{zoe} is possible, and life will find its unity in a pure immanence to itself, in ‘the perfection of its own power’. In this then, he seeks a politico-philosophical redefinition of life no longer founded upon the bloody separation of the natural life of the species and political life, but which is beyond every form of relation insofar as happy life is life lived in pure immanence, grounded on itself alone.

While Agamben’s starting point for the theorization of bare life is the term ‘mere life’ that Benjamin uses in “Critique of Violence,” the inspiration for his conception of a ‘happy life’ derives at least in part from the short text, “Theologico-Political Fragment.” In this, Benjamin explicitly addresses the relation of Messianic and historic time and writes that “only the Messiah himself consummates all history, in the sense that he alone redeems, completes, creates its relation to the Messianic.”\textsuperscript{36} Constructing an image of two arrows pointing in different directions but which are nevertheless reinforcing, Benjamin goes on to say that ‘the order of the profane should be erected on the idea of happiness’. This is because while the profane cannot in itself establish a relation with the Messianic, it assists the coming of the Messianic Kingdom precisely by being profane. In other words, while the profane is not a category of the Messianic, it is “the decisive category of its quietest approach,” because “the rhythm of Messianic nature is happiness.”\textsuperscript{37} Happiness allows for the fulfillment of historical time, since the Messianic kingdom is “not the goal of history but the end.”\textsuperscript{38}

Agamben’s absolutely profane happy life draws on this characterization of the profane and Messianic, wherein the profane happy life provides passage for Messianic redemption. The inauguration of happy life in which neither \textit{zoe} nor \textit{bios} can be isolated allows for the law in force without significance to be Overturned such that the Nothing maintained by that law is eliminated and humanity reaches its own fulfillment in its transparency to itself. For Agamben, happy life might be characterized as life lived in the experience of its own unity, its own potentiality of “being-thus,”\textsuperscript{39} and as such, is life lived beyond the reach of the law.\textsuperscript{40} In this way, Agamben offers a redemptive hope that is external to the problems of biopolitics; the problems posed by the state of exception and sovereignty’s capture of bare life are resolved by the inauguration of the happy life, and the coming politics it grounds redeem humanity in the face of biopolitical annihilation.

To summarize so far then, Agamben argues that bare life is produced as the excrecence of the distinction between \textit{bios} and \textit{zoe} and as such, is the carrier of the sovereign nexus of right and violence and the locus of biopolitical capture. Against this situation, he points toward a new conception of life, described as ‘happy life’ or a ‘form-of-life’, in which it is never possible to isolate bare life as the biopolitical subject.\textsuperscript{41} The happy life will be such that no separation of \textit{bios} and \textit{zoe} is possible, and life will find its unity in a pure...
immanence to itself, in ‘the perfection of its own power’. In this way, Agamben offers a redemptive hope that is external to the problems of biopolitics; the problems posed by the state of exception and sovereignty’s hold over the bare life caught within it can be resolved by the coming unified life. The inauguration of the happy life and the coming politics it grounds annuls bare life by overturning the conditions of its biopolitical capture.

**Happy Life and the Force of Law: Agamben and Derrida**

As provocative as it is, Agamben’s gesture toward a happy life that provides foundation for the coming politics clearly warrants further consideration and to do this, I turn to discussing the theoretical commitments that underpin Agamben’s theorization of biopolitics and the sovereign exception. In particular, I consider the messianic dimension of Agamben’s theorization, which derives from his theoretical debt to Walter Benjamin and which is perceived to provide the means of overcoming the structure of the ban identified in and through Schmitt’s conception of sovereignty. Indeed, it is no coincidence that the most important of Benjamin’s texts for Agamben are those in which the gesture toward the messianic is most explicitly formulated. However, I am less concerned with the particular characteristics of Benjamin’s conception of the messianic than with the way in which this gesture operates within Agamben’s argument on sovereignty and biopolitics. This implication can be brought out succinctly through a comparison of his position with that of Derrida, particularly of their respective interpretations of Benjamin’s essay “Critique of Violence” and Kafka’s parable “Before the Law.”

The notion of abandonment provides the point of departure for this discussion, for it can now be said that for Agamben, recognition of the status of law as being in force without significance in the ban is insufficient as the aim and achievement of contemporary thought, since residing in this recognition does little other than repeat the ontological structure of the sovereign ban. Instead, Agamben claims that contemporary thought must think abandonment beyond any conception of the law in order to move toward a politics freed of every ban. He states that:

The relation of abandonment is now to be thought in a new way. To read this relation as a being in force without significance – that is, as Being’s abandonment to and by a law that prescribes nothing, and not even itself – is to remain inside nihilism and not to push the experience of abandonment to the extreme. Only where the experience of abandonment is freed from every idea of the law and destiny… is abandonment truly experienced as such.

This complicated suggestion brings to light several crucial aspects of Agamben’s theorization of abandonment. First and most obviously, this statement summarizes
Agamben’s critique of the conception of abandonment given by Jean-Luc Nancy in his essay “Abandoned Being.” Nancy argues that abandonment is the condition—perhaps the sole condition—of the thinking of being in the contemporary world and, further, abandonment is always to be abandoned in relation to law, since “abandonment respects the law; it cannot do otherwise.” He concludes that “abandonment’s only law… is to be without return and without recourse.” Without exploring the complexities of Nancy’s text or his critical relation to Heidegger from whom the notion of abandonment is taken, it can be said that Agamben diverges from Nancy on this final point of the resolution and recourse of abandonment. Agamben’s divergence from Nancy’s formulation lies in his claim that the state of abandonment must be overcome through pushing the experience of abandonment to its extreme limit, beyond the law’s being in force without significance and beyond the contemporary condition of nihilism.

In fact, this reference to nihilism is key for disentangling Agamben’s commitment to a Benjaminian messianics as the path of overcoming the condition of abandonment, for it prefigures the distinction between perfect and imperfect nihilism that he poses as synonymous with the virtual and real state of exception posed by Benjamin in the “Theses on the Philosophy of History.” Benjamin’s fragment cited above posits the generalization of the state of exception and the correlative necessity of developing an account of historical time that can clearly illuminate and assist in realizing a means of overcoming that state through the creation of a real state of exception. The distinction that Benjamin posits between the virtual and the real state of exception or state of emergency can be understood as strictly analogous to a differentiation between the state of exception that constitutes sovereignty according to Schmitt’s thesis and the exceptionality of the messianic, which redeems and rescues humanity from the grip of the former. That is, historical fulfillment or redemption comes in the form of a messianic, real exceptionality that overcomes the form of law in the virtual state of exception, the latter of which is at least partly equated for Benjamin with Fascism.

Given that the fragment from the “Theses on the Philosophy of History” presents a barely disguised critique of Schmitt, it provides Agamben with the solution to the perceived urgency of overcoming or escaping the operations of the sovereign ban and the biopolitical capture of bare life that this entails. Accepting the essential correlation between nihilism and messianism posited by Scholem and Benjamin, Agamben claims that it is necessary to distinguish between two forms of messianism or nihilism. The first form, which he calls ‘imperfect nihilism’ nullifies the law but maintains “the Nothing [that is, the emptiness of the law] in a perpetual and infinitely deferred state of validity.” This is the nihilism that Agamben refers to above in his critique of Nancy’s conception of abandonment. The second form, called ‘perfect nihilism’ overturns the Nothing, and does not even permit the survival of validity beyond meaning; perfect nihilism, as Benjamin states, “succeeds in finding redemption in the overturning of the Nothing.” The task that contemporary thought is faced with then is the thought of perfect nihilism, which overturns the law in force without significance that characterizes the “virtual” state of exception of Western politics.

Importantly though, the overturning of the law does simply mean instituting a new law,
and nor does it mean reinstating the lost law of a previous time “to recuperate alternative heredities.” Both of these modes of progression would merely repeat the political aporia of abandonment. Rather, the task of redeeming life from the aporia of law in force without significance requires both the destruction of the past and the realization of “that which has never been.” It is only the inauguration of that which has never been, the not having been of the past, that will suffice to overturn the Nothing maintained by the law in force without significance and thereby restore human life to the unity of bios and zoë, a unity that itself has never yet been. As Agamben states “this—what has never happened—is the historical and wholly actual homeland of humanity.”

In this light, it becomes clear that the ‘form-of-life’ or ‘happy life’ that Agamben proposes as the foundation of the coming politics constitutes the ‘real state of exception’ from which biopolitics of modern democracy and its correlation with totalitarianism can be combated and life redeemed. For Agamben, the real state of exception or the messianic redemption that overturns law in force without significance can be actualized in the inauguration of a happy life that does not partake in the distinction between natural life and political life, but which might instead be characterized as life lived in the experience of its own unity, its own potentiality of ‘being-thus’.

In this, the notion of happy life is structurally similar to the theoretical gesture that Agamben makes in his earlier text, The Coming Community. Though not formulated in the terms of bare and happy life, the messianic overturning of expropriated being provides the logical impetus of this text, in which Agamben develops his conception of community without essence realized in the ‘whatever’ singularity. In this text, the community of whatever, the being-thus of humanity, which is neither general nor particular, without attribute or identity, is essentially a messianic community of humanity restored to its own potentiality, its own ‘being-in language’ that thereby overturns being’s expropriation by the Nothing of the spectacle to which it is currently condemned. However, to be clear this does not amount to a nostalgic re-invocation of Gemeinschaft; rather, as should be expected from the structure of messianics, the coming community has never yet been. As Thomas Carl Wall comments, “without destiny and without essence, the community that returns is one never present in the first place.” This suggests that the gesture toward the necessity of a new form of life or happy life to ground the coming politics that appears in the final pages of Homo Sacer brings to light the formulation of messianism that underpins Agamben’s conceptions of life, politics and historical transformation developed in much of his recent work.

The particular characteristics of Agamben’s gesture of political futurity can be outlined through a brief comparison of Agamben and Derrida’s interpretations of Benjaminian messianics. So far, I have argued that Agamben’s conception of opposition to biopolitical capture draws upon the logic suggested by Benjamin in his eighth thesis on the philosophy of history, such that instead of residing in the immanent potentiality of bare life he posits a messianic redemption from biopolitical capture in the form of a unified, happy life. Several commentators on Agamben have suggested that this logic can be understood as the transformation of the aporia of the exception in a redemptive euporia that subsequently
provides the hope and foundation of a coming politics. In other words, Agamben’s political logic relies on a transition from a situation of hopelessness or literally, ‘lack of way’ into a ‘felicitous way’ or hopefulness.

This transition is suggested in his discussion of the role of terminology and ‘the trace’ in the work of Jacques Derrida, where he argues that the concept of the trace is an attempt to rethink the Aristotelian paradox of potentiality. The deconstructive writing of the trace does not indicate the passage of potentiality into actuality, but is rather ‘a potentiality that is capable and that experiences itself’ in its passivity. As the ‘excess of signification in all sense’, the concept of the trace (which is nevertheless not a concept) central to deconstruction radicalizes the paradox of self-reference wherein a term refers only to a term and through that only to itself. But, Agamben argues, Derrida’s response to the paradox of self-reference is not logical resolution, but dislocation and transformation: he states, “the aporias of self-reference do not find their solution here; rather, they are dislocated and… transformed into euporias.”

While Agamben does not seek to distinguish his own position from that which he finds in Derridean deconstruction, his position on aporetic hopefulness differs substantially from that taken by Derrida. This difference can be illustrated through a brief consideration of their respective interpretations of Kafka’s parable, “Before the Law.”

In his essay ‘Before the Law,” presented in 1982, Derrida seeks to elaborate the relation between law and literature through an interpretation of Kafka’s parable of the same title. The key moment in this parable of the man from the country arriving before the open door of the Law for Derrida’s reading is the doorkeeper’s response to the man’s request to enter, the ‘not yet’, or ‘not at the moment’. Derrida suggests that this response indefinitely defers the decision on whether the man from the country can pass through the door. The deferral of passage is not a direct prohibition but an interruption that delays access to the law itself, a paradoxical situation given that it is precisely the law that delays that access. As Derrida writes “what is deferred forever till death is entry into the law itself, which is nothing other than that which dictates the delay.”

Importantly, for Derrida, this suggests that the law might be understood as “a nothing that incessantly defers access to itself, thus forbidding itself in order thereby to become something or someone.” This is the law that the man from the country is always subject to, for he is a figure of the subject of the law for Derrida, always before the law, before an incessantly deferred judgment. Further, as a subject of the law, the man from the country is before the law, but because he is before it, he is also outside of it, as an ‘outlaw’. “He is neither under the law nor in the law. He is both a subject of the law and an outlaw.”

Thus, the subject/outlaw presents himself before a law that is destined for him alone, but the incessant deferral of the decision on whether he can pass through the door means for Derrida that the parable is “an account of an event which arrives at not arriving, which manages not to happen… [the subject/outlaw] is always and remains before the law.”

Derrida addresses the thematic of the decision of the law again in his later text, “Force of Law,” where he strives to establish a distinction between law and incalculable justice. In this essay, Derrida explicitly links the calculability of the law with the impossible but
necessary experience of the aporia that conditions the political decision. In the first section of the essay, Derrida identifies three aporias that condition the relation of the law and justice, two of which are particularly important here. The first of these, identified as ‘the ghost of the undecidable’, marks the spectral residue of undecidability or incalculable justice in any political or juridical decision. The undecidable is not simply a matter of vacillation between two determinate decisions in the application of a rule, but marks the infinite, irreducible ‘idea of justice’ that haunts every decision and necessarily haunts it in order for it to be a decision and not merely the application of a rule.

The second aporia, identified as ‘the urgency that obstructs the horizon of knowledge’, adds to this in that it marks the necessity of the political decision in the face of the undecidable of infinite, irreducible justice. Justice, Derrida claims, cannot wait; rather than providing an excuse to remain outside the antagonism of politics, incalculable justice requires us to calculate, to take the decision on what is just and right at any moment. As Derrida states, “not only must we calculate, negotiate the relation between the calculable and the incalculable… but we must take it as far as possible, beyond the place we find ourselves and beyond the already definable zones of morality or politics or law.” This then is the ‘mad’ decision of the political, always gesturing beyond itself to an incalculable justice that necessitates and haunts the decision.

These two complementary, conflicting, aporia bring into focus the very specific position that Derrida takes toward the messianic in this essay. In identifying the irreducible ‘idea of justice’ that haunts the mad decision of the political, Derrida goes on to say that he would hesitate to “assimilate too quickly this “ideal of justice” to a regulative ideal (in the Kantian sense), to a messianic promise or to other horizons of the same type.” Derrida explains this hesitancy further, when he suggests several pages later that his reason for keeping distance from the Kantian regulative idea or messianic advent is precisely because they are horizons, a term which indicates both “the opening and the limit that defines an infinite progress or period of waiting.” Thus, Derrida rejects the formulation of the messianic advent as waiting, as requiring infinite patience, because justice ‘does not wait’. Incalculable justice does not require patience but a just decision ‘right away’ as he says. It necessitates the negotiation between calculable law and incalculable justice as an urgent decision; but at the same time, justice is the irreducible ‘to-come’ of the decision. As Derrida writes, justice “has no horizon of expectation… But for this very reason, it may have an avenir, a “to-come”… Justice remains, is yet, to come, à venir, it has an, it is à-venir, the very dimension of events irreducibly to come… Justice as the experience of absolute alterity is unpresentable, but it is the chance of the event and the condition of history.” However, the absolute alterity of justice does not entail a horizon of waiting, but is nevertheless resolutely messianic; the ‘to-come’ of justice “is not a horizon but the disruption or opening up of the horizon” that necessitates constant and urgent engagement with the aporia of the undecidable decision of the political.

In this light, Derrida’s taking distance from Benjamin in the post-script to “Force of Law” can be read not as a rejection of the messianic tout court, but as a rejection of a particular form or structure of messianism. In particular, it can be read as a matter of
taking distance from a messianism that associates the promise of the messianic with divine violence, which, for Benjamin, obviates and overturns the violence of the law in its totality, that is of both law-making and law-preserving violence, or mythic violence. In criticizing Benjamin’s suggestion that divine violence—which he understands as absolutely annihilating, bloodless and expiatory—must overturn the pernicious, bloody violence of the legal order, Derrida suggests that such a conception of messianism is haunted by “the theme of radical destruction, extermination, total annihilation, beginning with the annihilation of the law and right, if not of justice.” But as such, it gives itself too readily to an interpretation of the Nazi ‘final solution’ as messianic, divine violence. Thus, against this, Derrida insists upon the interminable urgency of the undecidable, on justice as the irreducible condition of history. In this, Derrida’s position can be summarized as one of ‘weak messianics’ where the ‘to-come’ is not outside of our time, but the spectral potentiality of every political, moral, juridical decision. As its constitutive condition, the ‘to-come’ of justice opens every decision of the political to undecidability, and as such, constitutes every second of our time as “the strait gate through which the Messiah might enter.”

The question of the overturning of the law is in fact the key to the different approaches that Derrida and Agamben take to Benjamin’s conception of the messianic: while Derrida rejects the association of the messianic with the waiting of the horizon and the total overturning of the law that divine violence entails, these are the central characteristics of the messianic for Agamben. In the essay “The Messiah and the Sovereign,” Agamben explicitly rejects an understanding of messianism as “‘life lived in deferral and delay’ in which nothing can be brought to fulfillment and nothing accomplished once and for all.” He argues instead that the messianic task is the restoration of meaning to the original form of the law, metonymically illustrated in the idea that in its original state the Torah was composed only of meaningless letters. Thus, he claims that the crucial problem for messianism is how the Messiah can restore a law that has no meaning. And as I have discussed previously, the resolution of the meaninglessness of the law does not come about simply through the inauguration of a new law; rather the messianic task is to confront and ultimately overturn the law in force without significance. Further, given that the law’s being in force without significance is characteristic of the state of exception of contemporary politics, the overturning of the law is the task that contemporary thought must confront. Only then will the bloody violence of the sovereign ban be halted. For Agamben, the messianic kingdom is differentiated from the historical time of the exception by a “small adjustment” brought about by a messianic event that confronts and overturns the meaninglessness of the law. These characteristics are clearly evinced in Agamben’s reading of “Before the Law” in which he explicitly criticizes Derrida’s reading of the parable.

Given that Derrida’s understanding of the law in Kafka’s parable is remarkably reminiscent of Nancy’s account of abandonment in relation to the law, where the subject is both turned over to the law and left bereft by it, held in the grip of the deferred decision as both subject and outlaw, it should be no surprise that Agamben’s interpretation of
“Before the Law” strikes at the heart of Derrida’s reading. According to Agamben, the parable is not an account of an event that never happens, or that happens in not happening, but exactly the reverse: Kafka’s parable describes “how something really has happened in seeming not to happen.” This parable allegorizes the state of the law in the age of imperfect nihilism, insofar as the law appears as being in force without significance, and the apparent aporias of it express the complexity of the messianic task of overturning the Nothing of the law. Whereas for Derrida the law opens on to nothing and holds the subject before the law through the incessant deferral of the judgment on his passage through the already open door of the law, for Agamben, the open door of the law is analogous to the operation of the law in the ban. The law holds the man from the country in its potentiality by asking nothing from him and imposing nothing on him except the ban. However, the man from the country does not so much figure as the subject of the law than as the messiah, who fulfills the messianic task in overturning the law. Agamben suggests that the behavior of the man from the country might be considered to be a ‘complicated and patient strategy’ to have the door closed in order to interrupt the law’s being in force without significance. Hence, the final line of the parable, in which the doorkeeper states ‘No-one else could enter here, since this door was destined for you alone. Now I will go and close it’ indicates the success of the messianic event in overturning the totality of the law and the Nothing that characterizes the condition of nihilism.

Several brief points can be made from this to summarize the differences between the messianics of Derrida and Agamben. First, Derrida poses the indeterminacy of the ‘weak force’ of the messianic as the condition of contemporary politics, such that the political decision is simultaneously necessary and impossible, ungrounded yet unavoidable. This is the core experience of the aporia as the experience of the impossible that marks Derrida’s political theory. Against this, Agamben posits the messianic overturning of the law in force without significance — that is, of the contemporary condition of imperfect nihilism — as a necessary ground of the coming politics of radical immanence and unity. This means that the indeterminacy of contemporary politics, evident in the zones of indistinction between life and law for instance, is not the condition of the political decision but precisely the aporetic condition to be overcome. Hence Agamben’s concern over the failure of the body to provide ‘solid ground’ for opposition to sovereign violence. Relatedly, Derrida’s weak messianicity insists on ongoing engagement through the undecidable decision of the political. Against this, the strong messianic position that Agamben takes requires that the law be overturned in its totality; anything less merely repeats the aporia of abandonment and reinscribes the dangers that attend the biopolitical distinction between bios and zoé.

Third, Derrida’s position entails recognition of the undecidable danger and hope within the aporetic experience of contemporary politics. Agamben sees the contemporary condition of political existence as one of irreparable danger, such that a wholly new form-of-life is necessary to redeem humanity from the exposure of bare life to sovereign violence.

Given these differences in the approaches taken by Derrida and Agamben vis-à-vis the messianic, the question still remains of which of these accounts, if either, is adequate to understanding and addressing the conditions of contemporary politics. The purpose of the foregoing discussion has been explicative rather than critical, so I will not attempt
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Notes

15. Agamben, Homo Sacer 51. It is important to note here that Agamben’s critique of law is not simply targeted at positive law, but at “the entire text of tradition in its regulative form, whether the Jewish Torah or the Islamic Shariah, Christian dogma or the profane nomos” (Homo Sacer 51). This recognition is important not only for measuring the stakes of Agamben’s criticism, but is also crucial for understanding the conceptual linkage—beyond the thematic of biopolitics—between
In this latter text, Agamben develops a conception of ‘unassumable responsibility’ or ‘non-responsibility’ that makes a strong distinction between the juridical and ethical in order to set itself apart from normative conceptions of responsibility in the line of Kant for instance, who Agamben identifies as having introduced ‘law in force without significance’ into modern thought in his attempted isolation of the pure form of law in The Critique of Practical Reason (see Homo Sacer 51).

16. The key parable of Kafka for Agamben is “Before the Law,” in which a man from the country presents himself before the doorkeeper who refuses to let him enter through the door (of the law). The man from the country waits indefinitely, only to be told toward the end of his life that the door was meant for him alone. The discussion of this problem in Homo Sacer is offered in a more developed form in Giorgio Agamben, “The Messiah and the Sovereign: The Problem of Law in Walter Benjamin,” Potentialities: Collected Essays in Philosophy, ed., trans. Daniel Heller-Roazen (Stanford: Stanford UP, 1999) 160-174. I discuss this further in the final section, where I compare Agamben’s interpretation with that of Derrida.


19. See the discussion of Benjamin in Agamben, Homo Sacer 53-55. Also compare Agamben’s discussion of Kafka in the same section of Homo Sacer.


21. Unfortunately, Agamben is not at all sensitive to the gendered dimension of the exclusion of natural life from the realm of the political in his treatment of biopolitics, although feminists have long argued that the association of femininity with natural, biological life is a consistent element of the Western political and cultural imaginary.


28. This clearly has implications for a consideration of rights within contemporary politics, though this is not something I can discuss here. Suffice to say that Agamben wholly rejects recourse to rights as a limitation on the violence of sovereign power, claiming that “every attempt to found political liberties in the rights of the citizen is… in vain.” (Agamben, Homo Sacer 181). Critics have taken this to indicate the limitations of Agamben’s political theory, since it negates recourse to rights as a politico-legal strategy in opposing violence or oppression. But this argument often fails to fully reckon with the implications of Agamben’s call for a wholly new form of politics in order to overcome the biopolitical ban. Cf. Jean-Philippe Deranty, “Agamben’s Challenge to Normative Theories of Modern Rights,” Borderlands e-journal, 3:1 (2004).


34. The relevant fragment from Aristotle’s Politics for Agamben’s argument is quoted as: “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 [kata to zēn auto monon]. If there is no great difficulty as to the way of life [kata ton bion], clearly most men will tolerate much suffering and hold on to life [zōē] as if it were a kind of serenity [euēmeria, beautiful day] and a natural sweetness.” Aristotle, Politics, 1278b, 23-31. The parenthetical inserts are Agamben’s.


37. Benjamin, “Theologico-Political Fragment” 312-313.


39. Giorgio Agamben, The Coming Community, trans. Michael Hardt, (Minneapolis: U of Minnesota P, 1993) 93; Also see Thomas Carl Wall, Radical Passivity: Levinas, Blanchot and Agamben (Albany: State U of New York P, 1999) 115-162. As Wall and others note, the key characteristic of Agamben’s formulation of the coming community is that the community of whatever is a community that has never been: it is not a nostalgic return to Gemeinschaft, or an identitarian conception of community, but a notion of community predicated on the pure immanence of ‘whatever’ beyond identity and all relation.


41. Agamben, Means Without End pp.4, 11-12.


43. Agamben, Homo Sacer n. 60.

44. Nancy, “Abandoned Being” 44.

45. Nancy, “Abandoned Being” 47.

46. This comment also indicates the critical relation that Agamben maintains toward Heidegger. On Agamben’s relation to Heidegger see Leland Deladurantaye, “Agamben’s Potential,” Diacritics, 30:2 (2000) 8. Deladurantaye’s note concerning Agamben’s comments in the French daily newspaper Libération on his theoretical engagement with Martin Heidegger and Benjamin is of particular importance. Agamben is quoted as claiming that his encounter with Heidegger meant that ‘philosophy became possible’. He goes on to say though that “this is precisely the interest of encounters—both in life and in thinking. They render life, for us, possible (or, sometimes, impossible). In any event, this is what happened to me with Heidegger, and, during these same years, with Benjamin’s thought. Every great oeuvre contains a degree of shadow and poison for which it does not always furnish the antidote. For me, Benjamin was that antidote which helped me to survive Heidegger.” (Agamben, cited in Deladurantaye, “Agamben’s Potential” 8, n.8).


50. Agamben’s conception of the law is particularly ambiguous throughout his work and has given rise to a number of criticisms. This ambiguity derives from his characterization of the institutions of positive law on the model of the Torah, a characterization that is unlikely to be convincing for many legal and political theorists. Indeed the theological dimension of Agamben’s political analysis is no doubt problematic from a number of points of view. It could be argued, for instance, that the strong messianic position that Agamben takes is problematic in its insistence on the overturning of the law in its totality, a position which is further reinforced by the association of positive legality with divine law. Setting this aside for the moment though, it remains the case that the analysis of sovereignty and biopolitics in *Homo Sacer* offers important reconsiderations of violence and the determination of life worth living. See Fitzpatrick “These mad abandon’d times”; Fitzpatrick, “Bare Sovereignty”; Antôn Schütz, “Thinking the Law with and against Luhmann, Legendre and Agamben,” *Law and Critique* 11: 2 (2000) 107-136; Thanos Zartaloudis, “Without Negative Origins and Absolute Ends: A Jurisprudence of the Singular,” *Law and Critique*, 13:2 (2002) 197-230, for further discussion of Agamben’s approach to the law.


54. Giorgio Agamben, *The Coming Community*, trans. Michael Hardt, (Minneapolis: U of Minnesota P, 1993) 93; Also see Wall, *Radical Passivity* 115-162. However, the problem with Wall’s otherwise instructive reading of Agamben is that he does not give enough weight to the messianic gesture within *The Coming Community*.


56. Wall, *Radical Passivity* 156; also see Agamben’s essay “‘Se: Hegel’s Absolute and Heidegger’s Ereignis’, *Potentialities* 116-137 for a further discussion of the proper being of humanity, understood as neither “something unsayable, the sacer that must remain unsaid in all speech and praxis… nor… according to the pathos of contemporary nihilism, a Nothing whose nullity grounds the arbitrariness and violence of social activity. Rather *se – ethos [dwelling place]—is the social praxis itself that, in the end, becomes transparent to itself.” This also indicates and helps explain Agamben’s unequivocal insistence on the elimination of the dogma of the sacredness of life, for here he states that “a fulfilled foundation of humanity in itself necessarily implies the definitive elimination of the sacrificial mythologeme.” (Agamben, “*Se*” 137)

57. See Heller Roazen, “Editors Introduction,” *Potentialities* 5; Deladurantaye, “Agamben’s Potential” 8. Deladurantaye in particular points out that the logic of the transformation of aperia into euporia derives from Benjamin’s influence on Agamben’s thought.


60. Agamben, “Pardes” 216.
62. It is clearly not possible to take up a full discussion of Derrida’s messianics here. Instead, I will limit my engagement to the short texts mentioned, which are paralleled in Agamben’s work.
64. Derrida, ‘Before the Law” 208.
65. Derrida, ‘Before the Law” 204.
70. However, the unfounded decision of deconstruction does not indicate a straightforward return to Schmitt’s strong decisionism. The mad decision of the political that Derrida indicates here is similar to Schmitt’s sovereign decision in that neither can be determined by pre-existent rules and cannot be a true decision if merely applying or reinstating a codified rule. Additionally, both insist on the constitutive force of the decision, in that the true decision must suspend the currently existing law in order to ‘reinvent it in each case’ as Derrida says (“Force of Law” 23). Nevertheless, there are important differences. First, while the decision of the sovereign is essentially an expression of the will of the sovereign in Schmitt, in Derrida, the undecidability of the decision deconstructs the sovereign decision through the insistence on the ‘absolute other’ of justice. In other words, for Derrida, the political decision must ‘negotiate with the undecidable’; see Gayatri Chakravorty Spivak, “Schmitt and Poststructuralism: A Response,” Cardozo Law Review, 21 (2000) 1729. Furthermore, as Slavoj Žižek points out, for Schmitt it is not possible to pass directly from the pure normative order to the concrete order of social life—this passage is necessarily mediated by the will of the sovereign expressed in the sovereign decision on the exception. However, the decision of the sovereign is not a decision for any concrete order but for the principle of order as such—“the principle of order, the Dass-sein of Order, has priority over its concrete content, over its Was-Sein.” Slavoj Žižek “Carl Schmitt in the Age of Post-Politics,” The Challenge of Carl Schmitt, ed. Chantal Mouffe (London: Verso, 1999) 18; see also Slavoj Žižek, The Ticklish Subject: the Absent Centre of Political Ontology (London : Verso, 1999) 114. For Derrida, the situation is almost exactly the opposite. That is, the decision that must be taken is a decision within and on the actuality of social life, which is disrupted by the ‘to-come’ of justice that cannot be assimilated to a regulative ideal (or the principle of order). One might say then that the ‘madness’ of the decision derives from the gap between the concrete actuality of social and political existence and the undecidability of the absolute other of justice, a madness that cannot be absolved through a sovereign will but which instead interminably haunts every decision. If it is not apparent yet, it should become clear that Agamben’s messianic event is actually more akin to Schmitt’s sovereign decision than is the account of the political decision given by Derrida. On the Derrida-Schmitt contrast, also see John P. McCormick, “Schmittian Positions on Law and Politics?: CLS and Derrida,” Cardozo Law Review, 21 (2000) 1693-1722; John P. McCormack, “Derrida on Law; Or Poststructuralism Gets Serious,” Political Theory, 29:3 (2001) 395-423. Nevertheless, one might argue that Schmitt’s strong decisionism and the spectre of the sovereign that it invokes still haunts not only deconstruction but also much other contemporary political theory. This is evident in poststructuralist and radical democratic political theory generally, which is explicitly engaged in putting the Schmittian ghost to rest. But further, it is also evident in liberal, proceduralist political theory. The important difference lies in how such approaches attempt to exorcise the spirit of the strong sovereign and the unfounded, founding decision, whether it be through denying that the decision takes place or by attempting to deconstruct and displace it.
72. Derrida, “Force of Law” 26; emphasis added.
73. Derrida, “Force of Law” 27.
74. Caputo, Prayers and Tears 118.
75. Derrida, “Force of Law” 63 n.6
77. Benjamin, “Theses on the Philosophy of History” 266.
78. Agamben, “The Messiah and the Sovereign” 166; Agamben’s primary target here is Gershom Scholem, who is cited in the quote I have provided. However, the characterization of messianism that Agamben is criticizing bears a strong resemblance to the position taken by Derrida.