

**LANGUAGE, POWER AND LIFE: A STUDY OF
GIORGIO AGAMBEN'S PHILOSOPHY OF
MESSIANIC POLITICS**

Thesis submitted to Jawaharlal Nehru University
for the award of the Degree of

DOCTOR OF PHILOSOPHY

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DECLARATION

The thesis titled "Language, Power and Life: A Study of Giorgio Agamben's Philosophy of Messianic Politics" submitted for the award of Degree of Doctor of Philosophy is an original work and has not been submitted, in part or full, for any other degree in any other University.


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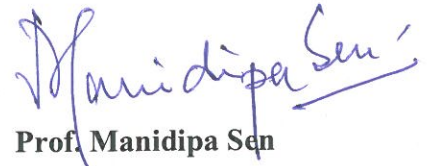
CERTIFICATE

We recommend that the thesis be placed before the examiners for evaluation and consideration of the award of Degree of Doctor of Philosophy.


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Those who struggle to create a just world.

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Introduction

On 9th of February, 2016, a group of students in Jawahar Lal Nehru University organized a cultural evening to protest the hanging of Maqbool Bhat and Afzal Guru. This event shook the entire Indian nation. TV channels debated the legality of the event in the binary of ‘nationalists’ versus ‘anti-nationals’ camps. The State responded by imposing sedition charges on some of the organizers and participants of the event.

Before this incident, a Ph.D. student at the Hyderabad Central University committed suicide to protest against his expulsion by the university authorities. He was rusticated on charges of indiscipline, accused falsely of beating a student leader of right wing student party. He wrote in his suicide note that his birth was a fatal accident pointing to his identity; he was born in a Dalit family. It led to a debate on the question of social justice in India, depicting the failure of the State to correct historical injustices.

These two events were based on the dead bodies of three people, pointing to the larger problems that ‘political order’ faces in both its conceptualization and actualization. The bodies of Bhat and Guru were annihilated by the state on grounds that they used force to threaten the territorial sanctity and order of the state. They were buried in Tihar Jail, denying the families even the act of performing the last rites for the dead. These two dead bodies, buried in a public prison, show that a ‘political order’ is implemented through violence even that demands monopoly of the sacred.

The death of Vemula points to the failure of the conception of political order to actualize itself by denying rights to an individual and maintaining inequality in the modern institutions that are formed on a promise of equality and democracy. Therefore, it puts a question mark to the claim made by liberal democracy: institutional order can deliver equality and justice.

I have mentioned these three deaths to understand the political philosophy of Giorgio Agamben. He himself has used these kinds of figures to critique the conception and operation of western politics. He mentions that the original function of the western politics has been to produce these kinds of deaths in order to sustain and protect the 'order'.

Agamben gives the example of homo sacer from Roman social order to explain the nature and problem that a conception of an order can create. According to him, this figure was excluded from the religious and juridical spheres. This exclusion meant that he can be killed by anyone and no one could be punished for his death. It also meant that that he did not belong to the sacred and the political, as he could be killed by anyone and nor in turn be sacrificed. This double exclusion from both the religious and juridical spheres, points to the ambiguity in the concept of sacred, as per Agamben. He cites anthropological theories that debate the 'sacredness' of this being and shows the limitation of such theories in not being able to define it. He says that the conceptualization of sacred points to circularity and ambiguity as seen in the figure of homo sacer.

Agamben does not stop with the life homo sacer in the Roman society. He sees a continuation in the production of bare lives or homo sacers. He mentions the life of concentration camp prisoners to show that these lives were regulated beyond any ethical categories. This form of homo sacer is shown in the life of Musselmann, a prisoner of the concentration camp. The idea of such a prisoner is used to reveal the levels of violence done to a person and the breakdown of ethical categories in being able to grasp the aspect of knowing and hence regulating the lives of individuals.

Likewise, he critiques the modern nation-state by saying that it relies on the identity of the body. In fact, the idea of a citizen is based on a biological identity. This birth-citizen link often breaks and creates homo sacers in the form of refugee. These bodies, then, exist beyond the law as and when they do not qualify as members of 'political order'. This can be justified from the present situation in the world as the problem of 'refugee' has grown increasingly due to the political violence in many places.

Also, Agamben links the American government's war on terror and the subsequent establishment of prisons in Guantanamo Bay as an example of a space much like camps, where life is treated in the inhuman ways on the pretext of maintaining security of a nation.

All these figures- as those condemned to violence- Agamben sees as sharing a deeper historical problem for their roots are fundamentally stemming from philosophical categories. He enumerates the concept of 'state of exception' to explain the problem that the conception of a good order faces. The 'state of exception' is understood as the power of the sovereign to suspend 'juridical order'. This understanding is borrowed from Carl Schmitt who considered 'norm' as being dependent upon the decision of the sovereign and also 'exception' representing the pure decision of the sovereign. For Schmitt, 'political' transcends the 'norm' which in other words meant that we have to rely on the will of sovereign to protect and decide on the question of 'order'.

Agamben accepts this definition and says that it reveals a paradox because the power of the 'sovereign' to suspend the 'norm' reveals that the sovereign remains inside and outside of the 'order' or 'norm'. He says that it denotes the paradox of language (law) by reflecting its inability to create a universal normative order. In others, 'state of exception' shows that law cannot apply to all the situations in a normal sense and, therefore, it has to withdraw and create a space where it applies by not applying.

Agamben goes deeper into this question and says that this problem arises because sovereign order has been considered to be a realm of 'good'. He says that this understanding has been borrowed from Aristotle when he described the foundation of political as being the conception and regulation of 'good life'. In short, this idea that 'order' is the realm of the political has created problems because the notion of 'order' faces ruptures and disruptions and in that case it withdraws to eliminate those disruptions, and thus, creates a paradox of power.

This problem is explained more coherently by Agamben through the concept of 'potentiality'. He says that the concept of 'potentiality' given by Aristotle has been understood from the point of actuality. He says that it should be understood as both potentialities to pass into actuality and the potentiality not to pass into actuality. The first

one, he claims, has created the problem in power because 'order' is considered to be realizable and this authority has been given to the sovereign. To do that, as explained above, sovereign uses the 'state of exception' to realize the potential of 'order'.

He clarifies the problem of 'potentiality' through the problem of 'constituted' and 'constituting' power. 'Constituted power' can be understood as 'norm' provided in the 'juridical order' and 'constituting power' as the power that aims to challenge and change the established norm. The former is the power that is invested in the state in the form of a document/text called constitution. Thus, its fundamental basis is the pre-established constitutional order. On the other hand, 'constituting power' exists outside the state and can be understood as the power over which law has no hold. It is the power which the sovereign controls by using exceptional powers. Both these powers show that the realm of 'political' will be a site of conflict as there will be always an opposition between the two.

The above analysis shows that a universal political order does not exist and there is a conflict between norm and exception. This tension creates bare lives as mentioned at the beginning of this introduction. But, while it is true that there have been situations in which sovereign power has acted through 'exception, the genesis of such problem is again rooted in the failure of the 'political order' to deliver equality and justice. As said above, the three deaths -Bhat, Guru and Vemula- point to the problems in the 'political order' only: the first two pointing to the disagreement on the space of a 'constitutional order' and the third on the failure of such order to deliver equality.

Keeping in view the above concerns, I have attempted to understand Agamben's philosophy to interrogate the possibility of a 'political order' that will stop these deaths or in his words, stop producing 'bare life'. For that I have divided this dissertation into four chapters.

The first chapter titled as Language of Power: State of Exception describes the nature of sovereignty and law (language) in the 'state of exception'. It explains the concept of 'state of exception' provided by Carl Schmitt as the power of the sovereign to decide on the unexpected situations. It further goes into the understanding of Agamben that these unexpected situations point to the limitation of language. The limitation is understood in

the way that while conceiving 'order' through law, thereby language, every situation cannot be interiorized or can be included in the 'order' only by excluding them.

The chapter also explains the historical experiences of the 'state of exception'. It is done in order to see the connecting link between all those experiences. In all these experiences, the connecting link points to the failure of 'political order' to interiorize every aspect of life or 'broadly' points to the limitation of a universal norm.

The last section of this chapter attempts to provide a critique of this understanding that a 'universal norm' is not possible. It shows that the 'state of exception' can be regulated and properly explained by language only. It cites the example of Indian constitution to explain that sovereign cannot withdraw the 'juridical order' on its own discretion and also cannot assume unaccountable powers to regulate and mutilate lives. This section makes a claim that a universal norm (procedure) is possible and, hence, the problem of 'exception' will not arise as sovereign will be bound that procedure. The 'state of exception' in Indian constitution points to that possibility.

The second chapter of this thesis titled as Bare Lives: Homo Sacer, Muselmann and Disappeared explains and interrogates the violence done to life in the 'state of exception'. It analyzes the life of homo sacer and Musselmann used by Agamben to describe the nature of 'state of exception'.

The figure of homo sacer, a Roman, was excluded from the juridical and religious spheres. This figure, for Agamben, points to the limitation of the concepts like sacred. He understands it as a limit figure that shows that the concept of sacred is ambiguous, thereby, pointing to the limitations in defining concepts.

The category of Muselmann is used to reveal the nature of the 'state of exception' during the Holocaust. Through him, he represents the 'life and death' in the concentration camps. He says that this figure deconstructs the logic of sovereign power by showing that it works on the logic of human-animal divide.

I have introduced the category of Disappeared to understand the nature of special powers exercised by the Armed Forces in Kashmir. I have attempted to show that this figure points to the limitation that the above two figures are not able to grasp: that not even conceptual analysis, however ambiguous, can be applied to them. I have also discussed that these lives are thrown open to violence because of a conflict that stems from how the very nature of the 'political' is to be interpreted. Therefore, it is in line with the understanding of the third section of the first chapter that 'political order' can be defined properly.

The chapter third titled as Rupture or Rule: Camp as a Paradigm explains the methodology of Giorgio Agamben. This is done to show that if the 'state of exception' exists as a rupture (or an anomaly) to rule, then, why does he think of them as being representative of the problems posed centrally by the political. Therefore, it has discussed the method of 'paradigm' used by Agamben. To do that it has also discussed the use of this method in other philosophers with respect to their understanding on history.

This chapter has particularly focused on Agamben's claim that it is not city-state but camp that has become the political site in the present times. He says that 'state of exception' is increasingly becoming a rule. I have explained that by looking at the development of bio-power.

In the last chapter, Rethinking Political: Coming Community, I have tried to understand the alternative as presented by Agamben. He represents his messianic in 'coming community'. I have discussed the nature of this community which he says will be based on a new being, the 'whatever being'. I have tried to understand the idea of a category without substance that as per him could be the nature of being in the coming community.

I have also tried to understand the praxis that can be used to achieve such a community. This involves his understanding of 'temporality' as non-homogenous and non-linear to be infused in Marxism. It also explains the concept of 'potentiality' used by Agamben. He re-interprets this concept by citing the examples of Bartleby, a scribe who refuses to act and thereby deactivates the sovereign power or the logic of actuality.

I have described his attempt to disrupt the sovereign power that acts on a machine of animal-man dichotomy. For that, he has provided a critique of the role of the art in the present times and the nature of experience in the present times. He uses terms like ‘man without content’ and ‘melancholy artist’ to analyze the nature of aesthetics and the possibility to restore it to their original function. I have also mentioned his criticism of specialized disciplines and the role they played in man-animal binary. He argues that interdisciplinary approach and an intersection between poetry and philosophy will help in understanding the true nature of being and stop this man-animal dichotomy on which then sovereign power acts and creates ‘bare lives’.

CHAPTER ONE

LANGUAGE OF POWER: STATE OF EXCEPTION

All significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development-in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver-but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts. The exception in jurisprudence is analogous to the miracle in theology. Only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries.¹

This chapter would explain the notion of ‘state of exception’, understood as the power of the ‘sovereign’ to suspend the ‘juridical order’. This power of the ‘sovereign’ to suspend the ‘norm’ constitutes the paradox of sovereignty, according to Giorgio Agamben. He borrows this understanding from Carl Schmitt and improves it by saying that it points to a problem in language only: the inability of law to create a universal normative order.

This chapter will analyze the nature and foundation of such paradox to argue that ‘sovereign’ does not transcend the ‘juridical order’. It will present an analysis of the ‘Indian constitutional order’ to show that ‘sovereign power’ can be contained within

¹ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, (Cambridge: MIT Press, 1985), 36.

language only in such a way that ‘discretion’ can be completely erased and hence procedure can be complete.

1.1 State of Exception: Paradox of Sovereignty

Giorgio Agamben’s book *Homo Sacer: Sovereign Power and Bare Life* and others² in this series are written to delineate the problems posed by the concept of ‘sovereign power’. Before I begin to introduce his analysis of sovereignty, it is important to mention that there are problems in identifying ‘sovereign power’. Generally speaking, it is identified with the political order laid down in ‘constitution’ in liberal democracies. The government is often used synonymously with ‘sovereign power’ and this mistake tends to conflate the problems arising from aberration of individual governments or situations with the theoretical foundations of political order. I would later in this chapter take up this problem of identification of the principle of sovereignty with aberration done by certain systems of power as being the reason for the kind of selective reading of political philosophy by Giorgio Agamben.

Agamben understands western politics through the ‘norm’ represented by ‘juridical order’ and the power of sovereign to preserve it. This relationship between ‘sovereign power’ and ‘juridical order’ is not stable, as per him, and, often, leads to suspension of the latter to deal with situations that are not covered by the theoretical construct of the ‘norm’ represented in the ‘juridical order’. This generalization about ‘power’ and ‘law’ is at the first place problematic in the sense that power, sovereignty, is a diffuse concept. At least, in theories of democracy power is understood such to allow individual rights and procedure of law to regulate the collective existence.

²*State of Exception, Stasis: Civil War as a Political Paradigm, The Sacrament of Language: An Archeology of the Oath, The Kingdom and the Glory: For a Theological Genealogy of Economy and Glory, Remnants of Auschwitz: The Witness and the Archive* are the texts written in this series.

However, it is true about ‘authoritarian systems’ where truth is thought to be absolute that manifests or incarnates in that ‘power’ is in one person or space who/which may be called king or crown. It makes my question important because ‘order’ or ‘norm’ is final only in a totalitarian system of thinking, then, how does ‘entire western politics’ become the point of analysis through this generalization. Besides, there is, always, a gap between theoretical understanding of the ‘political’ and the realistic aspect of it. When he says that ‘sovereign’ is the final protector of the ‘norm’, then, it has to be clear that which theoretical or epistemic exercises legitimize such an ‘order’.

I am raising the above queries to show that Agamben’s exceeds the limits of disciplinary knowledge in reflecting the problems of ‘power’ and ‘order’. He says that western politics has been operating through ‘state of exception’ meaning that it has to regulate ‘order’ even if that demands the suspension of the pre-existing order. All this shows that he begins his understanding from the present, the real event of the history.

His understanding of the ‘political’ is shaped by Carl Schmitt³, a German theorist, who defined ‘sovereign power’ as that which decides on ‘exceptional situations’ to protect the normal order. He says in *Political Theology* that “sovereign is he who decides on the exception.”⁴ This definition is based on the binary of ‘order’ and ‘anarchy’ and sovereign is one who is supposed to prevent the ‘anarchy’ in order to let save the ‘norm’. In other words, Schmitt believes that there are situations in which ‘sovereign authority’ has to decide on matters that don’t fall within the general framework of ‘legal norms’ and ‘thus, sovereign transcends the ‘procedural framework’ of power.

In his analysis of the political, Schmitt is critiquing the position of liberal theorists who argue for constitutionalism, a belief that ‘order’ can be conceptualized and rules, language, can be developed to regulate it. They understand that ‘power’ shall operate on the basis of ‘procedures’ so that ‘arbitrariness’ is eliminated from the ‘political’, a collective realm based on the ‘good’ of every individual.

³ He was a German jurist and legal theorist, critical of liberal constitutionalism and supporter of Nazism.

⁴ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, Massachusetts: MIT Press, 1985), 5.

Schmitt does not agree with the view of the liberals for the simple reason that the conception of 'order' rests on the decision of the sovereign. It means that a legal framework has to be based on the will of the sovereign; in normal circumstances such will is in consonance with the 'norm'. But in 'exceptional times' this will reigns supreme.

Many theorists of 'law' believed in the supremacy of sovereign by saying that he is the source of the law. For example, Jean Bodin⁵ considers sovereign as the source of law and highest power over citizens. Schmitt incorporates this idea of sovereign as being superior to law and shows it in the notion of 'state of exception'. He says:

The essence of the state's sovereignty . . . not . . . the monopoly to coerce or to rule, but . . . monopoly to decide. In the exception, the sovereign's decision frees itself from all normative ties and becomes in the true sense absolute.⁶

Thus, he differs from Bodin and others by saying that sovereign decision is not limited by normativity. He has a monopoly to decide in times of 'exceptional' situations. Again, as per him, the decision of the sovereign is the essential condition of power because 'norm' or 'law' depends on it both in normal or exceptional situations.

Schmitt explains 'political' in such a way because he considers it as the realm of order and destruction of it will result in anarchy. In other words, if sovereign fails to decide people will go back to the state of nature. Therefore, he makes sovereign as the protector of 'order' in both normal and exceptional circumstances. In normal circumstances, the sovereign decision is ineffective because the 'norm' enhances it. But, in case of 'exceptional situations' the decision of the sovereign becomes final, freed from the normative ties, because both of them are in crisis. Therefore, sovereign resides in both spaces as he has to decide both on 'normal circumstances' and 'exceptional circumstance'. It provides a peculiar understanding that sovereign exists beyond the space of 'political'. In fact, he exists as a

⁵ He was a French Political Philosopher who understood sovereignty as the absolute and perpetual power over citizens in *Six Books of the Commonwealth*.

⁶*Political Theology*, 12-13

borderline in the sense that he has to maintain ‘order’ even if that needs suspension of the ‘juridical order’. As he states:

The sovereign stands outside the juridical order and, nevertheless, belongs to it, since it is up to him to decide if the constitution is to be suspended in toto.⁷

In the above analysis, it is clear that Schmitt distinguishes between ‘norm’ and ‘exception’ and says that in the former ‘sovereign decision’ and ‘legal framework’ coincide while in the latter it does not. In case of ‘exemplary situations’ where ‘normal rule of law’ is withdrawn, sovereign takes the decision and that way it is supreme and unique. It is unique in the sense that he retains a position whereby he stands within and outside the ‘juridical order’ simultaneously. It means that ‘sovereignty’ still persists even after the suspension of ‘juridical order’. The sovereign by this logic becomes the one who sets the distinction between ‘norm’ and ‘exception’. As he says: “The decision on the exception is simply the re-emergence of this border-setting power, the ability to make a decisive distinction that can be made only by a sovereign authority.”⁸

Agamben improves the above decisionistic thesis given by Schmitt. He argues that the nature of sovereignty can be formulated as the problem of law only. By saying this he shifts the problem of the sovereignty from ‘decision’ of the sovereign to the structural reality of language. He does that by mentioning that law can’t apply to all the situations as language cannot conceive a definite idea of order. That is why there are certain situations where law cannot apply in its normal form and has to be withdrawn to allow it to be applicable in the form ‘exception’.

From this inability of law, he concludes that the structure of sovereignty is similar that of law; the similarity is that both of them are paradoxical as they remain within and outside of the ‘order’. Both the decision of the sovereign and the ‘exception’ within

⁷Ibid., 13.

⁸ Norris, Andrew, “The Exemplary Exception”, *Politics, Metaphysics, and Death* ed. Norris (Durham and London: Duke University Press, 2005), 268.

language remain outside their respective notions of 'norm'. Thus, the problem that Schmitt sees in the relationship between 'laws' and 'sovereignty' is reformulated as the problem of 'law' only and 'exception' remains inside it by remaining outside of the 'norm' that it defines. This is made clear by Agamben when he writes:

The specification that the sovereign is "at the same time outside and inside the juridical order" is not insignificant: the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law. This means that the paradox can also be formulated this way: "the law is outside itself," or: "I", the sovereign, who am outside the law, declare that there is nothing outside the law.⁹

The above analogy between 'sovereign power' and 'law' and the similarity in their structure is an implicit recognition of the fact that law is a limit concept because there are certain spheres of life which can't be regulated by law in the normal sense. Thus, the problem of sovereignty arises from the inability of law to be comprehensive, inclusive, and transcendent. The decision of the sovereign power becomes necessary given that a generality of law fails to apply to all situations.

To reiterate again what was said in the beginning of this chapter about the notion of sovereignty that the 'state of exception' does not exist outside law, rather, it creates a situation in which law can come in force. Schmitt argues that "exception is 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."¹⁰ Schmitt places the sovereign's position and ability as a necessary condition which law needs for its applicability. Such a condition is provided not in the form of 'exception' but the decision of sovereign to create a situation in which law can apply in the form of 'exception'. This is because 'exception' cannot be integrated in the general framework of law and therefore sovereign has to withdraw the normal rule of law to let it operate.

⁹Agamben, Giorgio, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998),p. 12.

¹⁰*Ibid.*, 17.

Sovereignty is based on this decision which determines the constitution of public order and security and therefore retains a metaphysical basis as it is like God, always there to decide. He puts it:

The exception is that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specifically juridical formal element: the decision in absolute purity. The exception appears in its absolute form when it is a question of creating a situation in which juridical rules can be valid. Every general rule demands a regular, everyday frame of life to which it can be factually applied and which is submitted to its regulations. The rule requires a homogeneous medium. This factual regularity is not merely an "external presupposition that the jurist can ignore; it belongs, rather, to the rule's immanent validity. There is no rule that is applicable to chaos. Order must be established for juridical order to make sense. A regular situation must be created, and sovereign is he who definitely decides if this situation is actually effective. All law is "situational law." The sovereign creates and guarantees the situation as a whole in its totality.¹¹

In this analysis Schmitt is anticipating Hobbes¹², as Andrew Norris claims that he was fond of styling himself as the Hobbes of 20th century but goes well beyond Hobbes in laying too much emphasis on the decision of sovereign as the creator of 'order' and a 'norm'. Norris claims that in Hobbes, sovereign is the protector of an 'order' which is already decided but Schmitt goes beyond it by placing the decision in absolute purity through which order is created. Hobbes made an absolute and irrevocable sovereign on some sort of consensual agreement between the parties in the state of nature. It is the people who invested him with final authority to protect their lives by protecting the 'order'. But Schmitt makes sovereign as the authority who will decide what is normal and

¹¹Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 13.

¹² Hobbes presented a fictional idea of the "state of nature" which he argued was anarchic and there was a constant danger to life. In this dark state, people transferred their right of life to a third party, a sovereign. In this way sovereign became the guarantor of order and any opposition to state will be a going back to state of nature (See Hobbes's *Leviathan* by C.B Macpherson).

exceptional. In such case, Norris argues that Schmitt's claim is a far more metaphysical claim than anything found in Hobbes.¹³

Political philosophers who fall in the contractarian tradition¹⁴ will oppose such a notion of 'sovereign power'. Hobbes, Locke and Rousseau believed that 'political' shall be based on the consent of the individuals and at the same time on some necessary rights. Sovereign cannot act arbitrarily as he has to respect fundamental principles of life, liberty and equality. In other words, the principles are 'contract' both act as the limitation on sovereign in the sense that he cannot arbitrarily exercise power as he has to function according to the rules set by the 'contract'. And the responsibility part ensures that he has to execute the principles of the 'contract'. Schmitt does take notice of the limitation and structure of the 'sovereign'.

Both these philosophers, Schmitt and Agamben, don't take into consideration the seriousness of the debates surrounding 'political' in the field of theorization. The aberrations in sovereignty result situations that don't accept the theoretical understanding of political and life in general. Therefore, to say that there is a metaphysical basis for 'violence' (as we will 'state of exception' creates 'bare life') is going beyond the point and neglecting the already rich debates existing about justice and order. Or this kind of theorization that understands 'political' as the realm of 'order' shall be informed by an explanation of the nature of conflict or what I call the foundation of violence only. Philosophers have done that by understanding the nature of man and the kind of society that he needs to express his moral worth. But there is a gap in the way theorization of a political community stands and the way political life is organized.

Agamben tries to reduce this gap by thinking through sovereignty and law that exist in the realm of the sensible. There is no dispute about it that collective life is organized through the principle of sovereignty. There is also no doubt about it that sovereign has operated through 'state of exception'. But we should ask the question that

¹³ Andrew Norris, "Sovereignty, Exception and norm", *journal of law and society vol. 34* number 1, march ,2007, p. 31-45

¹⁴ Hobbes, Locke and Rousseau are the main contract theorists who constructed political order by imagining a state of nature and life there. From that they created a state that has to ensure the securities that were missing in the anarchic state of nature. They also differ in their visualization of the state of nature. But all of them agree on state or political as being derived from the consent of individuals.

why it is that there human life world still faces the problem of violence. Is it failure of reflection or do we need to reformulate the understanding of 'political' in such a way so that the real peace will prevail?

He does that by addressing a hypothetical debate between Walter Benjamin and Schmitt by mentioning that Benjamin's *Critique of Violence* can be read as a departure from Schmitt's *Political Theology*. Benjamin argues that 'pure violence' or anarchic violence exists outside of the 'order' as a form of revolutionary violence. On the other, as described above, for Schmitt sovereign is the one who has to control this anarchy to protect the 'norm' in the society. By calling the resistance of the subaltern as revolutionary violence means that the so called 'order' does not cater to the needs of the people. The conflict or threat to the order exists because the 'order' on which sovereign sits is denying the possibilities of freedom to those who threaten it. And this is exactly what Schmitt misses when he says sovereign has to decide to protect the 'norm' and decide on the 'exception'. Rather than saying that the 'political' or 'norm' needs more democratization, he is legitimizing violence by essentialising position of the sovereign by saying that 'exception' outside the 'norm'.¹⁵

Agamben makes it more problematic by adding that the debate between them (the problem of location of violence in both Schmitt and Benjamin) is a struggle over a hollow space, a void that is created by the withdrawal of 'juridical order'. This addition to the condition of 'law' as constituting a hollow space is hard to understand. He defines it simply as being the condition which is created when the law or norm is withdrawn from a space and that becomes completely hollow. This space is hollow does not mean that there is no life but there are no categories through which we can understand it. Agamben says that in this space, void, law applies by not applying. One can understand this space from a position that 'normal juridical rules' does not apply to it. It seems tautological and problematic to say that 'law' applies in this space by withdrawing from it. He, himself, argues that a different status of law emerges in cases where 'juridical order' is withdrawn; law continues to be in operation in its ability not to apply. If it is simplified, then one can

¹⁵ Agamben, "The State of Exception", in *Politics, Metaphysics and Death*, ed. Andrew Norris (Durham and London: Duke University Press, 2005), 294.

argue that different rules apply to this situation which gives state unregulated power to rule.

By saying that 'state of exception' creates a void, Agamben takes sovereignty to the sphere of 'ontology'. It is clear when he says that the problem of 'sovereign power' arises from the way 'potentiality' has been understood. It might seem strange to draw such a connection but this is what he thinks is the problem. He thinks that sovereign power or law is considered to be site of 'order' and therefore language becomes the prime tool to develop such order. In other words, it is language that has to describe the 'order' that is called 'law' on which a collective life will be organized. This kind of exercise creates problems because language is understood to apply to all the situations and create order and in certain situations, 'state of exception', it can apply only negatively.

In order to understand more comprehensively this idea that 'power' is considered to be an actuality, one needs to look at the way he reinterprets the 'idea' of 'potentiality' in order to explain, both, the phenomena of 'state of exception' and the possibility of finding a new way of organizing political life. The idea of 'potentiality' that he is talking about is the one given by Aristotle (I will discuss in detail this idea in the chapter four of my thesis to understand his radical idea of 'political'). It is sufficient here to say that he blames the interpretation of 'potentiality' understood as actual as being responsible for the paradox of sovereign. To explain it further, it means that the 'order' is understood as the actual realm to be derived from language, a realm of the potential. This is problematic for him because he thinks that everything cannot pass into actuality. We saw that in the 'state of exception', law creates a void where it cannot apply or the rules breakdown in case of this space. In other words, when the law or 'norm' is withdrawn from a particular space, it creates a zone of in-distinction between 'inside' and 'outside', 'norm' and 'exception' and vice versa.

He attempts to develop this understanding of 'potentiality' through the problem of 'constituted' and 'constituting' power. 'Constituted power' can be understood as 'norm' provided in the 'juridical order'. On the other hand 'constituting power' is the ability of 'law' not to apply rather its inability to apply to 'exceptional spaces'. 'Constituted power' is thought as the power which is invested in the state and can be understood as the power which constitution provides. Its fundamental basis is the pre-established constitutional

order. On the other hand, ‘constituting power’ exists outside the state and can be understood as the power over which law has no hold. It is the power which sovereign exercises to revise or improve the legal order.¹⁶ Both these powers have a relationship as they show that ‘law’ is a dynamic phenomenon. Sovereignty relies on both these powers and as ‘constituting authority’ can declare that ‘constituted power’ has failed. From that emerges the space that is null and void. Agamben mentions in *Homo Sacer*’s chapter “Potentiality and law”:

That perhaps nowhere else does the paradox of sovereignty show itself so fully as in the problem of constituting power and its relation to constituted power.¹⁷

Before mentioning how this separation of power is made, it needs to be pointed that Agamben seems to think that no ‘order’ is final. There will be always limitations in the depiction of a ‘juridical order’ that envisages the good of the state. Again such a distinction is borrowed from Aristotle, according to him, when he defined state as the sphere of common good. Such an approach might need to discover the limitation of the ‘order’ rather than make a jump and criticize the entire tradition. That is reflected, as said above, in the way he poses it as a problem of ‘potentiality’ because ‘good’ is a potential category and that is why power takes the form ‘constituted’ and ‘constituting power’ to realize that good. Agamben argues that the relation between these two powers can’t be established harmoniously because the text of the constitution itself foresees the power of revision. He sees the tendency that everything shall be based on a determinate set of rules establishes that ‘constituting power’ has an independent and original existence. It is taken for granted that the revolutionary conditions which led to the establishment of a constitutional order don’t ascribe originality to the ‘constituting power’. He cites Benjamin to define this

¹⁶ Ibid.

¹⁷ *Homo Sacer*, 28.

relation between ‘constituting’ and ‘constituted authority’ as that of law positing violence and law preserving violence.¹⁸ As he quotes Benjamin in these lines:

If the awareness of the latent presence of violence in a legal institution disappears, the juridical institution decays. An example of this is provided today by the parliaments. They present such a well-known, sad spectacle because they have not remained aware of the revolutionary forces to which they owe their existence. . . . They lack a sense of the creative violence of law that is represented in them. One need not then be surprised that they do not arrive at decisions worthy of this violence, but instead oversee a course of political affairs that avoids violence through compromise.¹⁹

Thus, the tradition of democratic revolutionaries is thought to be imprisoned in this tendency despite their resolve to place the ‘constituting power’ within the ‘established constitutional authority’.²⁰ From that, Agamben argues that it is difficult to clearly demarcate between these two powers because these are clearly dissolved in each other. Though, he remarks that such attempts have been made to preserve ‘constituting authority’. He gives the example of ‘Trotsky and Mao Zedong. The first talked about the idea of a permanent revolution and the latter also talks about a continuous revolution’. In both these cases, these two powers are inseparable²¹.

He cites Antonio Negri’s definition that ‘constituting power’ can’t be reduced to the principle of sovereignty and the established ‘constituted order’. Negri writes about the ‘constituting order’ that,

The truth of constituting order is not the one that can (in any way whatsoever) be attributed to the concept of sovereignty. This is not the truth of constituting power not

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid., 29

only because constituting power is not (as is obvious) an emanation of constituted power, but also because constituting power is not the institution of constituted power: it is the act of choice, the punctual determination that opens a horizon, the radical enacting of something that did not exist before and whose conditions of existence stipulate that the creative act cannot lose its characteristics in creating. When constituting power sets the constituting process in motion, every determination is free and remains free. Sovereignty, on the other hand, arises as the establishment -- and therefore as the end -- of constituting power, as the consumption of the freedom brought by constituting power.²²

Agamben criticizes this attempt of Negri and argues that he could not isolate 'constituting power' from sovereign power in his analysis of context of 'constituting power'. However, he appreciates his analysis in the sense that it opens the fact that 'constituting power' "ceases to be a political concept and necessarily presents itself as a category of ontology".²³ From this, he concludes that the problem of 'constituting power' becomes a problem of 'constitution of potentiality'. The fact that he pushes this relation to the problem of 'ontology' is basically the complexity that the relation between these two powers presents. That is why he says that to resolve the problem of 'power', the link between 'potentiality' and 'actuality' needs to be rethought. As he states that

only an entirely new conjunction of possibility and reality, contingency and necessity will make it possible to cut the knot that binds sovereignty to constituting power. And only if it is possible to think the relation between potentiality and actuality differently -- and even to think beyond this relation -- will it be possible to think a constituting power wholly released from the sovereign ban."²⁴

²² Ibid., 30

²³ Ibid., 31

²⁴ *Homo Sacer*, .31.

The above analysis makes it clear that he tries to reformulate the relation between ‘constituting power’ and ‘constituted power’ by reinterpreting the connection between ‘potentiality’ and ‘actuality’. He explicitly politicizes the concept of ‘potentiality’ and claims that Aristotle gave the paradigm of sovereignty to Western philosophy through this idea. He re-interprets the idea to overcome the aporia created by the sovereign power. He does that by arguing that for Aristotle “potentiality preceded actuality and conditions it, and also seems to remain subordinate to it”.²⁵ In other words, he frees identification of ‘potentiality’ from the act and claims that it has an autonomous existence from that of act. Therefore, potentiality is not only “to be” but also the possibility of “not to be”.²⁶

From this debate, it emerges that ‘politics’ is a problem of first principles as the concept of ‘potentiality’ is invoked to delineate the problems of power. The ‘juridical order’ is thought to be a text and, hence, facing the same problems as one might say the truth in language faces. This becomes clear when he writes about ‘potentiality’ that it has an autonomous existence. He says:

Aristotle always takes great care to affirm the autonomous existence of potentiality -- the fact that the kithara player keeps his ability [*potenza*] to play even when he does not play, and that the architect keeps his ability [*potenza*] to build even when he does not build. What Aristotle undertakes to consider in *Book Theta of the Metaphysics* is, in other words, not potentiality as a merely logical possibility but rather the effective modes of potentiality's existence. This is why, if potentiality is to have its own consistency and not always disappear immediately into actuality, it is necessary that potentiality be able not to pass over into actuality, that potentiality constitutively be the potentiality not to (do or be), or, as Aristotle says, that potentiality be also impotentiality (*adynamia*).²⁷

²⁵ Ibid.

²⁶ Ibid., 31-32.

²⁷ Ibid., 31.

In short, Agamben revises the understanding of Aristotle's 'potentiality' as both 'potential to pass into actuality' and 'not to pass'. Such an analysis brings forth the idea that in the 'void' created by 'state of exception', the 'potentiality' of law to pass in actuality is withdrawn. How does that happen? What Agamben asserts is that "potentiality denotes the possibility for a thing not to pass into existence and thereby remain at the level of mere—or 'pure'—potentiality".²⁸

The idea of 'pure potentiality' is developed to free it from the burden of 'actuality'. He makes it clear by giving an example of intellect. He cites Aristotle who states that the intellect, "has no other nature than that of being potential, and before thinking it is absolutely nothing".²⁹ From this statement, he generalizes that intellect is the perfect example of pure potentiality, a potentiality "which in itself is nothing, but allows for the act of intelligence to take place".³⁰ Agamben writes:

The potential intellect is not a thing. It is nothing other than the intention through which a thing is understood; it is not a known object but simply a pure knowability and receptivity".³¹

This pure knowability and receptivity is the pure potentiality of the intellect. This shows that intellect has the possibility of knowing and in this way it should only signify the intent. Any claim of knowledge is susceptible to further revision and there is a need to do retain the freedom of thought by denying actuality the final currency. This invokes a kind of 'potentiality' which is a mere possibility and free. Agamben provides examples of many figures to explain his interpretation of 'potentiality'. One such example given is of a pianist named Glen Gould in his book *Coming Community*. We think of craft or skill as some activity that is realized and does not remain as a mere possibility like intellect.

²⁸ Leland De la Durantaye, *Giorgio Agamben: A Critical Introduction*, (California: Stanford University Press, Stanford, 2009), 5.

²⁹ Aristotle, *De Anima* (Cambridge, Mass.: Harvard University Press, 1986), 429a21.

³⁰ Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, ed. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1999), 245

³¹ *Ibid.*, 251.

Agamben does not talk like that. He sees inversely about the act in the sense that he ignores that we can only understand ‘potentiality’ from actuality. For example, if one learns piano, there is a proper science which depends upon thought as well practice. Also, skill is liable to be improved as there is no mastery over craft possible because the ‘potential’ also emerges from the amount of actuality one has achieved. Therefore, he thinks inversely because he does not talk about the process that made him to learn the craft. He writes about him that,

even though every pianist necessarily has the potential to play and the potential to not-play, Glenn Gould is, however, the only one who cannot not-play, and, directing his potentiality not only to the act but to his own impotence, he plays, so to speak, with his potential to not-play”.³²

Agamben uses rebellion to think about the idea of ‘potentiality’. In this, he misses out that it is only about actuality on which this pianist has mastery that he is thinking about. This has strange resemblance to Gandhi’s civil disobedience because all he is saying that Gould should refuse to play. The reason for it might become instrumental to something that Agamben has in mind. Elizabeth Balaskus says that Gould’s refusal to play can make him notorious for being rebellious as he stops playing and yet people know that he can play. He writes about the above comment of Agamben that,

This comment could refer to the notorious reputation Glenn Gould held as one of the most technically gifted pianists in the world, one of the most renowned performers of the 20th century, who did not, however, practice the piano regularly and, if he did practice, often did so without the use of an actual piano by miming the motions and playing the songs in his mind. While every concert pianist has the skill to exercise his ability to play the piano, Glenn Gould, in exercising his ability to not play the piano

³²Agamben, Giorgio, *The Coming Community*, trans. Michael Hardt (Minneapolis, MN: University of Minnesota Press, 1993), 34.

by “playing” without his instrument, maintained his impotentiality as a pianist. This impotentiality was turned back towards itself the minute Gould’s fingers touched a piano at a performance, when the skill and technique acquired by not playing the piano allowed Gould to play Bach better than any pianist in the world.³³

Again this example does not solve the problem of ‘potentiality’. Why should Gould refuse to play and what is it that it might serve? How can sovereign or law refuse to act? It is not similar to think of a pianist and a sovereign because the former does not involve the question of power densely as the latter does. Also, the situation in which some people refuse to ‘act’ on the skills that they have acquired demands a certain explanation and motivation as noted in the question. That can be done by providing the logic that this act will disrupt the logic of actuality. It sounds catchy but it does not resolve the problem of power as reflected in the violence unleashed by ‘state of exception’

Thus, Agamben’s pianist cannot solve the problem between the ‘constituted’ and ‘constituting power’. Also, in the ‘state of exception’, the suspension of ‘juridical order’ doesn’t mean that the law (language) fails to actualize. Rather, it is language only that is used to define, legitimize and exercise power. It is not like the pianist or Bartleby that power as potential does not act or law does not apply. He himself says that sovereign power excludes life in ‘exception’ by excluding it. In other words, life is thrown open to the arbitrariness of the individuals who act or represent sovereign. Thus, Agamben is wrong when he says that ‘state of exception’ reflects the structure of ‘potentiality’. He says,

the sovereign ban, which applies to the exception in no longer applying, corresponds to the structure of potentiality, which maintains itself in relation to actuality precisely through its ability not to be.”³⁴

³³ Balaskus, Balaskus ‘Examining potentiality in the Philosophy of Giorgio Agamben’, *Macalaster Journal of Philosophy* vol 19(oct, 2010), 9.

³⁴ *Homo Sacer*, 46.

In this way, the structure of ‘potentiality’ is not similar to that of a pianist who is refusing to play because sovereign cannot refuse to act. It represents ‘pure actuality’ not ‘potentiality’. In other words, his ‘potentiality’ is reflected in pure actuality because he has to always act. He can withdraw the law or ‘normal juridical order’ but cannot withdraw himself or refuse to rule. This is what happens when he withdraws the order: he attains absolute power to govern the lives. Here decision of the sovereign becomes important not the problem of ontology. One should interpret as the limitation of language and therefore it is not possible to conceive ‘power’ as ‘pure potentiality’ like Gould. Agamben does that by saying,

an act is sovereign when it realizes itself by simply taking away its own potentiality not to be, letting it be, giving itself to itself. ”³⁵

Further, he complicates it more by saying that ‘sovereign’ is neither ‘pure potentiality’ nor ‘pure actuality’. Rather, he puts the sovereign in the zone of ambiguity between ‘potentiality’ and ‘actuality’. As he states that “sovereignty is always double because Being, as potentiality, suspends itself, maintaining itself in a relation of ban (or abandonment) with itself in order to realize itself as absolute actuality (which thus presupposes nothing other than its own potentiality).”³⁶

This understanding is also supplemented through the idea of ‘ban’. That si derived from Jean-Luc Nancy to show the capacity of law in the ‘state of exception’.³⁷As we have described that ‘state of exception’ does not mean exclusion in the ordinary sense of the term, rather, it creates a condition of law in which inclusion is done through an excluding the life. This is considered similar to ‘ban’, as banning something would also mean that it is no longer in the system in the ordinary sense of the membership but it is in the system in a suspended condition. This understanding is borrowed from Nancy who thinks on the similar lines about ban. He says:

³⁵Ibid., 46.

³⁶Ibid., 33.

³⁷Ibid., 19.

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 its 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. ³⁸

The above understanding of ‘ban’ makes it clear that the ‘banned person’ is at the disposal of the law but in a sense of the reversal of law. The reversal here is simply the withdrawal of the law that is regular and normal. The banned is retained in the law even after he is set outside the norm. In other words, he does not escape law. The ‘state of exception’ follows the same criteria and it can be said that the relation between ‘ban’ and ‘state of exception’ is structurally similar. Agamben himself says about the relation between the two that “the relation of exception is a relation of ban”.³⁹

The above similarity shown between ‘ban’ and ‘state of exception’ brings forth the notion that the banned person can be similar to the sovereign. Nancy remarks that “it is difficult to locate this ‘banned life’ as the correlation between the ‘exception’ and ‘abandonment’ shows that it is impossible to say clearly whether that which has been banned is inside or outside the juridical order.”⁴⁰ This is clear that like sovereign the banned resides in a zone of ambiguity and indistinction. Both, sovereign and banned, are the product of ‘state of exception’ and remain inside and outside of normal order. It happens because the subject in the both cases is a human life: one is at the level where he decides about norm and exception and the other is simply thrown into such a space by the decision of the sovereign. Agamben states that if

³⁸ J. L. Nancy, "Abandoned Being", in *The Birth to Presence* (Stanford, CA: Stanford University Press), 43-44.

³⁹ *Homo Sacer*, 28.

⁴⁰ Catherine Mills, *The Philosophy of Agamben* (McGill-Queen's University Press Montreal & Kingston, Ithaca, 2008), 68.

exception is the structure of sovereignty, then, sovereignty is the originary structure in which law refers to life and includes it in itself by suspending it.”⁴¹ Thus, “in 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”.⁴²

This assertion about law as ‘being in force without significance’ is discussed by Agamben in *Homo Sacer’s* chapter “Force of Law” where he addresses a debate on ‘Kafka’s parable’. He says that there is a disagreement between Benjamin and Judaic scholar Gershom Scholem on the nature and existence law in Franz Kafka's writings.⁴³The disagreement can be understood from the way they understand this idea that the law rules without being in existence or any backing that normally it has. Scholem describes the status of law in the ‘state of exception’ as being in a state that is without any force. Agamben takes this phrase and agrees that it describes “the situation in which the law is valid precisely insofar as it commands nothing and has become unrealizable”.⁴⁴ In other words, he agrees to the structural condition of law in the ‘state of exception’ but adds that it does not mean that law commands nothing but it is simply removed of its positive content which means the normal rules are no longer available⁴⁵He says:

In taking up Scholem's phrase, Agamben also proposes that he misses the fundamental importance of Benjamin's objection that the law that has lost all content is indistinguishable from life.⁴⁶

⁴¹*Homo Sacer*, 27.

⁴²*Ibid.*, 51.

⁴³ The key parable of Kafka for Agamben is “Before the Law”. This parable shows that a man never enters the city. The city might mean the law regulating a space. He never becomes a part of the system. Yet he is not outside of it. He remains there in the crevices and ruptures of the city.

⁴⁴*Homo Sacer*. 172.

⁴⁵Catherine Mills, *The Philosophy of Agamben*, 68.

⁴⁶*Homo Sacer*, 53.

It is clear that the disagreement is on the interpretation of the ‘force of law’ in ‘state of exception’. Benjamin does not agree with Scholem that law is insignificant in the ‘state of exception’. Rather, he thinks that it is the life that is subject of the condition of law and how can be it without any force. In such a space, it is life that becomes indistinguishable from life and that is the significance it has. Agamben takes both these views and says that it is life that is involved in the ‘state of exception’ as well as the law is emptied of normal meaning and function. He says: “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”.⁴⁷

The fact is that it is life that is caught in the ‘state of exception’ and the theorization of the fact shall aim to free it from that situation. One has to problematize the notion of ‘order’ by asking a simple question: why is ‘norm’ threatened and is there a possibility that an ‘order’ can be conceived that will never be threatened and, hence, the discretion of the sovereign would not be needed. In the entire section, we have seen that there is no discussion about the notion of ‘norm’. All that he is saying that ‘exception’ exists as part of it and points the limitation of language as being unable to regulate ‘power’ in ‘exceptional circumstances’.

1.2 Genealogy of Exception

Before going into genealogy of the ‘state of exception’, it is pertinent to mention that there have been attempts to create a political order that may satisfy moral and material development of individuals. There have been practical (historical) and philosophical efforts to realize and conceptualize that ‘order’. The former includes the real historical

⁴⁷*The Philosophy of Agamben, 69.*

movements that demanded the reformulation of the political to check arbitrary use of power and later reflects the theoretical effort to understand the nature of political and the viability of an order that can eliminate violence and create a community providing good to every individual. Both have informed each other. I am not saying that some utopian order has been the object of political enquiry (though some have imagined it), rather, there has been a demand for rights for all. The present age which is considered as an age of democracy(though not entirely true both in case of democracies who function like dictators when it comes to their foreign policy and dictatorships, Islamic or communist), is still fraught with problems that militate against the desirable order of equality. Therefore, it seems anachronistic to look at 'exceptional spaces' as the problems of first philosophy rather than reflecting upon the conditions in which theoretical political principles fail. And, also, reflect on the alternatives that might alter such conditions and annihilate the problems faced by life.

Agamben, it seems, is interested in both these projects. In the previous section, I discussed his understanding of 'power' or 'sovereignty' which he says is the problem of 'ontology' because law/language is considered to be tool that can provide rules for a definite order. In other words, 'political' is understood as the realm of 'good' or that is conceived through language. According to him, such an understanding creates the paradox of sovereignty and law because both of these fail to exist in borderlines where concepts or rules are limited. He cites historical experiences to show the paradox of sovereignty. In all these experiences, discussed below, the entire 'juridical order' had to be withdrawn to deal with situations that did not allow the 'order' and 'sovereign' function properly.

One of the most ancient examples of 'state of exception' *Istitium* is cited in his book *State of Exception*. It was an institution in Roman law that allowed the suspension of juridical order. It is important to ask about the conditions on which this power was exercised. In other words, the legality and necessity of this law shall be described to arrive at some conclusion about sovereign power.

He says that this institution had been effectively used in the Romans in the context of threat to the Roman state. As he states:

If the Roman *senatus* was informed of a situation that seemed to threaten or endanger the *res publica*, it would pronounce a *senatus consultam ultimum* (the final decree of the senate) asking the consuls (or their substitutes and other magistrates in Rome, and every other citizen) to take any measure possible in order to ensure the *salus publica*, the security of the state. . . . This *senatus consultam* involved a *decretum*, a decree that declared a *tumultus* . . . and had as a consequence the proclamation of *iusitium*.⁴⁸

It is important to understand first the notion of ‘threat’ or aggression rather than the means to avoid or control the threat. He is not interested in the tangibility of threat to ‘order’ and the limitations of the ‘order’ itself. He takes a step forward to understand the nature of ‘political’. From the above lines it is clear that he does not seem to entertain the situations that might endanger the existence of state. The threat existed in the form of foreign aggression or internal rebellion. Interestingly, security of the state or any political order is primary as humans possess this ability to physically endanger the order and take it over. If Romans thought it necessary to protect their state, one should focus on the conditions that give rise to the threats with respect to the ‘juridical order’. For example, states are unstable as they don’t follow any legal framework in their interactions. It had been a permanent feature of international politics. In other words, war is a reality which makes it necessary to invest ‘exceptional powers’ in the state to protect itself and thereby provide security to its citizens. He does mention that and avoids that ‘political’ can be challenged and needs to be protected. Though he mentions causes of this kind of power by writing in the *State of Exception*:

⁴⁸ “The State of Exception”, *Politics, Metaphysics and Death*, 285-286

At the base of this *senatus consultum* was a decree declaring a *tumultus* (that is, an emergency situation in Rome resulting from a foreign war, insurrection, or civil war), which usually led to the proclamation of *aiustitium* (*iustitium edicere* or *indicere* [to proclaim or declare a *iustitium*]).⁴⁹

These kinds of ‘exceptional powers’ as denoted by *istitium* are not unique to Romans but continue in the present constitutions as well. Another example of ‘exception’ is that of Nazi Germany where Hitler abrogated the juridical order to allow the state to persecute Jews and give himself totalitarian power. He suspended the constitution of Germany on the ground that it is necessary to protect the people by providing them security. This pretext allowed him to curtail certain liberties in the name of the ‘security’ of the state. Agamben, regarding this abuse of ‘juridical order’ by Hitler, says that “from a juridical stand point entire Third Reich can be considered as a ‘state of exception’ that lasted for twelve years”.⁵⁰

One needs to go into the details of the powers used or abused by Hitler. He does that by using Article 48 of the constitution. This article had granted “the power to the emperor to declare a part of his empire to be in a state of war if the public security was threatened in such territory and suspend the fundamental rights, wholly or partially, in order to restore public order. It was done by many orders, as he mentions that such “state of exception’ on that basis (public order) was proclaimed more than two hundred fifty times”.⁵¹

From both *istitium* and suspension of Weimar constitution, it is clear that a particular ‘political order’ that runs on a particular ‘juridical order’ can be challenged physically from both inside and outside. This makes ‘security’ as the primary concern of the sovereign which he does by maintaining monopoly over violence. From both these experiences of ‘exception’, it is clear that every political order is considered fragile in the

⁴⁹ *State of Exception*, p.41

⁵⁰ *Ibid.*, p. 2

⁵¹ *Ibid.*, 14.

sense that it can be threatened. Therefore, a special power is given to the sovereign to protect the order in case the threat tries to destabilize it.

This paradox in 'order' reveals that any understanding of 'political' shall debate the nature of 'order' in addition to the nature of the threats. In other words, it should focus on the justification of the 'order' and the legitimacy of the 'threat'. From that one can understand the 'true' foundation and nature of the 'political' and make it more democratic. Agamben does not undertake such an exercise because he thinks that democracy is linked to totalitarianism. So it was not only Istitium or Hitler that abrogated the 'order' but democracy as well functions on this paradox.

Recalling Schmitt, it is primarily what he argues that 'political' is necessarily totalitarian as it will finally depend on the decision of the sovereign. My concern is that one has to understand the nature of circumstances that can provoke the sovereign to take such a decision and assume dictatorial powers. Agamben himself says it that 'state of exception' is justified on grounds of threat to the norm. But then he goes on to discuss the complexity of the situation created by such situation. He makes a jump in the sense that he does not consider the viability of the threat and the necessity of 'security'.

For example, in the *State of Exception*, he argues that "the 'state of exception' is difficult to define because it is closely related to civil war, insurrection and resistance".⁵² As civil war is considered to be a situation quite opposite to normal conditions, state response to such a situation is always extreme. He writes:

Because the civil war is the opposite of normal conditions, it lies in a zone of undecidability with respect to state of exception, which is state power's most immediate response to most internal conflicts. Thus, over the course of twentieth century, we have been able to witness a paradoxical phenomenon which has been defined as "legal civil war".⁵³

⁵²Giorgio Agamben, *State of Exception*, trans. Kevin Attel (Chicago and London: The University of Chicago Press, 2005), 2.

⁵³Ibid., 2.

The failure of theory on civil war or stasiology is ascribed to the fact that there is an inherent proximity between ‘civil war’ and ‘state of exception’. In such cases, response of the state is always extreme as shown in the case of Nazi state’s suspension of juridical order or Istitium. In fact, not only the totalitarian regimes but he also locates the institutionalization of ‘state of exception’ in liberal democratic states and, hence, remarks that it exists as a uniting tie between democracy and totalitarianism. Regarding totalitarianism, he remarks:

Modern totalitarianism can be defined as the establishment, through state of exception, of a legal civil war that allows the physical elimination of not only political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system.⁵⁴

Before citing other examples of ‘state of exception’ in the present political reality it is important to mention that Agamben sees a nexus between democracy and totalitarianism. The former cannot get rid of the ‘exceptional’ powers which threaten the very liberal basis of democracy. Again reiterating the earlier point mentioned throughout this chapter he is not interested in those situations. For example, Germany after the Second World War had a context in which it was made to repay the reparations of war through the Treaty of Versailles. We have to look at the international system and the legal norms followed by the states. The ‘political’ between states was not democratic and also within the states was not fully representative. There are theorists who look at totalitarianism as the failure of democratic order only and not as a problem in the political.⁵⁵

⁵⁴ Ibid., 2

⁵⁵There are thinkers who consider ‘totalitarianism’ as antithetical to democracy. The abuse of democracy, however, is possible. But that abuse is primarily done because capitalism and democracy exist side by side. The origins of totalitarianism itself are a result of the crisis in democracy because it fails to grant real

Hannah Arendt has written about the origins of totalitarianism by clubbing Nazism and Stalinism together. She does not understand it as the problem of an 'exception' hovering around like a ghost that will haunt the normalcy in the society. Rather, she explains it as the problem of totalitarian systems of thinking which she calls 'isms'. She writes:

While the totalitarian regimes are thus resolutely and cynically emptying the world of the only thing that makes sense to the utilitarian expectations of common sense, they impose upon it at the same time a kind of supersense which the ideologies actually always meant when they pretended to have found the key to history or the solution to the riddles of the universe. Over and above the senselessness of totalitarian society is enthroned the ridiculous supersense of its ideological superstition. Ideologies are harmless, uncritical and arbitrary opinions only as long as they are not believed in seriously. Once their claim to total validity is taken literally they become the nuclei of logical systems in which, as in the systems of paranoiacs, everything follows comprehensibly and even compulsorily once the first premise is accepted. The insanity of such systems lies not only in their first premise but in the very logicity with which they are constructed. The curious logicity of all isms, their simple-minded trust in the salvation value of stubborn devotion without regard for specific, varying factors, already harbors the first germs of totalitarian contempt for reality and factuality.⁵⁶

equality to individuals. Harold J. Laski in his *Crisis of Democracy* has pointed out how formal equality was established and it was needed to allow the new class to break the old traditional order. In practice, capitalism and democracy never worked effectively. From this crisis also emerged what is known as fascism.

⁵⁶ Hannah Arendt, *Origins of Totalitarianism*, ed. (New York: Harcourt, Brace, 1951), p.431-32.

It is interesting to note that a ‘totalizing system’ that defines ‘political’ in its own ways has a tendency to exclude the variations that might conflict with them. Violence follows in the form of ‘purification’ of the system which takes the theory of race or any ideological justification as the basis of such violence. It is in conformity with Agamben’s thesis when he says that ‘norm’ or ‘order’ is not final and sovereign power will always face situations in which law cannot apply. I make such a connection because, I think, rather than mystifying law or sovereign power we should think of it as the problem of ‘rigid’ ideologies and pin hope in democracy if we have to get rid of totalitarianism. But Agamben does not believe that and links democracy also with totalitarianism.

Further, he clarifies that certain terminologies have been used to describe “the state of exception” which are misleading. The terms, he refers to, are “state of siege” and “martial law”. He contends that though these terms are connected with the “state of exception” but they can’t define the phenomenon that results from the withdrawal of law.⁵⁷ The above terms are thought to be special laws while as ‘state of exception’ is not considered such. Unlike ‘martial law’, ‘state of exception’ involves the suspension of juridical order itself. If state employs ‘special laws’ to deal with matters of resistance or civil war, then these laws alone can’t be deemed to describe the phenomenon that the “state of exception” tries to decipher. He calls such “special laws” as fictitious or political terms that are misleading. Fictitious laws like “state of siege” have been introduced to increase the authority of military and it was French Constituent Assembly which for the first time introduced such a law to increase the power of the military in the civilian sphere and enable the military and civilian authority to assist each other while acting in their respective spheres.⁵⁸ On the other hand, the idea of “state of exception” where the whole constitutional authority was suspended was “introduced for the first time in the constitution of 22 Frimaire Year 8, Article 92 of which reads as,”

In the case of armed revolt or disturbance that would threaten the security of the state, the law can, in the places and for the time that it determines, suspend the rule of

⁵⁷*State of Exception.*, p. 4.

⁵⁸*Ibid.*, 4.

the constitution. In such cases, such suspension can be provisionally declared by a decree of the government if the legislative body is in recess, provided that this body is convened as soon as possible by an article of the same decree.⁵⁹

Indian state has introduced similar ‘martial laws’ to deal with resistance in different states. For example, a ‘special law’, Armed Forces Special Power Act (henceforth, AFSPA), has been imposed in Jammu and Kashmir. This law is operational in many states in India like Assam and Manipur to suppress the armed resistance for independence.⁶⁰ State has given through this law, exceptional powers to armed forces to annihilate armed overthrow the state. In all the territories where this “exceptional law” exists, violence is used to challenge the legitimacy of Indian state. There are historical reasons where the merger with Indian union is seen as forceful and undemocratic by the people. For example, Jammu and Kashmir was a Princely State during the British rule and refused to join either with India or Pakistan after the partition. It was attacked by Pakistani armed tribal groups which became a pretext for India to send its armed forces. Seen as external help, India signed an Instrument of Accession with the Kashmir’s ruler and promised a plebiscite to get the opinion of the people and legitimize the accession. This right to determine their political existence was later denied to the people of Kashmir. But, people resisted and contested the undemocratic rule of the Indian state .Their resistance took different shapes-- -protest to armed opposition. The state response to such resistance was multi-pronged. Illegal detentions, imprisonment of political leaders, abrogation of existing constitutional status and maneuvering of elections followed in the beginning. When people resorted to arms Indian state militarized it heavily and empowered the military through special laws like AFSPA. Like Roman Senate’s decree that anything should be done to protect the republic, AFSPA empowered the Indian military to do anything to silence any demand for rights. The law defines the situation in which death can be produced. One of the figures that this kind of law produces is of disappearance; people who are not traceable. These become invisible beings and even death cannot help in recognizing them. I will evaluate

⁵⁹Ibid., 5.

⁶⁰Armed Forces Special Powers Act: A Study in National Security Tyranny (2010): South Asia Human Rights Documentation Centre. http://www.hrdc.net/sahrdc/resources/armed_forces.html.

such a being in the next chapter, for now, it is sufficient to say that even martial laws create situations in which it is difficult to identify not only the political but legal as well.

On the source of these ‘exceptional laws’, Agamben argues in the *State of Exception* that there are differences in the legal tradition between ‘those who consider that ‘state of exception’ resides within the juridical order and those who consider it as something external which means that it resides with the decision of the sovereign⁶¹ Those who confine the ‘state of exception’ within the ‘constitutional order’ understand it to be an essential part of positive law. They consider it as the positive contribution or tendency of law as the juridical order can itself decide the nature and significance of ‘state of exception’. On the other hand, the opposite group of scholars like Hoerni, Larreti and Rossiter disagree and say that it cannot have a positive content and place it in the subjective decision of the sovereign. In short, they consider the necessity that leads to the establishment of ‘state of exception’ as an extra juridical phenomenon.⁶²

Agamben criticizes both these standpoints on the ground that these theories rely on simple topographical opposition of inside /outside and, thus, fail to account for the phenomenon that the ‘state of exception’ produces. He, also, places Schmitt in this narrow interpretation of the ‘state of exception’ that is based on the ‘necessity’ argument. Unlike Schmitt, for him, inside/outside is not a simple relation that is established by the ‘state of exception’ but a situation where both these topographies blur with each other:

State of exception is neither internal nor external to the juridical order and the problem of defining it concerns precisely a threshold, a zone of indifference, where inside and outside don’t exclude each other but rather blur with each other. The suspension of norm doesn’t mean its abolition, and the zone of anomie that it establishes is not unrelated to the juridical order.⁶³

⁶¹*State of exception*, 22.

⁶²*Ibid.*, 23.

⁶³*Ibid.*, 24.

This zone of in-distinction which ‘exception’ creates between inside/outside can be understood from the way ‘the law of necessity’ has been conceptualized. For this he describes the interpretation of the Latin saying that the ‘necessity has no law’. He says that such a theorem has been interpreted in two ways: the first way understands it as free, meaning that necessity does not need any law and second understands it as creative, meaning that it can create its own law.⁶⁴ In both these cases, the ‘state of exception’ is understood as the necessity whereby it is free from any limitation as it can create an order to legitimize itself by giving the argument of necessity. In other words, necessity is such a law that can provide justification for anything done in the name of it.

Agamben while conceptualizing the ‘theory of necessity’ maintains that the medieval conception of ‘necessity’ does not envisage the suspension of law. He mentions Gratian’s *Decretum* where this principle is formulated. Citing the text from Gratian, it is brought that necessity has no law and it renders licit illicit and vice versa. As he states that, “if something is done out of necessity, it is done licitly, since what is not licit in law, necessity makes it licit. Likewise necessity has no law.”⁶⁵ This theory of ‘necessity’, which allows the sovereign to take an action apart from what is prescribed in law, is seen as the theory of ‘exception’ itself. As he mentions:

The theory of necessity is none other than a theory of exception by virtue of which a particular case is released from the obligation to observe that law. Necessity is not a source of law, nor does it properly suspend the law; it merely releases a particular case from the literal application of the norm.⁶⁶

Further, he cites Santi Romano’s extreme position on the status of ‘necessity’. Romano, a jurist believed that necessity is not only related to law but is the first originary

⁶⁴*State of Exception*, 24.

⁶⁵*Ibid.*

⁶⁶*Ibid.*, 25.

source of law. He distinguishes between those who see 'necessity' as grounded in the general principles of law and those who see 'necessity' as a mere fact and the powers that it confers as having no legal basis. Romano disagrees with both these positions and argues that these positions deny that the source of law can be beyond legislation. While maintaining that necessity is the originary source of law, he argues that during the time of revolution it is 'necessity' that provides legitimacy to the constitutional order and state. Thus, necessity gives rise to new norms and can reappear at different times as the source of legislation.⁶⁷

Agamben takes this analysis to assert that it creates a zone of indistinction where extra-judicial proceedings pass into law and vice versa. This situation which necessity creates is seen in both 'state of exception' and 'revolution'. The law and fact blur with each other in such a situation and necessity can't resolve the 'state of exception'. As he states that,

the attempt to resolve the state of exception in the state of necessity turns up against as many and even more serious aporias of the phenomenon that it should have explained. Not only does necessity come down to a decision, but, that on which it decides, is in truth something undecidable in fact and law.⁶⁸

This zone of undecidability is the product of 'state of exception'. Recalling the debate in the beginning of this chapter that 'state of exception' creates a situation in which law applies in no longer applying to it, Agamben in *Homo Sacer* adds a crucial element to this by saying that the 'legal norms' might be withdrawn in case of 'exception' which does not mean that it would not have any relation to the rule. He says that 'exception' does not cease to have a relation with the legal framework. In fact, the relation is intact but new, and calls it as inclusive exclusion whereby something is still a part of the system by not being a

⁶⁷*State of Exception*, 27-29

⁶⁸*ibid.*, 30

part of the normal system of relations or rules. In short, Agamben puts it that the even in the suspension of law, ‘exception’ maintains a relation with the general rule. He says:

Agamben sees the relation of exception to positive law in that exception is an element in law that transcends positive law in the form of its suspension. He draws the relation as: exception is to positive law what negative theology is to positive theology. While the latter affirms and predicates determinate qualities of God, negative (or mystical) theology, with its "neither . . . nor ..." negates and suspends the attribution to God of any predicate whatsoever. Yet negative theology is not outside theology and can actually be shown to function as the principle grounding the possibility in general of anything like a theology. Only because it has been negatively presupposed as what subsists outside any possible predicate can divinity become the subject of a predication. Analogously, only because its validity is suspended in the state of exception can positive law define the normal case as the realm of its own validity.⁶⁹

The relation that ‘exception’ maintains with the general rule is explained by giving different examples. He shows that by drawing an analogy between ‘exception’ and ‘law’ and that of ‘language’. He mentions that the condition of law in the ‘state of exception’ is similar to the condition of language. As in language, the absence is pre-supposed in an abstraction is similar to the ‘state of exception’ in the sense it is assumed in the law.⁷⁰ This kind of relation between law and its suspension arises from the ‘structure of exception’ where “the rule applies to the exception in no longer applying, in withdrawing from it,”⁷¹ shows the potential relation law maintains with the non- juridical. As he mentions:

⁶⁹ *Homo Sacer*, p. 13.

⁷⁰ He relates this relation between norm and exception to language where he says just as language presupposes “the nonlinguistic as that with which it must maintain itself in a virtual relation (in the form of a language or, more precisely, a grammatical game, that is, in the form of a discourse whose actual denotation is maintained in infinite suspension) so that it may later denote it in actual speech, so the law presupposes the non-juridical (for example, mere violence in the form of the state of nature) as that with which it maintains itself in a potential relation in the state of exception. The sovereign exception (as zone of in distinction between nature and right) is the presupposition of the juridical reference in the form of its suspension” (*Homo Sacer*, 17).

⁷¹ Agamben, *Homo Sacer*, 18.

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.⁷²

In this way, when a ‘state of siege’ or ‘emergency’ is introduced in any territorial space, the relation of that space with the legal order remains of a different order. The law applies to that place in not applying to it. The relation seems to be very difficult to understand. The same space which was under law is now outside the law. Then, how does law apply to it when it is taken outside the law?

Agamben emphasizes that the outside maintains a relation with the inside and ‘exception’ shall not be confused with “either as a situation of fact or as a situation of right, but instead institutes a paradoxical threshold of indistinction between the two.”⁷³ The space of ‘exception’ is such in which these categories does not hold true as in chaos and order, rights and fact coincide and in way everything dissolves in it.

To further clarify the complexity of situation of ‘exception’ which looks like a no-man’s land, he takes the interpretation of Alain Badiou on set theory thesis.⁷⁴ Badiou includes “exception” in the category which embodies a kind of membership without inclusion. It reads ‘exclusion’ of a member as being a part of the system and thus existing within the system only. Agamben says:

what defines the character of the sovereign claim is precisely that it applies to the exception in no longer applying to it, that it includes what is outside itself. The sovereign exception is, thus, the figure in which singularity is represented as such, which is to say, insofar as it is representable. In Badiou's scheme, the exception introduces a figure, a threshold of indistinction between excrescence (representation

⁷²*Ibid.*, 13.

⁷³ *Ibid.*

⁷⁴ (*Homo Sacer*, 18).

without presentation) and singularity (presentation without representation), something like a paradoxical inclusion of membership itself.”⁷⁵

Thus, ‘exception’ seems to be in a zone of indistinction where it can’t be included and cannot become a member of the whole in which it is always already included. The exception, then, is a limit figure which Agamben sees to be in a radical crisis where membership and inclusion can’t be distinguished. He interprets his excess theorem argument to reiterate the point that “exception” expresses precisely the impossibility of a system to make inclusion similar to that of membership. It means that inclusion and membership is not the same thing.⁷⁶ From this, one can generalize that to become included in a system; one does not have to be a member.

The above complex elaboration of the “space” in which inside/outside categories do not fit is what we tried to discuss in the beginning by saying that sovereignty constitutes a paradox by existing inside and outside the law. Such structure of sovereignty is considered as the structure of “exception”. In “exception” the status of law has been explained by Agamben by invoking different explanations even from a set theory. Even, then, it is not easy to understand the complex phenomenon that “exception” creates and he himself makes it such by arguing that the paradox of sovereignty appears because of the problem of “potentiality”.

In short he reiterates that “state of exception” has become the paradigm of the modern government and offers a juridical genealogy of the “state of exception”. Some of them, I have, mentioned above. It seems there has been a history of ‘state of exception’ as they existed across the time. He provides such examples in different countries like Germany, Switzerland, Italy, England, and United States of America. During the course, he argues that the “state of siege” was established in the constitutional order and it was parliament who was invested with such power.

⁷⁵*Homo Sacer*, 18.

⁷⁶ *Ibid.*

The recent example of ‘state of exception’ is given from America who introduced U.S Patriot Act. He links the act in which prisoners, muslims only, are held as prisoners and no civil procedure is followed to regulate their lives. They become bare lives and he finds a semblance of Nazi Germany’s abuse of law in this. He says:

The immediately biopolitical significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension emerges clearly in the “military order” issued by the president of the United States on November 13, 2001, which authorized the “indefinite detention” and trial by “military commissions” (not to be confused with the military tribunals provided for by the law of war) of noncitizens suspected of involvement in terrorist activities. The USA Patriot Act issued by the U.S. Senate on October 26, 2001, already allowed the attorney general to “take into custody” any alien suspected of activities that endangered “the national security of the United States,” but within seven days the alien had to be either released or charged with the violation of immigration laws or some other criminal offense. What is new about President Bush’s order is that it radically erases any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Not only do the Taliban captured in Afghanistan not enjoy the status of POWs as defined by the Geneva Convention, they do not even have the status of persons charged with a crime according to American laws. Neither prisoners nor persons accused, but simply “detainees,” they are the object of a pure de facto rule, of a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from judicial oversight. The only thing to which it could possibly be compared is the legal situation of the Jews in the Nazi *Lager* [camps], who, along with their citizenship, had lost every legal identity, but at least retained their identity as Jews.⁷⁷

⁷⁷*State of Exception*, p.3-4

The above discussion on the genealogy of the 'state of exception' there is a reiteration of the fact that sovereign power is faced by situation of civil war or insurrection whereby it has to withdraw normal juridical order to deal with such situations. There is no critique of the liberal framework. One might raise a question that the normal civil juridical order might not assimilate the aspirations of the people or the democratic framework is liable to be abused and such threat has to be preserved. In other words, there shall be a discussion on the 'political order' provided in a 'juridical order' and then any justification to protect it from outside threats is viable.

1.3 Critique: Exception as Procedure

In the first two sections of this chapter I have analyzed the question of sovereignty and law and their peculiarity in 'state of exception'. I raised some fundamental issues concerning the way this issue has been understood as this problem of 'state of exception' turns out to be emerging from the problems of crisis in the 'political only'. It is a layered problem ranging from perceptions of sacred to failures in the very democratic institutions to satisfy aspirations of the people. In this section I would also understand how, in democracies, 'state of exception' follows a procedure and does not create 'bare life'. The nature and context of 'exception' in Indian juridical order represented by its constitution will be analyzed. Before analyzing that in detail I want to point out that there are concrete situations given in the very constitution that can become a basis to suspend it. It does not rely, therefore, on the will of the sovereign and is contrary to the conception provided by Schmitt and Agamben.

In Indian Constitution the powers to introduce ‘state of exception’ are known as ‘emergency powers’.⁷⁸ The main article, 352, has titled it as ‘Proclamation of Emergency’ and head of the state has the power to declare it not on arbitrary grounds but on concrete conditions that threaten physically the political order of the state. The first clause of this article reads:

If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation.⁷⁹

From the first clause, it is clear that ‘emergency powers’ or ‘exceptional powers’ can be exercised by the head of the state on grounds of ‘security’. Those grounds are named as ‘war’, ‘external aggression’ or ‘armed rebellion’. So this attempt to allow ‘state of exception’ to exist only in concrete situations and define them point out that ‘norm’ can be wholly described in law. The first two conditions denote the external political environment (international) which does not follow the principles of democracies properly and is based on the despotism of certain major powers. Nation state as an entity sees itself in a competition with other actors and sometimes different forms of conflict may lead to war or a military conflict.

⁷⁸The ‘state of exception’ in India popularly known as Emergency introduced by Indira Gandhi, the then Prime Minister of India, in 1975-77. This time saw the banning of dissent and imprisonment of opposition party members.

⁷⁹ P.M. Bakshi, *The Constitution of India*, universal Law Publishing Co., New Delhi, India, 2007, 290.

The third condition of 'emergency' is more concrete in the sense that it stipulates that to avoid a physical threat state has to withdraw 'normal civil order'. The threat is a concrete condition as some people might take arms to annihilate the sovereignty of the state. In this case, the head of the state can introduce extra-ordinary measures to eliminate this threat.

Before going into the further wisdom of this 'state of exception' one thing emerges clearly that sovereign decision is not a decision in abyss. The law or the juridical order itself has laid out the conditions that might arise and 'state of exception' is must to handle that situation. Unlike Schmitt who, as we saw in the beginning of this chapter, mystifies political by saying that it is based on the decision of the sovereign, this attempt in Indian constitutional order points out that 'no decision' even 'exceptional' can be arbitrary. In other words all power can be exercised procedurally. This also negates the position of Agamben that 'law' cannot as a position apply to all situations.

Such is the beauty of the language in this article that it lucidly puts out the condition in which sovereign will become totalitarian as:

A proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.⁸⁰

The above explanatory part is clear that the decision of the sovereign cannot be based on his subjective idea of 'norm'. Rather there shall be an actual condition in which physical threat to the state is possible which can be possession of arms or any physical entitlement that might cause danger in the real sense of the term. Thereby, it again points to the limitation of the sovereign and hence neither Schmitt nor Agamben is right when they point to 'political' as being dependent upon the subjectivity of the sovereign or language. The conditions of 'political' and anti-political become important as the latter can

⁸⁰ *The Constitution of India*, 290.

be actual and real. After all, the ‘political’ is what is common to all the citizens and at the same time the order is liable to be abused by some in actual sense of the term. Any ideology can offer a justification to abrogate the liberal order of the Indian, for example, Maoism is one such ideology that challenges the constitutional order. It might become necessary to withdraw the constitutional order to deal with this security threat.

Besides there are other regulations provided in the Indian constitution that hampers the arbitrary decision of the sovereign and makes it a collective decision of the sovereign and provides checks and balances in the form of a procedure to revoke it in case the conditions of anti-political are over. It reads:

The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.⁸¹

The ‘state of exception’ is also not the sole prerogative power of the sovereign (cabinet or Prime Minister). It has to be reviewed by the Parliament, the representative house of the people and the origin of the laws. Article 352 says:

Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament: Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the

⁸¹Ibid., 290.

Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.⁸²

The exception can continue only for six months unless the parliament approves. If it does not happen the 'state of exception' will cease to operate on the expiration of the said period. The limitation is that:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause: Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the house of the people during the said period, the proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continence in force of the Proclamation has been also passed by the House of the People.⁸³

There are other technicalities required for the 'state of exception' to be active. These include the re-passage by a significant majority in the parliament and a motion to

⁸²Ibid.,. 291

⁸³Ibid. 292.

revoke it needing some basic number. In this entire explanatory article the way 'state of exception' has been regulated raises fundamental points that in a democracy no power can be used arbitrarily. Though there are questions regarding the legitimacy of the political order and the revolutionary forces that try to undermine it. My basic contention is that democracies are procedural mechanisms of power where every form of power is thought to be exercised through rules and those rules have to be upheld and an entire system of checks and balances are evolved to deal with that.

The 'political' within a system as an order may be corrupt or oppressive if it does not follow democratic rules. Also, the aim of a democracy is to change rules to cater to the needs of the people or groups who feel excluded. There seems to be no viable alternative to rule based life. In democracies, rights shall not cease and no life shall be taken arbitrarily. It is one thing to say that there shall be universal peace or the technologies of violence and it is another to agree that humans possess the ability to take another person's life or curtail his liberty or freedom. How does one deal with such a fact. Indian constitution ensures that even in 'state of exception', 'Right to Life' does not cease. In other words, no life can be taken by the executive action. The courts later will interrogate the acts done under this rubric.

This can be best understood by explaining what happens under 'exception'. Article 353 of Indian constitution state provides the structure of the operation of the 'state of exception'. It does not leave it to the ambiguity of the concepts so that the sovereign can use it on his own discretion. It regulates it in manner that he has to follow this procedure. It says that during its operation,

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the

conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.⁸⁴

Here Indian democracy becomes a centralized form of governance where the union govt. takes all the powers to legislate and administer the country. It can apply to whole of the country or a part in which emergency is in existence. Interestingly the exception can be introduced in the state if they fail to comply with the constitutional order. In other words if the state governments fail to fulfil their legal obligations the centre will take over. Such a position is given in Article 356 of the Indian constitution. It says:

If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation -

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State.⁸⁵

⁸⁴*The Constitution of India*. 292.

⁸⁵*Ibid.* 294.

The interesting thing about this kind of ‘exception’ is that the legislature and executive cannot take the power of the courts.⁸⁶ In fact, generally what is good about the Indian case is that the theory of separation of powers still holds during ‘state of exception’. This avoids the danger of despotism. As we saw above the executive and parliament both have power over ‘exception’ and don’t interfere with the judiciary. In all there is no possibility where power can be concentrated in one man or one party.⁸⁷

Further, the rights guaranteed in the Indian constitution are withdrawn. Certain civil liberties are curbed, provided in Article 19 which is mostly about freedom of press, association, movement and so on. Even such suspension is regulated by law and the law clearly mentions the manner in which such suspension can happen. That is provided in Article 358 which allows suspension of civil liberties provided in the constitution in article nineteen.⁸⁸

These civil liberties are suspended and Courts are also barred from enforcing those rights. Article 359 is named as ‘Suspension of the enforcement of the rights conferred by Part III’. It mentions that “where a Proclamation of Emergency is in operation, the

⁸⁶It bars the executive from taking or using powers given to the courts by the Constitution. This will allow the judiciary, on which the normal civil order is based to remain functional so that powers are not concentrated in one organ of the government. (The Constituion of India, p. 290-295).

⁸⁷Article 357 also protects legislative procedure in case of emergency. It grants power to the parliament to legislate on the matters of the state. It also authorizes the union executive to take the administration of the state. In both these cases, the procedure does not go away. Rather, it is replaced by the central authorities. .(See The Constitution of India, p. 290-295).

⁸⁸ This law allows the suspension of these rights which mostly contain the civil liberties. The sovereign is authorized to curtail them in order to face the situation of the war. It is interesting as the procedure only tells us what the sovereign can do. (See The Constitution of India, p. 295).

President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.”⁸⁹

This is a significant part of the law that certain rights are considered sacrosanct and cannot be taken away even in case of emergency. These two important articles are Right Against Arbitrary Arrest and Detention and Right to Life. The former is contained in Article 20 Indian constitution which guarantees protection to individuals in respect of conviction for offences. It says:

No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. No person shall be prosecuted and punished for the same offence more than once. No person accused of any offence shall be compelled to be a witness against himself.⁹⁰

The text of the above mentioned article makes it clear that ‘offences’ which are deemed as ‘offences’ by law will be deemed as offences even in ‘exception’. No person can be illegally punished for any act done as per law. This means the criminal procedure will not cease to operate even during ‘state of emergency’.

On the other hand, Article 21 is important as it is the basis of ‘political order’ as depicted by contractarians like Hobbes, Locke and Rousseau as well. It contains right to life and mentions that “no person shall be deprived of his life or personal liberty except according to procedure established by law”.⁹¹ This important procedure presents a limitation on

⁸⁹ *The Constitution of India*, 296.

⁹⁰ *The Constitution of India*, 44.

⁹¹ *Ibid.*,46

sovereign power points out the problems that a 'decisionistic' sovereignty faces. It stipulates clearly that life cannot be taken arbitrarily. It is important, as I mentioned in the beginning of this section, that juridical order is devised in such a way that it is impossible to create 'bare life' as Agamben thinks. Law does not enter a zone of indistinction and creates a void where life becomes indistinguishable from law. It is very much the 'procedure' only which can be understood clearly and later deliberated upon to deliver justice.

From the above discussion on Indian constitutional order it is clear that government cannot suspend the normal juridical order arbitrarily. Rather what emerges as a problem is that how would states deal with threats which are physical and real? If there are claims that are lacking in the 'political order' then these can be allowed to make the system more democratic. So, democracy as a procedure does not have the problems that Schmitt and Agamben attaches to it. Neither is law a mystified entity that it will apply negatively and create inclusive exclusive spaces.

In conclusion, one can say that Agamben uses Schmitt to pinpoint the problem in the nature of 'sovereignty. As Schmitt has described the concept of sovereignty to delineate the problems posed by the norm which could have been read as the problem that a procedure is facing, Agamben complicates it further by saying that it is the problem of language. He does not go into the debate on the nature of universal categories, say, for example, he does not question or construct the nature of 'political'. From Aristotle he cites only two things: the conception that 'political is the realm of good and the relative autonomy of the state and home. He does not go into the proper explanation of the debate about the end of the state provided by the Aristotle. Also, other theories from the Greeks have been ignored as also the reading of Aristotle has been selective.

He also confuses with the unregulated violence the category of political. The latter is primarily about procedure or power exercised in a rational or procedural way. While an attempt has been made when he says that it is all within the language that the limits of the

political can be found, it gives hope that those limits can show the way towards a better universal order.

His theory also does not sustain in the present situation. We have seen the development of democracies in such a way that the procedure or what is called rule of law is considered supreme. This has placed hope in language as procedures or rules can be debated or made more neutral. Relying on the discretion of the sovereign has not gone well in history.

The hope for a procedural form of power was shown in the Indian constitution. It was shown that an attempt has been made to properly streamline the situation of abuse of power. It is interesting to note that there has been an attempt to think of situations and contexts with respect to 'state of exception'. The situations are concrete in nature and this show a way to think or construct structures of power from the real context in order to eliminate the element of ambiguity so that those who are in power will be use it for their own benefit and power.

Chapter Two

Bare Lives: Homo Sacer, Muselmann and Disappeared

In the first chapter, I have analyzed the condition of ‘sovereignty’ and ‘law’ in the ‘state of exception’. Agamben says that in the ‘state of exception’ life and law blur into each other and what remains is the life that is exposed to the unimaginable violence. In this chapter, I would analyze such ‘life’ in the ‘state of exception’, which Agamben says is a life that is bare and without any qualifications needed to exist.

The examples of ‘bare life’ given by him are that of *homo Sacer*, muselmann and so on. In this chapter I would try to understand these two categories and show that these lives don’t share the same logic of sovereign power. In fact, some of these lives are produced because of the crisis in ‘political only’. I would also add the category of ‘disappeared’, a form of life that is not there. It is a life that cannot be known and, hence, points to the limits in identifying certain lives and thereby fails all conceptual categories to deliberate upon its nature. But this disappeared category shows the nature of violence that ‘impunity’ in law can allow. This would also point out that it is the disagreement with the order that creates the necessity of ‘state of exception’ and hence absence of ‘political’ is controlled through pure violence.

2.1 Homo Sacer: Ambivalence of the Sacred

Agamben argues that politics has been bio-politics since its beginning, in the west. This argument is provided in one of the provisional conclusions of the inquiry undertaken in the book, *Homo Sacer: Sovereign Power and Bare Life*. By bio-politics, he means that the control or inclusion of life is the fundamental function of the sovereign power. This inclusion is done both through the withdrawal of the 'normal juridical order,' as seen in the 'state of exception'. As per him, 'state of exception' is the original condition of sovereignty and, therefore, 'bare life' becomes its main function as well. He mentions that

The fundamental activity of sovereign power is the production of 'bare life' as originary political element and as threshold of articulation between nature and culture, *zoē* and *bios*.⁹²

This fundamental activity of sovereignty as the production of "bare life" is discussed through the figure of *homo sacer*, a roman person who is declared as impure and thrown open to violence. Why is he banned by the sovereign power and what is the role 'state of exception' in this ban?

Agamben does not take into consideration the nature of the action of the banned. He is only concerned with the functioning of the sovereign power to restore or protect order. He uses this figure of *homo sacer* to show the condition of life in the 'state of exception'. This figure is considered to be representative of the 'bare life' that a sovereign ban produces in the 'state of exception'.

Before one goes into the subtleties and complexities of this figure, it should be mentioned that Agamben has made this figure as the protagonist of his book, *Homo Sacer: Sovereign Power and Bare Life*. He says:

⁹²*Homo Sacer*, 117.

The protagonist of this book is bare life, that is the life of homo sacer (sacred man), who may be killed and yet not sacrificed, and whose essential function in modern politics we intend to assert.⁹³

Agamben's protagonist was excluded from the sphere of law as well as religion. This double exclusion guaranteed that he can't be sacrificed and on the other hand he can be killed by any one and no one can be punished for killing this "sacred man". It raises the paradox of 'sacred' because how can someone be a sacred man if he cannot be sacrificed.

These questions and concerns are not answered clearly by Agamben. He fits this figure in the narrative of 'state of exception'. For him, homo sacer belongs to death and is representative of 'bare life' that is produced by the 'state of exception'.

In order to understand the 'bare life' of this sacred, one needs to explain the conception of life that he providing. He takes up Aristotle's distinction of life as that of *zoe* and *bios*, as important to describe the status of homo sacer. Aristotle had separated life into two for the simple reason that state is concerned with the political life of individuals to provide them greater self-sufficiency, and on the other hand, family provides some level of sufficiency as well primarily that of reproduction. That is why *Zoe* is called as the simple natural life that remains confined to the 'home' and *bios* is called 'political life', marking the realm of 'political'. Agamben mentions distinction in the beginning of his book *Homo Sacer*:

"The Greeks had no single term to express what we mean by the word life. They used two terms that, although traceable to a common etymological root, are semantically and morphologically distinct: *zoē*, which expressed the simple fact of

⁹³Homo Sacer, p.8.

living common to all living beings (animals, men, or gods), and *bios*, which indicated the form or way of living proper to an individual or a group”.⁹⁴

In this distinction of life, he introduces the third category of ‘bare life’ or homo sacer. He is excluded from the entire society which means that he cannot become a member of any institution. He is simply excluded from both home and the state.⁹⁵ His ‘life’ becomes a naked life that cannot live in any form because his biological life/body might be considered dangerous to the order that both state and religion provide. This again should prompt a debate on the nature of the ‘order’ defined by the religious and political spheres.

Agamben engages in such discussion by interrogating the basis of Roman social order, through the figure of homo sacer. In other words, with the nature of his exclusion from the religious and juridical sphere by considering that it points to the limits of sovereign and the sacred. In the ‘state of exception’ we saw that a zone of indistinction is created where inside/ outside blur with each other. In a similar sense, homo sacer reflects the ambivalence of the ‘sacred’ in the Roman social order. The ambivalence means that the ‘order’ creates a space and life where the conception of sacred becomes problematic. This is because the concept of sacred does not apply to the homo sacer.

⁹⁴*Ibid.*, 4.

⁹⁵ The term that Giorgio Agamben uses for “bare life” in his book is *la nuda vita*. There are different interpretations of this term. Daniel Heller Roazen translates *Ianuda vita* as “bare life”. One scholar Durantaye in *A Critical Introduction to Agamben* notes that the history of the translation of *la nuda vita* is complex and remarks that Agamben first used this term to mean “naked life”. He mentions that in a brief discussion of the idea of the sacred at the end of *Language and Death*, Agamben wrote that “even the sacralization of life derives from sacrifice: from this point of view it simply abandons the naked natural life [*Ianuda vita*] to its own violence and its own unspeakableness.” Then, again in an essay from 1993 Agamben again invokes *Ianuda vita*, and in a widely read translation of that essay three years later the term is again rendered as “naked life”.

But this term, *Ianuda vita*, is not a term of Agamben’s own invention. It was Benjamin who used the term that influenced Agamben’s usage. As in “Destiny and Character,” Benjamin invokes *das blofseLeben*, “bare life,” and employs it again in “The Critique of Violence”. Agamben conceived *la nuda vita* as a translation of Benjamin’s “*das blofseLeben*” is not made clear to his reader in *Language and Death*, in the 1993 essay, or in any of the other essays leading up to *Homo Sacer*. Nor, for that matter, is it made clear in the opening sections of *Homo Sacer*. At the end of part one, however, Agamben turns to Benjamin’s analyses of law and life and there underlines the relation of one formulation to the other: “*nuda vita (blojteLeben)*.” “*Nuda vita*” naked or “bare life”-is thus, for Agamben, another way of saying *blojteLeben*-bare life-and this fact allows us to understand better not only Heller-Roazen’s translation but also *Homo Sacer*’s protagonist (See Leland de la Durantaye, *Giorgio Agamben: A Critical Introduction*, 200-202).

To understand the nature of sacred as being ambiguous like the status of law in the 'state of exception' we need to describe the analysis undertaken by Giorgio Agamben about the Roman social order. He does by explaining the different interpretations of 'sacredness' given by many authors, particularly sociologists. In fact, this analysis follows a mode of debate on 'sacredness' and 'life'. He begins with the status of homo sacer's 'life' in Pompeius Festus's text. He mentions:

The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide; in the first tribunitian law, in fact, it is noted that "if someone kills the one who is sacred according to the plebiscite, it will not be considered homicide." This is why it is customary for a bad or impure man to be called sacred.⁹⁶

Agamben says that Festus considers the idea of sacred as that of being pure or clean. That is, if homo sacer is excluded from the religious sphere, it points that he is impure. Agamben sees this account of Festus as contradictory, and cites the essay of H. Bennett to show that. He mentions that Bennett observes, Festus's definition

Seems to deny the very thing implicit in the term since while it confirms the sacredness of a person, it authorizes (or, more precisely, renders unpunishable) his killing (whatever etymology one accepts for the term parricidium, it originally indicated the killing of a free man). The contradiction is even more pronounced when one considers that the person whom anyone could kill with impunity was nevertheless not to be put to death according to ritual practices.⁹⁷

Accepting this contradiction on the 'sacredness' of homo sacer, he says that such ambivalence of sacred is even found in the modern scholarship. They also point to the

⁹⁶ *Homo Sacer*, 47.

⁹⁷ *Homo Sacer*, 47.

problem of defining clearly this idea of ‘sacred’ in the Roman social order. On one side, authors like Theodor Mommsen, Ludwig Lange, Bennett, and James Leigh Strachan-Davidson, are mentioned who see “*sacratio* as a weakened and secularized residue of an archaic phase in which religious law was not yet distinguished from penal law and the death sentence appeared as a sacrifice to the gods.”⁹⁸ The other group including scholars like “Károly Kerényi and W. Ward Fowler, consider *sacratio* to bear the traces of an archetypal figure of the sacred -- consecration to the gods of the underworld -- which is analogous to the ethnological notion of taboo: august and damned, worthy of veneration and provoking horror.”⁹⁹

These two divergent perspectives are seen as unable to resolve the contradiction of the life of this “sacred man”. The first group of authors can explain the concept “being killed with impunity” but they are unable to explain the ban on sacredness. The inability of their analysis to explain the ban on sacrifice stems from their own assertion that death sentence was considered to be a sacrifice to gods. The other view is also seen as unable to explain the contradictory traits of homo sacer on the basis that it fails to explain the contradiction that if ‘sacred’ belonged to gods, then how anyone can kill him without committing desecration.¹⁰⁰

From the above discussion on the nature of sacred in Roman social order, presented by different scholars, he says that they are unable to define the contradictory traits of sacred life because it is a limit concept. He says that we are

confronted with a limit concept of the Roman social order that, as such, cannot be explained in a satisfying manner as long as we remain inside either the *iusdivinum* or the *iushumanum*.¹⁰¹

⁹⁸Ibid., 48.

⁹⁹ Ibid.

¹⁰⁰Ibid.

¹⁰¹ Ibid.

He further remarks that it points to the ambiguity of the concepts. This happens because the concept of 'sacred' tries to define the realm of 'profane' by raising objects and individuals to these two realms. He says so at the end of his book, *Language and Death*, by noting that "the sacred is necessarily an ambiguous and circular notion."¹⁰² Put simply, the ambiguity of 'sacredness' emerges from the life of *homo sacer* because of the two facts: he can be killed but cannot be sacrificed.

In his book *Homo Sacer*, he says that such ambiguity exists because Anthropology and French Sociology looked at it from the perspective of 'taboo'. To explain that, he mentions William Smith's analysis of ethnographic notion of 'taboo' in primitive cultures and Biblical religions. He argues that Smith establishes the ambiguity of sacredness and tries to establish the dubious character of sacredness by undertaking a study of progression of the notion of 'taboo' in primitive cultures and religious traditions. He puts it:

An enigmatic archaic Roman legal figure that seems to embody contradictory traits and therefore had to be explained thus begins to resonate with the religious category of the sacred when this category irrevocably loses its significance and comes to assume contradictory meanings. Once placed in relation with the ethnographic concept of taboo, this ambivalence is then used -- with perfect circularity -- to explain the figure of *homo sacer*. There is a moment in the life of concepts when they lose their immediate intelligibility and can then, like all empty terms, be overburdened with contradictory meanings. For the religious phenomenon, this moment coincides with the point at which anthropology -- for which the ambivalent terms *mana*, *taboo*, and *sacer* are absolutely central -- was born at the end of the last century.¹⁰³

From this debate, Agamben points out that that concepts mark contradiction as seen in the idea of sacredness in the Roma social order. Then he goes on to say that this concept

¹⁰²Agamben, *Language and Death: The Place of Negativity*, trans. Karen E. Pinkus & Michael Hardt, (Minneapolis, MN: University of Minnesota Press, 1991), 105.

¹⁰³*Homo Sacer*, 53.

shall not be seen in the scientific understanding of ‘taboo’. This can be understood when he writes that, “an assumed ambivalence of the generic religious category of the sacred cannot explain the juridico-political phenomenon to which the most ancient meaning of the term *sacer* refers. On the contrary, only an attentive and unprejudiced delimitation of the respective fields of the political and the religious will make it possible to understand the history of their intersection and complex relations. It is important, in any case, that the ordinary juridico-political dimension that presents itself in *homo sacer* not be covered over by a scientific mythologeme that not only explains nothing but is itself in need of explanation.”¹⁰⁴

It is clear that the exclusion of *homo sacer* from religious and legal sphere presents the same paradox that law does in the ‘state of exception’. Both, law and *homo sacer*, reside into a space where it is difficult to distinguish between different categories. Therefore, he considers the double exclusion of *homo sacer* similar to the structure of the ‘state of exception’. Agamben puts it:

If this is true, then *sacratio* takes the form of a double exception, both from the *ius humanum* and from the *ius divinum*, and both from the sphere of the profane and from that of the religious. The topological structure drawn by this double exception is that of a double exclusion and a double capture, which presents more than a mere analogy with the structure of the sovereign exception.¹⁰⁵

The exclusion of *homo sacer* and state of exception considered are analogous in the sense that it is life that is caught and killed in both these situations. In the former, the concept of ‘sacred’ does not hold as the concept of law provides an ambiguity in the ‘state of exception’. It is interesting to see that these two different phenomena share a similarity. He writes:

¹⁰⁴Ibid., 53.

¹⁰⁵ Ibid., 54

the very formulation given by Festus in some way even constitutes a real exception in the technical sense, which the killer, invoking the sacredness of the victim, could have opposed to the prosecution in the case of a trial. If one looks closely, however, one sees that even the *nequefasesteummolari* ("it is not licit to sacrifice him") takes the form of an exception, this time from the *iusdivinum* and from every form of ritual killing.¹⁰⁶

Agamben argues that the violence done to homo sacer can be classified "neither as homicide or sacrifice, neither as the execution of a condemnation to death nor as sacrilege."¹⁰⁷ This type of violence which cannot be classified in any terminology is complex and not easy to grasp as it involves a difficult comparison. It is easy to understand the life that is exposed to violence in spaces where rule of law is suspended. In such spaces individual liberties are usurped as the machinery that could ensure such rights becomes in-operative. One can't establish a proper link for this structural similarity that Agamben establishes. Also, homo sacer is a criminal but what lacks in Agamben is a clear account of what sort of criminal act is it that he has committed. His exclusion from the sacred might be symbolic and we should be more concerned about the real problem of violence rather than the conceptual confusion that certain forms of power and exclusion describe.

Similarly, it is one thing to say that sovereign power will introduce 'state of exception' on grounds of threat to juridical order and another thing to say that someone is excluded from the sacred order. It raises the question that we should define concepts clearly rather than assume that there is a limit to such analysis. The fact that one can point to the ambiguity in the concepts on which power is exercised gives hope that there is a possibility of order that might eliminate violence from the side of the sovereign. But what is more pressing is that the bare life can be a real threat that any order cannot deal with without violence.

¹⁰⁶*Homo Sacer*, 54

¹⁰⁷ *Ibid.*

One such criticism about the formulation of 'limit concept' through an interpretation of *homo sacer*'s characteristics, in disparate Roman texts, comes from Fitzpatrick. He argues that such an exercise is problematic by saying that

seeking out this place of origin, then, we find that usually the study of Roman law, especially of 'early' Roman law, involves a scrupulous effort to reconcile textual fragments, and this exercise is sometimes supplemented by reference to what historical context may be retrievable. Agamben, however, plumps instantly for one text on *homo sacer* and observes in it a seeming contradiction. He then organizes the more expansively engaged modern scholarship on *homo sacer* in terms of its not being able to explain one or the other side of the contradiction. From all of which he summarily concludes that it appears that we are confronted with a limit concept of the Roman social order".¹⁰⁸ Fitzpatrick concludes that the generalization about the life of 'homo sacer' evades the questions concerning the nature of roman social order¹⁰⁹.

Agamben forms a larger perception about western order by saying that such conceptual ambiguities provide the foundation of sovereign power. As he states that "the structural analogy between the sovereign exception and *sacratio* shows its full sense. At the two extreme limits of the order, the sovereign and *homo sacer* present two symmetrical figures that have the same structure and are correlative: the sovereign is the one with respect to whom all men are potentially *hominessacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns."¹¹⁰

Further he considers the realm of sovereign creating a relationship of *homo sacer* with respect to life that makes everyone vulnerable to the violent form of death. He states:

¹⁰⁸ Peter Fitzpatrick, "Bare Sovereignty: *Homo Sacer* and the Insistence of Law" in *Politics, Metaphysics, and Death*, ed. Andrew Norris (Durham and London: Duke University Press, 2005), 51.

¹⁰⁹Ibid., 51.

¹¹⁰, *Homo Sacer*, 56.

This sphere is that of the sovereign decision, which suspends law in the state of exception and thus implicates bare life within it. We must therefore ask ourselves if the structure of sovereignty and the structure of *sacratio* might be connected, and if they might, from this perspective, be shown to illuminate each other. We may even then advance a hypothesis: once brought back to his proper place beyond both penal law and sacrifice, *homo sacer* presents the originary figure of life taken into the sovereign ban and preserves the memory of the originary exclusion through which the political dimension was first constituted. The political sphere of sovereignty was thus constituted through a double exclusion, as an excrescence of the profane in the religious and of the religious in the profane, which takes the form of a zone of indistinction between sacrifice and homicide. The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life -- that is, life that may be killed but not sacrificed -- is the life that has been captured in this sphere.¹¹¹

2.2 Muselmann: Death in the Camps

In the previous section we saw that the life of *homo sacer*, an example of ‘bare life’ in Roman social order, pointing to ambivalence of the sacred and considered as analogous to the structure of ‘state of exception’. In this section I would describe the ‘bare life’ of ‘concentration camp prisoner’ which, historically, resulted from the suspension of Weimar Constitution and was produced in the violent legal spaces called ‘concentration camps’.

In the previous chapter, a through description of ‘state of exception’ is given which among other realities describes the link of ‘state of exception’ with totalitarianism. In fact, it was pointed out that it is not only authoritarian regimes but also democracies that have a secret connection with ‘state of exception’. Agamben looks at the development of totalitarian regimes in 20th century from his juridical political model .It particularly looks

¹¹¹Ibid.,55.

at the Nazism of the 20th century, an ideology in which German constitution was abrogated to allow Hitler to assume dictatorial power and use racism to persecute non-Aryans especially Jews. A common sense understanding of that historical tragedy is that democracy was abused (in the previous chapter I have explained that it was the crisis in democracy propelled by international politics). It was also the period when League of Nations evolved the concept of self-determination. Agamben is not interested in economic and sociological reasons for explaining the Holocaust. He treats it as the symptom of the same logic of sovereign power whose original function is to produce 'bare life'. The space that is created by such 'state of exception' is best depicted in the camp, a space where ethics don't exist. All that remains within the camps is a life that is completely sacred, susceptible to all forms of violence and no accountability, legal, is ensured for the inhuman treatment meted out to the prisoners in these spaces.

In order to understand what Agamben is saying about the camps, it is important to understand the construction of these camps and nature of order inside them. In *HomoSacer*, Agamben claims that "camp" has become the *nomos* of the modern by which he means that it has become the fundamental "paradigm" of our age. The "camps" he is referring to were the "concentration camps" in Germany during the Second World War where Jews were exterminated. In these "camps", death was manufactured and mass killings were authorized. This situation in politics, in the history of mankind, where whole population was authorized to be annihilated, is not unusual and in Agamben's scheme of things does not represent a break with classical politics. He sees it as representing the continuity of inner logic of western politics marked by "state of exception" where life is exposed to death. It is not something that occurred out of nothing but had its origin in the very fundamental operation of western politics. Though what had happened in these camps is regarded as inhuman, for Agamben it is the same inclusion/ exclusion logic of politics that had led to this formation. He does not regard it as something exceptional but a materialization of the hidden basis of politics where life is simply excluded and subjected to inhuman treatment. As he puts it:

The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term "exception" (*excipere*), taken outside, included through its own exclusion.¹¹²

In this sense, ‘camps’ were created due to the ‘state of exception’. In fact, camps can be simply considered as ‘materialization of the state of exception.’¹¹³ It was only after usurping the normal legal order that Hitler created a situation of emergency in Germany and confined life of certain races to exceptional and horrible spaces of camps. This power to withdraw the normal legal order and negate certain forms of life had been basically the problem of sovereignty (as discussed in the first chapter that sovereignty includes life through exclusion). In this way the “camp” as a structure represented the bio-political space and provided a new “paradigm” of juridical-political order in which the “norm” became indistinguishable from the “exception”: a structure in which the “state of exception” was realized normally. The inhabitants of the camps were simply homo sacers whose lives became ‘bare lives’ in an absolute sense. Like homo sacer, the bare life in camps was such that law and life dissolved into each other. As he puts it:

The bare life into which the camp's inhabitants were transformed is not, however, an extra political, natural fact that law must limit itself to confirming or recognizing. It is, rather, a threshold in which law constantly passes over into fact and fact into law, and in which the two planes become indistinguishable.¹¹⁴

In a liberal democracy, rights are considered important that limit the power of the sovereign power. In this camps can be understood as an anti-thesis of the ‘order’ that a liberal democracy projects. Many understand this horrible space as a perversion of

¹¹² Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, (Stanford: Stanford UP, 1998), 109.

¹¹³ Giorgio Agamben, *Means without End: Notes on Politics*, trans. Ceasare Casarino & Vincenzo Binetti (Minneapolis, MN: University of Minnesota Press), 38.

¹¹⁴ Agamben, *Homo Sacer*, 110.

democracy. This is because a certain group of people, on the basis of race, was subjected to such inhuman treatment. But Agamben sees such aberration in history not a deviation from normal but as a rule which is intensely governing our political life. He maintains that this space of death shall not be seen as an isolated phenomenon but as the hidden matrix of the western politics. There is no break in the logic of “exception” from classical period to the rise of “camps”. In fact, with modernity bio-politics began to intensify; new technologies of power emerged to control life.

This characterization of the ‘camps’ as the ‘paradigm’ of Western politics indicates that Agamben sees the ‘camp’ a result of exceptional politics. It marks the general logic of modern politics. He states,

the birth of the camp in our time appears as an event that decisively signals the political space of modernity itself. It is produced at the point at which the political system of the modern nation-state, which was founded on the functional nexus between a determinate localization (land) and a determinate order (the State) and mediated by automatic rules for the inscription of life (birth or the nation), enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks.¹¹⁵

This camp becomes a space in which ‘bare life’ is produced. The life of Muselmann is the one that he picks up to philosophize about the nature of political. In the last pages of *Homo Sacer* he writes that

Primo Levi has described the person who in camp jargon was called "the Muslim," *der Muselmann* -- a being from whom humiliation, horror, and fear had so taken away all consciousness and all personality as to make him absolutely apathetic

¹¹⁵*Homo Sacer*, 112.

(hence the ironical name given to him). He was not only, like his companions, excluded from the political and social context to which he once belonged; he was not only, as Jewish life that does not deserve to live, destined to a future more or less close to death. He no longer belongs to the world of men in any way; he does not even belong to the threatened and precarious world of the camp inhabitants who have forgotten him from the very beginning. Mute and absolutely alone, he had passed into another world without memory and without grief.¹¹⁶

Muselmann represents figure that is neither *zoe* nor *bios*. In *Remnants of Auschwitz*, Agamben, says that this figure represents the true nature of bio-politics. It is done through the notion of testimony by considering him as the true representation of the atrocities of the camp. To do that he cites the experiences of Primo Levi, a survivor of the camps, who has written an account of the life and death in camps and raised the problem of testifying to the worst and unthinkable crimes in the camps.

In the camps, the horrible things that happened can be told only by those who faced those atrocities. In this sense, the witness can be only that prisoner who lived the most extreme conditions of the camp. Testimony, in this sense, needs the double presence of the witness: presence at the time of experience of those atrocities and presence at the time of witnessing. This consideration makes the problem of witnessing complex as the true witness can't physically survive those atrocities and testify that such were the methods of torture and inhuman treatment. It only brings the fact that one who somehow survives can testify to these dark realities in the camps. One such survivor is Primo Levi, who has widely written about the life and death in the camps.¹¹⁷ The problem here is the same that Levi can't become the true witness because his survival became possible only through certain privileges. In a sense, he clearly has not faced the most horrible conditions in the camps. As he himself argues

¹¹⁶Ibid., 119.

¹¹⁷ Levi survived the Nazi camps and has written many accounts of the horrible experiences. The best among them are *Survival In Auschwitz*, *The reawakening*, *The Drowned and the Saved*.

that the normal prisoners who faced such atrocities can't live to tell their tales and "the task of testifying fell to those who had led atypical lives in the camps, who had benefitted from some exceptional privilege or aid without which they would never have survived."¹¹⁸

In his own case, his training as a chemist allowed him to work with civilians and received the extra rations and the better treatment necessary for his survival. In this way, survivor becomes the one who can testify to the original experiences in the camps. This condition puts into suspicion the testimony of Levi because his survival relied on some exceptional privileges. Another difficulty that arises is that of the camp torments the life of prisoner which influences the objectivity of the one who bears witness.¹¹⁹

This difficulty of testimony remains central to Agamben's concern in *Remnants in Auschwitz*, and he describes it as "a perpetual commentary on testimony".¹²⁰ He sees this difficulty of testimony as a difficulty of communicating our intimate experiences as the difficulty of historical knowledge itself. As he states that "the aporia of Auschwitz is, indeed, the very aporia of historical knowledge: a non-coincidence between facts and truth, between verification and comprehension".¹²¹ In such non-coincidence between facts and truth, lies the life of *Muselmann*. In fact, he argues that one of the key figures which bear the true witness to the atrocities in the camps is the figure of *Muselmann*.¹²²

Muselmann was an inhabitant of the camp who had reached "the state of physical inanition and psychological desperation resembling autism and presaging death."¹²³ He was indifferent to the atrocities of the camp. Whatever the origin of the term, the *Muselmann* symbolized a prisoner in whom we saw a complete withdrawal of normal

¹¹⁸ Leland de la Durantaye, *A Critical Introduction*, 250.

¹¹⁹ *Ibid.*

¹²⁰ Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller Roazen (New York : Zone Books, 1999), 13.

¹²¹ *Ibid.*, 12.

¹²² The term *Muselman* has been described as having different interpretations about its origin. It is considered to be derived from the word muslim which means one who submits his will to God. This is the act of homo sacer for Agamben because one is submitting himself to the Sovereign. It also represents that the Sovereign, Allah is omnipresent and regulating the life of the subject. This has similarities to the prisoner in the camp as he was all the time in the gaze of the sovereign. (See *Remnants*, 45).

¹²³ Durantaye, *A Critical Introduction*, 250.

sensibilities as are present in a human being. In this way, he was reduced to the mere zoe who did not desire anything neither did he negate anything.

In this limit figure, Agamben locates the breakdown of any distinctions between human and inhuman. He mentions that “in Auschwitz ethics begins precisely at the point where the *Muselmann*, the 'complete witness,' makes it forever impossible to distinguish between man and non-man.”¹²⁴ Such is the condition of this figure that he argues that it is impossible to locate whether he is a human or a non-human. This figure is a “bare life” and like *homo sacer* lies in a no man’s land where it is impossible to distinguish between human and non-human. His immense capacity to suffer the pain and not react to anything by giving up the hope of survival consists in the infinite potentiality to suffer pain. But this infinite potentiality to suffer immense pain is the realm of inhuman. In this sense *Muselmann* is located at the zone of indistinction between human and inhuman and bears the true witness to the atrocities of the camp.

On this, Catherine Mills argues that the location of *Muselmann* raises “a number of epistemological questions about the veridical status of experience, Agamben largely sets these aside to focus on the ethical implications of the apparent lacuna between an experience and what can be said about it - that is, between fact and language.”¹²⁵ In *Muselmann* there is a lacuna where the distinction between human and inhuman enter into a zone of indistinction and in the words of Mills through this figure,

Agamben’s central concerns remains “whether there is in fact a "humanity of the human" over and above the claim to belong to a biological species that would provide a secure anchorage point for an ethics responsive to the paradoxes presented by the camps and the *Muselmanner*.”¹²⁶

¹²⁴ *Remnants of Auschwitz*, 47

¹²⁵ Catherine Mills, *Philosophy of Agamben*, 92

¹²⁶ *Ibid.*

Agamben's conception of this limit figure bears a new form of ethics. He says that this figure "is the site of an experiment in which morality and humanity themselves are called into question."¹²⁷ This figure, thus, brings an end to the categories of respect and dignity. "The *Muselmann* is a limit figure of a special kind, in which not only categories of such as dignity and respect but even the very idea of an ethical limit loses their meaning."¹²⁸

In this sense, *Muselmann* is a being who transcends distinction between the human and the inhuman. This distinction ceases and one cannot differentiate between them. This status brings into crisis all the moral categories. He describes the status of this prisoner as

The non-human who obstinately appears as human: he is the human that cannot be told apart from the inhuman.¹²⁹

Again, he appears to be in a realm of human in which the ethical notions of responsibility and dignity no longer hold true as described above. This brings us to a zone of human in which the ethical concepts become useless. As he states that "if there is a zone of the human in which these concepts make no sense, then they are not genuine ethical concepts, for no ethics can claim to exclude a part of humanity, no matter how unpleasant or difficult that humanity is to see."¹³⁰

Muselmann, thus, is seen as a figure which marks limit not only to the distinction between human and no-human but to any ethical conceptions. This limitation exists from the potentiality of the being himself. He says:

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid., 69

¹³⁰ Ibid., 64

the human being exists as the nodal point for "currents of the human and inhuman" and human power borders on the inhuman; the human also endures the non-human . . . humans bear within themselves the mark of the inhuman. Their spirit contains at its very center the wound of non-spirit, non-human chaos atrociously consigned to its own being capable of everything.¹³¹

It can be argued that the potentiality of *Muselmann* consists both in being human and inhuman. His humanity is reflected or defined in his capacity to tolerate the inhuman treatment that he suffers in the camp.¹³² *Muselmann* bears all which seems unthinkable to a human being. He gives up any hope to live and is indifferent to pain and pleasure. In ordinary sense, he resembles a living corpse. Importantly, Agamben suggests that he doesn't cease to be human and, in fact, this ability to bear all those atrocities is the kind of endurance which every human is capable and this endurance takes the form of testimony. It is human who can bear the inhuman and in this way remain a witness to the inhuman. Bearing witness, thus, doesn't require losing the status of human but in the same capacity enduring what is inhuman. In fact, "human beings are human insofar as they bear witness to the inhuman."¹³³

This claim that the figure of *Muselmann* bears witness to the inhuman or the human bears witness to the inhuman is rooted in ambiguities. Catherine Mills with the same apprehensions of how a human can bear witness to the inhuman brings out how human and inhuman are then understood by Agamben, and how these terms relate to the question of testimony and language?

The above question is answered in the Heideggerian way by saying that the sovereign power defines by deconstructing the sphere of the in-human. He remarks that in *Open: Man and Animal* that there has been a continuous process of defining human and separating it from what is not human. This process exists within the political existence as well. It is not a simple binary of separating humans from nature or human species but a

¹³¹*Remnants of Auschwitz*, 77.

¹³²*Philosophy of Agamben*, 94.

¹³³*Remnants of Auschwitz*, 121.

complex process of separating even the humans from themselves or finding animality within the human species as well.

In the opening lines of *Homo Sacer*, Agamben relates this aporia in the sovereign through a discussion on Aristotel. He says that the latter created this problem by distinguishing life into *zoe* and *bios* and giving the latter the power to decide on the question of life. He, himself, does not agree to such a kind of politics and says that *Zoe* in itself has no destiny or it has its own potentiality. The human/inhuman distinctions cannot be applied to it. That distinction applies primarily because sovereignty and language decide on this pure, natural life. As Agamben states that

The link between bare life and politics is the same link that the metaphysical definition of man as "the living being who has language" seeks in the relation between *phone* and *logos*: Among living beings, only man has language. The voice is the sign of pain and pleasure, and this is why it belongs to other living beings (since their nature has developed to the point of having the sensations of pain and pleasure and of signifying the two). But language is for manifesting the fitting and the unfitting and the just and the unjust. To have the sensation of the good and the bad and of the just and the unjust is what is proper to men as opposed to other living beings, and the community of these things makes dwelling and the city.¹³⁴

The life in the camps represented by Agamben through the figure of *muselmann* does not present the same problem as *homo sacer* does. There is a qualitative difference between the two; the former was excluded and killed on the basis of race and the latter on the basis of crime. The point about *homo sacer* that it presents the limitation of the sacred does not apply to this figure. In other words, camp does not represent a space in which sacred is ambiguous. In short, the way life was mutilated in case of both these figures

¹³⁴*Homo Sacer*, 8

might be similar but the justification or the foundation on which these were thrown open to violence are not similar.

2.3 DISAPPEARED: Invisibles

In this section, I would introduced the figure of ‘disappeared’ to show how ‘state of seige’(Agamben, as pointed out in the first chapter, says ‘martial laws’ are different but connected with ‘state of exception’) create a situation in which a certain form of life disappears. This exercise would point to the limitations of the Agamben’s idea that only death is produced in the ‘state of exception’. I would rather suggest that the violence goes beyond that and annihilates the nomenclature of death to identify certain lives. This figure points to the limitations of the language as their death is even not present. These are simply unnamable beings and that is why they are called ‘disappeared’.

In order to understand these ‘invisible beings’, it is important to understand the ‘legal structures’ and processes that produce them. Disappeared are people who are lost in their own society. It happens particularly in conflict areas where state and other actors are engaged in an armed conflict. My concern in this section is to understand the disappeared in Kashmir¹³⁵ and show that not only death but invisibility of life is produced by ‘special law’.

¹³⁵Jammu and Kashmir has been constructed as a conflict during the colonial era. The formation of India and Pakistan out of British India had heavy cost for the political future of Jammu and Kashmir. The text of history was manipulated in a way that both India and Pakistan interpreted it in their own themes of national discourse. While India claims that Kashmir is its *Atoot Ang* (integral part) Pakistan claims it is her *Shah Rag* (jugular vein). The result was Indian and Pakistan administered Kashmir.

The context of Kashmir needs to be described in order to understand the armed conflict and the special laws that are used to control people there. It is a disputed territory between India and Pakistan.¹³⁶ The international community also agrees that it is a dispute over territory between the two countries and the people in the state shall be allowed to decide their political future.¹³⁷

It is important to note that most conflicts arise due to the dispute on the nature of political only. If we see conflict areas like Kashmir, all the parties see legal language as problematic and interpret it in their own ways. Besides, nation states don't follow law or language in their interaction regularly. They consider their own interest as being the highest law. This can be understood by explaining the nature of conflict in Kashmir.

¹³⁶The partition was executed on the basis of the two-nation theory. The Muslim provinces were merged to create the dominion of Pakistan and the provinces with majority of Hindu population were joined together to form the dominion of India. But this scheme of partitioning did not apply to the five hundred and sixty five (565) Princely States such as Jammu and Kashmir. The British Government announced their plan that these States were free to decide up on their future. However, the rulers of these Princely States were advised by the Crown to take economic factors, geographical contiguity, the aspirations of their people and similar other factors into consideration while taking the decision vis-à-vis accession. The accession was amicably settled with regard to all the States except the State of Hyderabad, Junagard and Kashmir. Hyderabad and Junagard were non-Muslim majority States with Muslim rulers. Kashmir's status was converse to both of them-The Kashmir State had a Hindu ruler but an overwhelming majority of the Muslim population- While former two states joined the dominion of India, the Maharaja of Jammu and Kashmir did not accede to either India or Pakistan but showed his interest in independence of the state. However, the tribal invasion led Maharaja to sign the instrument of Accession with the Indian Union on October 26, 1947. The deed of accession, however, became controversial, as on one hand, Lord Mountbatten, the then Governor-General of India, put a question mark on the legitimacy of this relation by communicating to the Maharaja that acceptance remains provisional subject to ratification of people of the state. On the other hand, Both Kashmiris and Pakistanis contest this decision of accession as non-binding and unfair as the populace had already rebelled against the ruler before he could decide the fate of the State.

¹³⁷The Kashmir dispute got recognition at an international level when India in 1948 took the matter to the United Nation's Security Council. The UN Security Council through its many resolutions said that Jammu and Kashmir shall decide her political future through the democratic method of a free and impartial Plebiscite.

The states of India and Pakistan were created on the question of identity by the British. Different political units were allowed to choose their political future. All this happened because consent is considered the foundation of modern states. In other words, power cannot be exercised arbitrarily as every individual shall agree to it. It is because the nation states, particularly liberal, are considered to be based on the sovereignty of people both in its formation and regulation. In case of Kashmir, the negotiations over sovereignty failed and the two states claimed it on the basis of their own justifications.

The war over sovereignty or political is fundamentally creates a space for violence which different actors use to either destroy an order or protect it. India in its part of Kashmir tried to control it through politics and, later, when it failed it resorted to legalized violence. In such a scenario, order broke down and military used exceptional powers to regulate and violate lives in manners that have similarities to the concentration camps. The resemblance of Kashmir to camps is not exaggerated because both these spaces use surveillance to regulate the order. These spaces become panopticons where every individual comes under the gaze of the sovereign. That is why anyone and any space can be searched, restricted and denied.

This has been done by the Indian in Kashmir by providing exceptional power to the military. This exceptional power allows military to use different forms of violence. To understand these forms of violence, a detailed discussion on this law is needed. The law is called Armed Forces Special Powers Act (AFSPA), popularly and generally understood as power of the army personnel to shoot on mere grounds of suspicion. It is also notorious for being called as the ‘license’ to kill.¹³⁸This legislation has its roots in British Empire who introduced such legislation during Second World War to suppress the Indian struggle for self-determination.¹³⁹ Indian state continued with this law by renaming it AFSPA to suppress the demands for self-determination within its own territory. The necessity of such a law is

¹³⁸It extends to the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura where people are demanding right to form their own nation-states.

¹³⁹This law has been renamed from Armed Forces Special Powers Ordinance promulgated by the British In 1942 to suppress the nationalist ‘Quit India’ movement. It gives power to the military to kill anyone on mere grounds of suspicion and eliminate the threat to the state.

based on the ground that these territories threaten the “national integrity” and “security of India”, and hence armed forces need to be empowered with such exemplary power which would control any political or armed opposition acting as a threat to the idea of India. The Act says that:

Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area-

(a) if he is of opinion that it is necessary so to do for the maintenance of Public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that Purpose use such force as may be necessary.¹⁴⁰

The above lines, largely, give unrestricted power to the military that includes causing death and the rationale is that there are people who might possess arms and hurt the physical life the state. In order to make this law operational, all that is needed is a

¹⁴⁰http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

simple proclamation by the central government that the particular area or “territory” is disturbed.¹⁴¹

What is interesting is that such exceptional law does not withdraw the normal civil law but it makes Armed forces immune to the authority of the courts. The act gives ‘exceptional powers’ to the armed forces as it says:

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this.¹⁴²

The above rules make it clear that the armed forces cannot be prosecuted in civil courts and at best can use their own martial courts to punish those who did not follow the standard procedure. Though there is a provision in which central govt can grant sanction to prosecute the erring offices. One can say that the normal and exceptional order co-exist in such territories. There is always a conflict between civil rights and excesses committed by the armed forces as such law makes the life of the entire population vulnerable to death and violence. Rapes, disappearances, custody killings, destruction of property and traumatization of whole population through crackdowns, frisking, night search at homes, curfews and many other humiliating techniques, are brutalities which go unpunished under this law. Existence in such places is not different from the life that prevailed in the Nazi camps. This can be properly justified from the fact that hardly anyone is punished for the rapes or any other form of violence.

This law makes any notion of rights subservient to national integrity, security and public order. Like *iustitium* the AFSPA involves the suspension of juridical order and

¹⁴¹This act needs a simple declaration that the area is disturbed and the civilian government cannot function in these areas. This can be simply done by the executive of the area or the state and then the armed forces can come and use the exceptional powers granted under this act to eliminate the resistance and let the civilian government function.

¹⁴²http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

allow the state to do anything to protect its boundaries. Nation is imagined to be a sacred body. Unlike *homo sacer*, this sacred body is invincible and immortal. It can't be killed. If someone tries to violate (even in thought) this sacred body-politic, his life is exposed to violence by the state. Sedition is the term that is used to describe the opposition to this inviolable politico-religious body. The conception of such a sacred body is sought to be provided by the constitution itself.

Why is it necessary to give such 'exceptional powers' to the armed forces? It is primarily to end the revolutionary violence, understood as insurgency in the terminology of the state. This form of state violence is justified on the ground that there is a real threat to the legal existence of the state. In other words, the legal is considered to be arrested by the Indian state because it has refused people their historical right.

This exceptional law has produced deaths and bodies have been put to bio-political techniques to make them docile. Popularly, such deaths or violence is understood as gross human rights violations. Amnesty International's reports in July 2015, released a report, "*Denied: Failures in Accountability for Human Rights Violations by Security Force Personnel in Jammu and Kashmir.*" Like the violations of human rights, the report was an elaborate one, compiled after conducting interviews with fifty eight members of the victim families, consulting with the civil society groups, lawyers, government officials, police and court records, and the Right to Information applications. After a detailed examination of the legal structure that give special powers to Indian security forces and the nature of human rights violations, the report sees a connection between the impunity granted to Indian soldiers as responsible for the abuse of power.

I have mentioned the report of AI to bring into debate the question of impunity in law. The law can allow impunity and at the same time deny it. That is why it is important to understand that Agamben is wrong that anarchy or violence cannot be controlled by law. Or to explain it more clearly, the idea of 'exception' as well as normalcy can, both, be determined by law. It is law only that gives powers or sets rules that can be used or abused

to produce death. For example, AI report says 96 percent of complaints brought against Indian army have been dismissed as false intended to tarnish the image of Indian Army and the 4 percent complaints addressed in the trials have been done in a close-door manner by not allowing public to know. The impunity has been primarily due to the Armed Forces Special Powers Act which bars civilian courts from prosecuting a soldier.

Impunity granted by this law creates a form of life that cannot be brought under the law even if civilian courts are allowed to decide on the nature of these lives. I am talking about disappearances. The term denotes the condition in which someone is absent from the space of which he is a part. It is not an ordinary absence in the sense that locus of the being has changed. Rather, these beings disappear from the nomenclature of both life and death. Therefore, it is not a simple death because in this case the death does not come even to rescue the identity of these people.

Therefore, one can argue that 'martial law' can create a situation in which people can disappear. This makes it difficult even for the ordinary system of rules to make sense of these beings. They become invisible as well as their abductors who enjoy impunity under this law cannot be known. It is a double paradox in the sense not only the dead or disappeared but also the one who kills them or disappears them cannot be known through language. All that can be said about the disappeared that are unknown beings whose identity cannot be known. This also throws a challenge to deconstruct the structure of 'impunity'.

In conclusion, after analysing the figure of homo sacer, muselmann and disappeared it can be said that these figures point out different forms of lives facing violence and death not only due to the reasons of sovereign power but also due to other reasons. For example, it is not know why homo sacer was excluded from the society. The only thing that is said that he was excluded on account of crime. Even if that is accepted then one need to also argue that crime or violence can be a real category as humans

possess this ability or may be because life is such that it can be made vulnerable to the violations even if order created is perfect.

Agamben also ignores that violence can not be political only. It could come from social only. So the binary of norm and exception and the zone of indistinction exist in the social as well. Therefore, one needs to also say why social is important to arrive at some conception of an order.

Chapter Three

Rupture or Rule: Camp as a Paradigm

Agamben understands western politics through the paradox reflected in the condition of 'sovereign power' and 'law' in the 'state of exception'. In the previous two chapters, I have interrogated the notion of 'state of exception' and the 'bare life' produced by this so called original function of sovereign power. Many inter-related concepts came to the fore and it seems Agamben tries to fit in every nuance in this fundamental premise and, thereby, says that the entire western politics is a 'politics of ban'. It has implications for understanding historical progression as it sets a new way of thinking about history. It understands history through the prism of 'power' especially the power that creates 'bare life' and suspends what is, normally, known as 'order' at that point of time.

In this chapter, I would interrogate the methodological concerns of Agamben. His approach thinks from margins. For example, the notion of 'state of exception' is an anomaly. It has been hardly a rule though it has been used occasionally. Similarly, the 'bare life' of homo sacer, musselmann or disappeared are marginal figures and a result of crisis in the political only (as shown in the previous chapters). How does these 'marginal figures and concepts' become representative of something larger, history?

3.1 Representative Power of the Camp

Agamben thinks from 'margins' or 'ruptures' and describes them as being representative of 'politics' that works on the logic of 'order' and 'exception'. It is interesting because 'politics' traditionally is understood as something that will provide order, justice and freedom. He denies that and says that it is inherent in the logic of 'juridical order' that 'exception' will be exercised. In the previous chapter, a detailed explanation of 'bare lives' was provided where it emerged that sovereignty operates like a machine and excludes and includes life on the logic of human and inhuman. In these figures of condemnation and death, ethics breaks down. These figures are marginal as the larger reality is 'order' where sovereign goes beyond the 'powers' given to him by the 'juridical order' to protect it.

Agamben says that these are representative of larger paradox of politics and invokes the method of 'paradigm' to develop such understanding. In other words, 'bare life' is considered to be representative of the relationship of the sovereign power with life. At the first place such a claim may seem radical and provocative. For example, the rise of 'camp politics', during world war second, is seen as inhuman or something exceptional to norms. Why does then Agamben think of these figures, spaces and paradoxes as having a representative power?

Like many other philosophers— Hegel, Marx and Heidegger- he philosophizes about the entire history. His approach is different in the sense that he enters this debate through an analysis of the sovereign power and the bare life; it produces in the state of exception. In this regard, Dominick La Capra writes that in Agamben's view,

thought is to engage in unyielding, radical critique of the present in relation to the past. Hence, the key role for aporia, paradox, and hyperbole as 'in-your-face' strategies of provocation."¹⁴³

La Capra says that these devices, mentioned in the quote, are used by Agamben to provoke the reader.¹⁴⁴ This means that he uses literary techniques to reflect upon the nature of 'political' and it is not a comprehensive or logical analysis of the procedure rather ruptures are used to generalize about the nature of political.

Agamben does exaggerate by using literary symbols but that is not the motivation of his analysis. It is a proper attempt to understand history through an analysis of 'political order'. Therefore, La Capra's apprehension about Agamben is not true as he does not take into consideration his methodological concern, in the characterization of contemporary politics through the space of 'camp'. He uses different figures to analyze the development of western politics; the figure of *homo sacer*, "state of exception", "camp", "refugee" and so on. Catherine Mills in her book, *The Philosophy of Agamben*, stresses that characterization of "camp" by Agamben shall be seen in the light of both topography of 'state of exception' and as a 'topological figure'. The topography of "camp" represents the topography of "exception" which is characterized by the topography of inside and outside where something excluded is actually included. But, Agamben argues that the "camp" structure during the period of fascism does not represent a simple space that confines life by excluding it. Rather it is a space that controls life by disciplining it and killing it in a well thought out ways. It has similarities with technologies of power that Foucault discerns in case of prisons or hospitals to show the nature of the disciplinary power of the state or the control over life and death of the people by the state¹⁴⁵

¹⁴³ Dominick La Capra, "Approaching Limit Events: Siting Agamben." *Giorgio Agamben: Sovereignty and Life*. ed. Matthew Calarco and Steven DeCaroli (Stanford, CA: Stanford University Press, 2007), 161.

¹⁴⁴ Durantaye, *Giorgio Agamben : A Critical Introduction* (California: Stanford University Press Stanford, 2009), 214.

¹⁴⁵ Catherine Mills, *The Philosophy of Agamben* (Montreal & Kingston, Ithaca :McGill-Queen's University Press, 2008), 88-89.

Catherine Mills writes that “the camp is a topological figure which rather than describing and delimiting a particular locale, reveals an abstract logic that is by no means limited to the geographical space of internment.”¹⁴⁶ The abstract logic is in the nature of the juridical and sovereign power to control and kill life in certain spaces so that the ‘political’ rules. Agamben writes;

The camp as dislocating localization is the hidden matrix of the politics in which we are still living, and it is this structure of the camp that we must learn to recognize in all its metamorphoses into the zones *d’attentes* of our airports and certain outskirts of our cities. The camp is the fourth, inseparable element that has now added itself to -- and so broken -- the old trinity composed of the state, the nation (birth), and land.¹⁴⁷

Thus, it should be clear that “camp” is the space whose structure is reflected in other places and even governs the contemporary situation. We have seen spaces in the present times as confined around the paradigm of security. It could be an airport or a sports space or any space can become a space like a camp where surveillance or control becomes the primary object of the order. In a way, the prism of the political takes the form of security. In simple words, camp becomes representative of the ‘politics’ that has been governing. It can be understood properly if we explain his method of ‘paradigm’.

The use of certain historical realities or figures to depict the problems in the sovereign order constitutes his method of paradigm. He mentions a number of figures like refugee, coma patient and *homo sacer*, (as discussed in chapter second) as paradigmatic of contemporary politics. The figure of *homo sacer*, a life that can be killed with impunity finds resonance in the camps, reemerges in different forms. All these figures are produced by the sovereign power by deciding on the value of life. In other words, Agamben employs images as paradigmatic of the same idea-“bare life”- this historical distance raises a methodological question that has frequently troubled Agamben's readers. As already seen

¹⁴⁶*The Philosophy of Agamben*, 89.

¹⁴⁷*Homo Sacer*, 113.

by La Capra as provocative and rhetorical, his work is also seen as unhistorical in the sense that he oversteps the limitations of a genuine historical analysis. Whether *homo sacer* or “camp”, both belong to a particular historical situation, then, how these can be used to diagnose contemporary politics. This apprehension can be formulated in the sense that how does Agamben use such concrete historical facts as providing the fundamental structure of politics? Again, the answer to such criticism lies in his understanding and use of historical facts and he clearly mentions that he uses paradigm as a method. As he puts in these lines in the use of his paradigm:

In my work I have had occasion to analyze figures such as the *homo sacer*, the *Muselmann*, the state of exception, and the concentration camp that are, of course, discrete historical phenomena, but that I have also treated as paradigms whose function was to constitute and render intelligible a vast historico-problematic context.¹⁴⁸

So, he sees the present historical context as problematic through these different historical figures by treating them as a “paradigm”. Though in *Homo Sacer*, he doesn’t provide a definition of this method but he says that his use of this method of ‘paradigm’ is a continuation of Foucault’s use of genealogical and paradigmatic method that he employed. In order to understand his method, we need to discuss then, the project of Foucault.

Foucault considered “paradigm” as a method which functions like an example. In other words, anything that can be used as “paradigm” means that it has an exemplary value. Among the “paradigms”, Foucault's most important “paradigm”, which is also the one to which Agamben has most explicitly compared his own, is the “panopticon” presented in *Discipline and Punish*. “Panopticon” is used as an emblematic figure for a new age of disciplinary power and governmental control. Foucault derives this idea from

¹⁴⁸ Giorgio Agamben, *Signatura Rerum: Sul Metoda*, trans. By Durayente in *A Cirital Introduction* (Turin: Bollati Boringhieri, 2008), 224.

Jeremy Bentham, who actually presented “panopticon” as the design of a prison. It was first proposed in 1787, for a circular prison. This prison was meant to be structurally such that every prisoner could be watched. In a way, it was designed in such a way that the activities of the prisoner could be watched and from that one could understand the nature of his being. Bentham writes about the intention of this prison that,

In a Panopticon prison, there ought not anywhere be a single foot square, on which man or boy shall be able to plant himself . . . under any assurance of not being observed.¹⁴⁹

Bentham’s prison plan was accepted by the authorities in London but later the prison turned out not be based on his model. Thus, in Bentham’s unsuccessful model, we see a clear motivation of building a prison for disciplinary reasons, allowing state to have knowledge of the prisoner.

Foucault sees this simple unrealistic attempt in history as symbolic of something greater and elevates it to the rank of "paradigm". The influence of Bentham’s design was not the traditional task of the historian to study what interested Foucault; he was not concerned with the “panopticon” as a design that had exercised a discernable historical influence, or even as a representative instance in its genre. For him, it stood in a different relation to its age-and to ours.¹⁵⁰He argues that “panopticon” exemplifies far more than what Bentham could have ever dreamed of it. As he puts it:

The “panopticon” must not be understood as a dream building: it is the diagram of a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance or friction, must be represented as a pure architectural and optic system : it is in fact a figure of political technology that may and must be detached

¹⁴⁹ Jeremy Bentham, "Panopticon; or, the Inspection House: Postscript: Part 1." *The Works of Jeremy Bentham*, Vol. 4 (London: Simpkin Marshall, 1843), 86.

¹⁵⁰ Durantaye, *A Critical Introduction to Agamben*, p.215-216.

from any specific use [such that it provides the] general principle of a new "political anatomy" whose object and end are not the relations of sovereignty -but the relations of discipline.¹⁵¹

Now, here is an interesting way, in which Foucault deals with a certain historical development that had been only conceptualized. For Foucault, this "panopticon" shall not be seen as an ordinary historical development meaning that it is not an ordinary event in history. Rather, it is considered more potent and important than an ordinary event or fact. It is exemplary because it lays down the structural realities that an age uses to function or regulate life.

The spectacular display of state power whose emblem was to be found in gory acts of prolonged public torture, such as those inflicted on the French regicide *Damiens*, was ceding to a more subtle form of control. In other words, the control of life was going to be structurally different after this conception. Now, the state did not need to subjugate people rather create spaces in which they can be automatically observed and regulated. One can say that 'surveillance' became more modern and pragmatic in this age where techniques for control became more sophisticated.

The use of "paradigm", for Foucault, shall be, thus, seen as uncovering and revealing the truth about deeper structural realities. The "panopticon" showed that a new form of power is required for subjugation by showing that a shift in discipline is required and torture should be replaced by subtle ways of surveillance in order to control the population. This is the way in which "panopticon" serves as a paradigm and allows Foucault to view history in a non-traditional way. It represents a new understanding of history because unlike a traditional historian, it sees ruptures as having representative power and frees the understanding of history from the dialectical and causal understanding.

As stated above 'paradigm' is an important way to look at the way processes and structures control life. Foucault understood it that way and inferred the modalities of power

¹⁵¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London: Penguin, 1979), 205.

that followed as per this reality. In a way, societies become prone to the gaze of the sovereign and slowly the entire life world was transformed into a panopticon.¹⁵²

Now coming to Agamben's claim that "camp" has become "the bio-political "paradigm" of model of modern age"; it envisages the similar use of a concrete historical situation as a "paradigm" through which contemporary situation can be analyzed. It can be said that the use of "panopticon" as a paradigmatic method resonates in figure of the "concentration camp" for Agamben. On the other side, camp is thought to be representative of the power relations in the contemporary period. Some see the development of "camps" as isolated spaces and Agamben's generalization of this space has been criticized. One such criticism comes from Antonio Negri who sees the "life and death" in the camps simply life as a result of civil war with no paradigmatic or exemplary value. As he writes that "

Life and death in the camps, represents nothing more than life and death in the camps-an episode of the civil war of the twentieth century, a horrific spectacle of the destiny of capitalism and the ideological unmasking of its will.¹⁵³

But this objection of Negri is seen as unequivocal by Durantaye. He argues that, on one hand, Negri denies the exemplary value of "death and life" in camps and, on the other, he, himself, makes use of this situation with regard to the analysis of capitalism. As he states that "this clear and categorical criticism is undermined by the fact that in the very next clause Negri himself uses life and death in the camps to do just what he charged Agamben with: representing something else-"the destiny of capitalism."¹⁵⁴

Also, Agamben's provides a much clear idea of his method in his *Coming Community* where he links it to example. "Paradigm" is understood in the light of the exemplary value of an example. As he states that "on the one hand, every example is treated in effect as a real particular case; but on the other, it remains understood that it

¹⁵²A *Critical Introduction*, 217.

¹⁵³ Antonio Negri and Michael Hardt, *Empire* (Cambridge, MA: Harvard University Press, 2001), 194.

¹⁵⁴ Durantaye, *A Critical Introduction*, 218.

cannot serve in its particularity.”¹⁵⁵ In this sense, example remains a particular case but it can fit in other places as well. Likewise, concentration camps can be representative of other situations. While remaining a particular historical development, these can reveal the deeper logic of politics in other spaces. In other words, through the use of the method of paradigm, a particular hisotrico-political context can be understood.

Further, Agamben understands “paradigm” as structurally similar to analogy. He is careful to stress that the paradigm is not a "metaphor," but it follows the logic of analogy. In this respect the paradigm resembles more closely the "semantic structure" of allegory than that of metaphor. He remarks that to make of something an example is a complex act, "one that supposes that the term that is to function as paradigm is deactivated from its normal usage not so as to be displaced into another area The paradigm is a singular case that is isolated from the context to which it belongs only to the extent that by eliciting its singularity it renders a new group of phenomena intelligible whose homogeneity the paradigm itself constitutes."¹⁵⁶

Given this nature of “paradigm” as similar to example which follows the logic of analogy, it should be clear that his method of “paradigm” visualizes history through analogies. In this sense, when he says in *Homo Sacer* that “bare life” is the protagonist of his book, the genealogy of this figure is traced through different historical situations. First, it is said that the production of “bare life” is the original activity of sovereign and, then, such “bare life” is found in different periods and continuity is drawn. In a way, it is only through recourse to past that the present is understood through this method called paradigm. As he remarks: “I believe that history-or better, what Foucault called the archaeology of one's own culture-is the only way to reach the present. The historical object

¹⁵⁵ Agamben, *The Coming Community*, trans. Michael Hard (Minneapolis, MN: University of Minnesota Press,1993), 10.

¹⁵⁶ Durantaye, *A Critical Introduction*, 224.

is never only in the past and never only in the present. It lies in a constellation formed by both: it is there where past and present meet.”¹⁵⁷

Moreover, his understanding of historical object is, further, influenced by Walter Benjamin’s “dialectical image”. He dedicates significant attention to Benjamin's idea of a dialectical image, characterizing it at one point as "the fulcrum of theory of historical consciousness".¹⁵⁸ For Benjamin, an image is dialectical in the sense that the past and the present enter in a dialogue or dialectical relation. It is a kind of exchange in which two elements enter into a dynamic contact. In his *Arcades Project*, he writes,

It is not that what is past casts its light on what is present, or what is present its light on what is past; rather, an image is that wherein what has been comes together in a flash with the now to form a constellation.¹⁵⁹

While emphasizing that only dialectical images are historical, Benjamin mentions through it the movement in history. He was interested in developing a new theory of historical consciousness and vehemently rejects an ideology of progress and the model of time that corresponds to it. He understood history from the point of presence and charged it with an energy capable of “blowing elements out of the historical continuum” in which traditional historiography had imprisoned them.”¹⁶⁰ In the *Arcades Project*, he writes that

a moment in time can be fully understood as a dialectical image only by means of another concept. This concept is the 'now of knowability'.¹⁶¹

¹⁵⁷Ibid., 223.

¹⁵⁸Ibid, 244.

¹⁵⁹ Walter Benjamin, *The Arcades Project. 4 vols*, ed. Rold Tiedemann, Trans. Howard Eiland and Kevin McLaughlin (Cambridge, MA: Harvard University Press, 1999), 463.

¹⁶⁰Ibid, 245.

¹⁶¹ Ibid.

At this point, it should be clear that there is a similarity between Agamben's "paradigm" and Benjamin's "dialectical images". Both "paradigm" and "dialectical images" view historical situation in a dynamic way: a marriage between past and present. "Like Agamben's paradigms, Benjamin's dialectical images represent a dynamic constellation of past and present where a moment in the past is not a simple element in a historical archive but a potentially dynamic means of understanding-and changing-the present situation, one that acquires its potentiality only at specific, and fortuitous, points."¹⁶² In this sense Agamben's "paradigm" has a double character: on one side he works as a historian and on the second stage, he removes such texts and figures from their position in a continuum of historical experience and uses them to the dynamic end of elucidating the present. Such images are, for Benjamin and Agamben, "crystallizations" of historical experience-and not just any historical experience, but experience that at a given moment acquires unprecedented relevance.¹⁶³

In sum, Agamben's "paradigm", drawing from Foucault and Benjamin, provides a new and radical conception of history. In the same way, his claim that the present state of politics is "camp like" shall be understood in the same way. We can find the same figure of *homo sacer* and *Muselmann* in the contemporary period. In a more general way, western politics is bio-politics.

To substantiate this methodological concern, Agamben provides concrete examples. He argues that his original thesis about sovereignty (state of exception) holds true in the present times. In Agamben's terminology, the same juridical power continues to produce "bare life" as the "state of exception" has increasingly become the rule. In reality, it has been so. He provides an example of modern "state of exception" introduced by the United States. *In State of Exception*, such an example is presented whose basis became the "war on terror". It is called The US patriot Act passed in October; 2001 by the American Senate that empowers the attorney general to take into custody any alien suspected of terrorist activities. However, this Act ensured some safeguards to detained by ensuring their release if any criminal offense was not proved. What followed this act was a

¹⁶² Durantaye, *A Critical Introduction*, 246.

¹⁶³ Ibid.

“military order” issued by the American President on 13 November, 2001 which empowered the “indefinite detention” and trial by “military commissions” of people (not American citizens) suspected of terrorist activities.¹⁶⁴ About this order of Bush (former President of America), Agamben says that it “radically erased any legal status of the individual, thus producing an unnamable and unclassifiable being.”¹⁶⁵ Those who were captured under this order are simply *homo sacers*. Mostly people from Afghanistan were captured under this order; they were considered to be the members of Taliban. These prisoners did not enjoy the status of prisoners of war¹⁶⁶ as defined by the Geneva Convention. They did not even have the status of persons charged with crime under American laws.¹⁶⁷ He says that these represented

neither prisoners nor persons accused but simply “detainees”, they are the object of defacto rule, of a detention that is indefinite not only in its temporal sense but in its very nature as well, since it is entire removed from the law and juridical oversight.¹⁶⁸

Agamben argues that these prisoners, who are kept in Guantanamo Bay, can be compared to the legal status of Jews, who lost their legal identity and retained only the identity of being Jews.¹⁶⁹ This comparison places two historically distant structures as resembling the same form of politics. Both the “camp” and “Guantanamo Bay prison” are a product of sovereign’s decision of withdrawal of juridical order. In both these spaces, life is treated as “bare life”. Outside any notion of rights and legal norms, these places represent the spaces of “death”. In this sense, the figure of *Muselmann* and a Taliban in Guantanamo Bay are similar lives; those lives which belong to violence only.

Another figure that is representative of “bare life” in the present nation-state scenario is the figure of “refugee”. This figure does not fit in the notion of rights which are

¹⁶⁴Agamben, *State of Exception*, 3.

¹⁶⁵Ibid.

¹⁶⁶Prisoners of War. They also have certain rights under Geneva Convention.

¹⁶⁷*State of Exception*, 3.

¹⁶⁸Ibid., 3-4.

¹⁶⁹Ibid., 4.

linked to the birth-nation criteria. In a nation state, nature life is translated as citizen and guaranteed certain rights. When due to certain situations---war, famine, poverty----some people migrate from one geographical space to another, their life remains that of “bare life”. As Agamben states:

If refugees (whose number has continued to grow in our century, to the point of including a significant part of humanity today) represent such a disquieting element in the order of the modern nation-state, this is above all because by breaking the continuity between man and citizen, nativity and nationality, they put the originary fiction of modern sovereignty in crisis. Bringing to light the difference between birth and nation, the refugee causes the secret presupposition of the political domain -- bare life -- to appear for an instant within that domain. In this sense, the refugee is truly "the man of rights."¹⁷⁰

Not only refugee, Agamben while drawing from Hannah Arendt’s claim that nation state and rights are closely linked, argues that this conception of a political formed on the fact of biological life materialized in the “camps”. In other words, “refugee” is the result of the same phenomenon as the “camps” were. He puts it: “

Only if we understand this essential historical function of the doctrine of rights can we grasp the development and metamorphosis of declarations of rights in our century. When the hidden difference [*scarto*] between birth and nation entered into a lasting crisis following the devastation of Europe's geopolitical order after the First World War, what appeared was Nazism and fascism, that is, two properly biopolitical movements that made of natural life the exemplary place of the sovereign decision.”¹⁷¹

¹⁷⁰*Homo Sacer*, 84.

¹⁷¹*Ibid.*, 82.

Though, there are efforts of humanitarianism to solve the problem of refugees, Agamben disdains them by saying that humanitarianism ends up in treating life as “bare life”. Citing an example of Rwanda where humanitarian organizations tried to collect funds by showing the photograph of children in destitution, he concludes that these end up in supporting state power. He writes,

The "imploring eyes" of the Rwandan child, whose photograph is shown to obtain money but who "is now becoming more and more difficult to find alive," may well be the most telling contemporary cipher of the bare life that humanitarian organizations, in perfect symmetry with state power, need. A humanitarianism separated from politics cannot fail to reproduce the isolation of sacred life at the basis of sovereignty, and the camp -- which is to say, the pure space of exception -- is the biopolitical paradigm that it cannot master.¹⁷²

Apart from this figure of “refugee”, Agamben also cites the example of complicity between scientists and politics during Nazism. In the camps, prisoners were selected for medical experimentation. Called as VPs (*Versuchspersonen*, human guinea pigs), they were subjected to drugs and other medical experimentation which involved risk to their natural life. He cites the example of a Jewish VP, who was put to pressure at 12000 degree altitude. The condition of this subject is described as:

After four minutes, the VP began to sweat and to shake her head. After five minutes cramps were produced; between six and ten minutes breathing accelerated and the VP lost consciousness; between ten and thirty minutes breathing slowed down to three breaths a minute, and then ceased altogether. At the same time skin color became strongly cyanotic and foam appeared around the lips.¹⁷³

¹⁷²Ibid., 85.

¹⁷³*Homo Sacer*, 99.

Such examples are numerous; it shows that biological science and sovereignty intersect. Such experiments were carried because the “camps” represented a space where life was without any rights. Such a decision was political; eugenic policies also were decided by Nazi state. But these developments reveal that the prisoners were already sentenced to death by the Nazi state. One important thing that emerges in bio-politics “is that in the bio political horizon that characterizes modernity, the physician and the scientist move in the no-man's-land into which at one point the sovereign alone could penetrate.”¹⁷⁴ This form of bio-politics continues in the present times. In American, prisoners are subjected to the same experimentation. Also, the question of euthanasia and coma are the issues considered to represent the same phenomenon: physician decides on the nature of death; the question of life and death is now in the hands of a physician. The change in this form of decision shows that science assumes the form of sovereignty; it is the scientist who has assumed the power to decide on the question of life and death (in case of euthanasia, for example).

Now given these figures of “bare life”, it can be said that bio-politics is the political reality of the present times. It has increasingly become the rule of the contemporary politics. The scope of this politics has increased. Rule of law and democracy operates on this hidden machine of death. Modern democracy is believed to have failed to reconcile *zoe* and *bios*. It continues to produce “bare life” in the form of a “refugee”, “coma patient”, Guantanamo Bay Prisoner and others. This failure of modern democracy, according to Agamben leads to an aporia: “it wants to put the happiness and freedom of men into play in the very place –“bare life”---that marked their subjection.”¹⁷⁵ So the present reality is also contradictory. But Agamben has a remedy. Like Marx, he thinks that there are contradictions in the present system that provides hope for the future... For Agamben, the seeds of revolution lie in the same place from where the problem arises: sovereign produces “bare life” by deciding on life. In order to free politics from this “creature of death”, the fundamental basis of politics shall be revised. I shall discuss such an attempt in the next chapter.

¹⁷⁴Ibid., 102.

¹⁷⁵*Homo Sacer*, 9.

3.2 BIO-POWER

In order to describe these modern figures of “bare life”, it shall be mentioned that this form of control over life is used to supplement the analysis of bio-power developed by Foucault. For Foucault, natural life began to be controlled by the state in the modern period. Agamben while accepting this, at the same time, states that “the production of a bio-political body is the original activity of sovereign power. In this sense, bio-politics is at least as old as the sovereign exception.”¹⁷⁶ Further, he claims that “bare life” will uncover the zone of ambiguity between sovereignty and life and explain the bio-political character of politics which is reflected in modern state’s techniques to control biological life. He states in the *Homo Sacer* that this analysis shall be seen as a ‘correction’ or ‘completion’ of Foucault’s account of biopower.¹⁷⁷

Foucault in his, *History of Sexuality Volume I*, argues that bio-power is a modern phenomenon. Bio-power can be taken as development in politics where the biological or natural life of people became the object of state-power. Such analysis rests on the way Greeks thought about politics. It was Aristotle who made a distinction between natural and political life. Both these forms-of-life belonged to different spheres of regulation. Natural life belonged to home whereas political life belonged to state. Foucault’s idea of the development of modern state’s power to control body rests on such distinction. As Agamben remarks that “Michel Foucault refers to this very definition when, at the end of the first volume of *The History of Sexuality*, he summarizes the process by which, at the threshold of the modern era, natural life begins to be included in the mechanisms and calculations of state power, and politics turns into bio-politics.”¹⁷⁸ This development in politics marked an end to the distinction made by Aristotle as state began to control the sphere of life which belonged to home.

¹⁷⁶*Homo Sacer*, 7.

¹⁷⁷*Ibid.*, 8.

¹⁷⁸*Ibid.*, 5.

This control of life is declared by Foucault when he writes that

For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question.¹⁷⁹

These lines mark a beginning of the process which tries to regulate life in new ways and processes. Call it home, its head was father. Home regulated the natural or biological needs of existence. But, what was the relation of sovereign power with those of its subjects? Had he no power over “the life and death of subjects”?

It is Foucault who provides an analysis of development of bio-power in changing notion of “right of life and death”. For him, Aristotle’s living man lost his home with the rise of bio-power. He first introduced this concept of bio-power in a lecture in 1976, then again in a few pages at the end of the *The History of Sexuality, Volume I*. Foucault refers to bio-power the manner in which during the eighteenth and nineteenth centuries, state power came to be exercised over human life, over “man in so far he is a living being”.¹⁸⁰ The development of mechanisms of state is contrasted with the mechanisms of discipline in *Discipline and Punish*. In this book, he provides a detailed analysis of punishment used to correct individual. The focus of the punishment is also the body. As he states in his book, the aim of the study is to

¹⁷⁹Michel Foucault, *The History of Sexuality, Volume I: An Introduction*, trans. Robert Hurley (New York: Vintage, 1990), 143.

¹⁸⁰ Michel Foucault, “Society must be *Defended*”: *Lectures at the College de France*, edited by Mauro Bertani and Allessandro Fontana, trans. D. Macey (London: Allen Lane, 2003), 254.

try to study the metamorphosis of punitive methods on the basis of the political technology of the body, in which might be read as a common history of power relations and object relations.¹⁸¹

In comparing these disciplinary techniques with bio-power, the major difference is that while disciplinary techniques are exercised on the individuals, bio-power is exercised on whole population. Paul Patton¹⁸² argues that the bio-power of Foucault has three distinguished features. While as Foucault argues that the punishment shall be regarded as a complex social function, such techniques were focused on individual body whereas bio-power led to the development of state policies in relation to birth control and rate of birth. Also, the development of policies in relation to morbidity insofar as this was effected by endemic diseases within a given population. This led to the concern of public hygiene, the growth of medicine, insurance policies, and various forms of control over environment. Such developments represent the first feature of bio-power and can be summed as, “the birth rate, mortality rate, various biological disabilities, and the effects of environment.”¹⁸³

The second distinguished feature of bio-power can be located at the scale at which it operated. Unlike, punishment it operates on the entire population as it considers the entire population as the subject of the power and more importantly as the problem of power.¹⁸⁴

Thirdly, bio-power intervenes at the level of population and develops statistics and techniques that deal with population. In this regard Foucault mentions that “the mortality rate has to be modified or lowered; life expectancy has to be increased; the birth rate has to be stimulated. And most important of all regulatory mechanisms must be established to establish equilibrium, maintain an average. . . . In a word, security mechanisms have to be

¹⁸¹Michel Foucault, *The Foucault Reader* ed. Paul Rabinow (New York: Pantheon Books, 1984), 171.

¹⁸² Paul Patton, “Agamben and Foucault on Bio-power and Bio-politics”, *Sovereignty and Life*, edited by Mathew Calarco and Steven DeCaroli (California: Stanford University Press Stanford, 2007), 208-209.

¹⁸³*Society Must Be Defended*, 245.

¹⁸⁴ *Ibid.*

installed around a random element inherent in a population of living beings so as to optimize a state of life”.¹⁸⁵

In such developments of bio-power, “the decisive event of modernity” occurred: natural life began to be regulated by the state. In other words, state began to exercise power over the life of its population. In Aristotle’s world this type of power was not exercised by the state. It was home which took care of natural life. If “father” was the sovereign of the family and he exercised such power, now that sovereign changed and state began to control these activities. In this sense, biological life became the object of state and Agamben calls this analysis of Foucault as the entry of “*zoe* in the sphere of politics”. Unlike, Foucault he argues that this process was already fulfilled by the sovereign power in its decision on the life of *homo sacer*. Though “bare life” is not same as *zoe* or natural life; it is a life who has neither *zoe* nor *bios* as this life may be killed but not sacrificed. The figure of this “bare life” emerges within the categories of *zoe* and *bios*. The life of *homo sacer* is threatened by death and at the same time it does not qualify or deserve to be a part of political order.

Patton argues that Agamben relies on equivocation with regard to use of the term “bare life”. As per him, such equivocation emerges at two places while he uses the term. The first one emerges in the analysis of sovereignty where it is identified with the “sacred life” and the status of *homo sacer* and secondly, it emerges in the context of his critical remarks about modern democratic politics it is identified with natural life of *Zoë*.¹⁸⁶ Given this equivocation, it does not take away the concern of Agamben’s project. For him, Foucault’s analysis of bio-power shall be supplemented by the fact that “bare life is politicized” already. It is not only in the modern period that politics began to control natural life but “bare life” represents the inner logic of western politics. In this sense, he states that the bio-political models of power shall be connected with the juridical-political analysis. For, it is sovereignty that produces “bare life” in its juridical suspension. This is regarded as one of the major concern of the study in *Homo Sacer*. As he states:

¹⁸⁵Ibid., 246.

¹⁸⁶*Sovereignty and Life*, 211.

The present inquiry concerns precisely this hidden point of intersection between the juridico-institutional and the biopolitical models of power. What this work has had to record among its likely conclusions is precisely that the two analyses cannot be separated, and 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 bio political body is the original activity of sovereign power. In this sense, bio politics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie uniting power and bare life, thereby reaffirming the bond (derived from a tenacious correspondence between the modern and the archaic which one encounters in the most diverse spheres) between modern power and the most immemorial of the *arcana imperil*.¹⁸⁷

Thus, the modern form of sovereignty does not represent a break with the past. Rather, it is the development of the same *aporai* of sovereignty and law. As already described that the paradox of “state of exception” produces the modern figures of refugee, nation-state and coma patient and represent the intersection of biology and sovereignty, it shall be mentioned that Foucault also provides an analysis of sovereign power while asserting that bio-political technologies are a modern form of state power. He provides such an analysis in *History of Sexuality Volume I* and emphasizes that the focus of sovereign power has changed. Such analysis is presented under the title “Right of Death and Power over Life”. The title itself brings out that there has been a shift from the right to take and dispose life. In other words, he presents the development of bio-politics by providing an analysis of change of locus of power that can be summarized in the formula of ‘power over life and death’. As he states that

¹⁸⁷*Homo Sacer*, 7.

for a long time, one of the characteristic privileges of sovereign power was the right to decide life and death.¹⁸⁸

But this right of sovereign over his subjects was not absolute and unconditional. It was exercised only in cases where the sovereign's existence was in threat. Foucault says in this regard that

If he was threatened by external enemies who sought to overthrow him or contest his rights, he could then legitimately wage war, require his subjects to take part in the defense of the state; without "directly proposing their death," he was empowered to "expose their life": in this sense, he wielded an indirect "power" over them of life and death.¹⁸⁹

However, this indirect form of death can take the direct form in cases where an individual transgresses his command or refuses to participate in the defense of the ruler. In this sense, this power of life and death is seen as "conditioned by the defense of the sovereign and his own survival."¹⁹⁰ Thus, in the classical period, it was the sovereign's power to decide on the question of life and death. In other words, it meant that he will decide whether a life should live or die.¹⁹¹

Such a power was mainly exercised in the form of deduction as per Foucault. He says that,

It is a subtraction mechanism, a right to appropriate a portion of wealth, a tax of products, goods and services, labour and blood, levied on the subjects. And although

¹⁸⁸ Michel Foucault, *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 258

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid., 259

the law is the sovereign's principal means of ruling, the ultimate reference point is the sword: "Law cannot help but be armed and its arm, par excellence, is death."¹⁹²

Foucault points out that this form of power has undergone a change in the western since 17th century as slowly this kind of power has been replaced by the bio-power. He states that "deduction has tended to be no longer the major form of power but merely one element among others, working to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, ordering them, rather than one dedicated to impeding them, making them submit or destroying them".¹⁹³ This is marked by a parallel shift in the right of death as no longer alone based on the right of the sovereign but on the right of everyone's existence. The entire social body came to possess this right and wars are no longer fought in the classical sense. It is on the pretext of the security of the entire social body that wars are fought. He puts it:

The principle underlying the tactics of battle—that one has to be capable of killing in order to go on living—has become the principle that defines the strategy of the states. But the existence in question is no longer the juridical existence of the sovereignty; at stake is the biological existence of a population.¹⁹⁴

While relating this change in right of death and life to death penalty, he argues that death penalty assumed a contradictory character. Capital punishment also began to be seen in this bio-political paradigm. One who represented a danger to the biological existence of others is to be put to gallows. Crime is to be judged on this terrain where the existence of others is involved. This change in penalty shows the shift in power. The task of bio-power became

¹⁹² Ibid.,

¹⁹³ *Foucault Reader*, 259

¹⁹⁴ Ibid., 260

to take charge of life that needs a continuous regulatory and corrective mechanism. The logic of bio-power is not deduction but production: It exerts a positive influence on life, endeavors to administer, optimize, and multiply it. Bio-power replaces the right to “take life and let live” with that of a power to foster life – or disallow it to the point of death. Instead of being exercised by means of law and violence, bio-power is exercised through the normalizing biological, psychological and social technologies – through the “methods of power capable of optimizing forces, aptitudes, and life in general.”¹⁹⁵

Unlike sovereign power, bio-power does not indulge in the public display of death. It creates structures that exclude it (“disqualification of death”¹⁹⁶). It is because death does not become the focus of bio-power. It focuses on the birth and life of individuals and populations. This change in power to foster and administer life brought a new right to death: suicide. In older times suicide was a crime because it was only sovereign who can take the life. Now, with the change in power relations, this power to take one’s life became one’s private right. It happened for the first time that an individual assumed a right to kill himself.

It is not surprising that suicide—once a crime, since it was a way to usurp the power of the death which the sovereign alone, whether the one below or the Lord above, had the right to exercise—became, in the course of nineteenth century, one of the first conducts to appear in the sphere of sociological analysis; it testified to the individual and the private right to die, at the borders and in the interstices of the power that was exercised over life. . . . one of the first astonishments of a society in which political power had assigned itself the task of administering life.¹⁹⁷

¹⁹⁵Ibid., 138.

¹⁹⁶Ibid., 138.

¹⁹⁷*Foucault Reader*, 261.

Foucault sums up that the development of bio-power in the seventeenth century took two main forms: *anatomo-politics of the human body* and *a bio-politics of the population*. The first one was characterized by the procedures of power that “focused on the body as a machine: its disciplining, the optimization of the capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls”.¹⁹⁸ Such type of power was based on the procedures concerned with the disciplining of the body. On the other hand, bio-politics of population was regulative in nature. In fact, this power involved interventions designed to control the population. This power is distinguished from the former on its location aim. It focused on “the species body, the body imbued with the mechanics of life and serving as the basis of biological processes: propagation, births and mortality, level of health, life expectancy, longevity, with all the conditions that can cause these to vary.”¹⁹⁹

By describing the development of bio-power in the transformation of sovereign power’s right to decide life and death, Foucault claims that Aristotle’s man as “an animal with an additional capacity for politics” came to end. Politics now questioned this distinction and it is no longer possible to maintain such distinction. Unlike this, Agamben talks about “bare life” as the product of sovereign decision because of the aporias present in sovereignty itself. Agamben mentions the foundation of this same right of sovereign to take life in *Homo Sacer*. He accepts Foucault’s claim that the sovereign derived the right to take life of subjects from the ancient *patria potestas*. In ancient Roman family such power was exercised by the father on the notion of his authority over the family and its members. He could take the life of slaves or his children because he is considered as the giver of this right.²⁰⁰ Agamben argues that this ‘right over life and death’ emerges in the history of law as

the formula *vitae necisque potesta*, which designates not sovereign power but rather the unconditional authority [potestà] of the pater over his sons.²⁰¹

¹⁹⁸Ibid., 261.

¹⁹⁹*Foucault Reader*, 261.

²⁰⁰Ibid., 258.

²⁰¹*Homo Sacer*, 58.

Asserting that *vita* in Romans was not a juridical concept but a simple fact of living like Latin *zoe*, he remarks that such a concept assumed the juridical meaning in the very expression of *vitae necisque potesta*. This power of father to take life of his son is, then, characterized as the model of political power. Like Foucault, he argues that such power of father within the domestic jurisdiction is the foundation of political power. He states that this power exists over the body of the individual and is extended to the sovereign when he takes power over the entire population.²⁰²

The father's right over sons' and slaves' in the domestic jurisdiction assumes a structural similarity with "state of exception". As he puts it:

It is as if male citizens had to pay for their participation in political life with an unconditional subjection to a power of death, as if life were able to enter the city only in the double exception of being capable of being killed and yet not sacrificed. Hence the situation of the *patria potestas* at the limit of both the *domus* and the city: if classical politics is born through the separation of these two spheres, life that may be killed but not sacrificed is the hinge on which each sphere is articulated and the threshold at which the two spheres are joined in becoming indeterminate. Neither political *bios* nor natural *zoē*, sacred life is the zone of indistinction in which *zoē* and *bios* constitute each other in including and excluding each other.²⁰³

In sum, Agamben is interested in his juridical-political model and takes the modern bio political technologies as a repetition of juridical phenomenon. The fact that Foucault was not able to link the intersection of juridical institutional models of power to bio-power is attributed to the death of Foucault. The development in the modern period -- the birth of nation-state or the rise of totalitarianism-- is corroborated by certain figures. The bio-

²⁰² Ibid.

²⁰³ *Homo Sacer*, 60.

political development in the modern democracy is located in the writ of *habeas corpus*. This term literally means “to produce the body”, and is considered to be one of the foundations of human rights as it required the authority to produce the body of the prisoner before the magistrate and prove his guilt. Agamben considers that in Ancient and medieval times there were analogous writs that ordered the presence of an accused at the time of trial, so that he can be detained. But, in modern democracy, he argues, this writ took a new legal form: the corpus became the new subject of politics. As he states:

Nothing allows one to measure the difference between ancient and medieval freedom and the freedom at the basis of modern democracy better than this formula. It is not the free man and his statutes and prerogatives, nor even simply homo, but rather corpus that is the new subject of politics. And democracy is born precisely as the assertion and presentation of this "body": *habeas corpus ad subjiciendum*, "You will have to have a body to show."²⁰⁴

Thus, body became the new site of the legal and it marks not only the politicization of body but makes body as the new foundation of power. Through this institution of *habeas corpus* the production of *homo sacer* continued.

Another form of modern *homo sacer*, for Agamben, is provided in the French Declaration of the Rights of Man and Citizen in 1789. This document is considered as the foundation of the modern democracy as it considers an individual as the bearer of certain inalienable rights. Agamben represents this declaration as problematic in the sense that it identifies the criteria of “birth” as the foundation of rights and, hence, the political formation: nation. The rise of nation-state, in the context of this declaration, makes the natural life as the foundation of political structure. He argues that it established a link between man and citizen through this criterion of birth. In this sense,

²⁰⁴Homo Sacer, 79.

the principle of nativity and the principle of sovereignty, which were separated in the ancient régime (where birth marked only the emergence of, a *sujet*, a subject), are now irrevocably united in the body of the "sovereign subject" so that the foundation of the new nation-state may be constituted."²⁰⁵

In this development of nation-state politics, *homo sacer* is produced in the figure of "refugee". This figure emerges primarily because the notion of rights and nation are closely tied. As Agamben states :

the concept of the refugee (and the figure of life that this concept represents) must be resolutely separated from the concept of the rights of man, and we must seriously consider Arendt's claim that the fates of human rights and the nation-state are bound together such that the decline and crisis of the one necessarily implies the end of the other. The refugee must be considered for what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state, from the birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights.²⁰⁶

From this limit category of "refugee", Agamben concludes that the entire idea of human rights is a façade. For "refugees" we are forced to think beyond the man-citizen link which has resulted in the development of humanitarianism apart from politics. Agamben disdains any attempt of humanitarian organizations to protect the rights of "refugees" and makes them complicit by saying that they "maintain a secret solidarity with the very powers they ought to fight".²⁰⁷

²⁰⁵Ibid., 82.

²⁰⁶*Homo Sacer*, 86.

²⁰⁷ Ibid., 85

The most striking development of “bare life” was presented by the nation-states in the concentration camps. This period, under Hitler, brought in clearly the intersection between biology and politics. The life in camps represented “bare life”. Those residing in the camps were without any legal status. It was the most authentic bio-political space. One important development in the camps was that the prisoners were used for medical experiments. Some prisoners of camps were forced to undergo certain experiments. This shows that how medicine and sovereignty intersected during Nazism.

Now, after describing the modern forms of “bare life”, Agamben’s claim that Foucault’s bio-power needs to be completed shall be clear. This complete account of bio-politics shows how juridical models of power and bio-power intersect and produce “bare life”.

The only thing that shall be reconsidered and explained again is Aristotle’s conception of *zoe* and *bios*. The fact is that both Foucault and Agamben provide such an analysis of power only on Aristotle’s distinction of life. Aristotle provided such a distinction of life on the idea that the end of *polis* is good life. In other words, politics is a supreme activity as it is concerned with “good life”. Aristotle expresses his awareness of that idea with the most perfect lucidity:

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 [*zoē*] as if it were a kind of serenity [*euēmeria*, beautiful day] and a natural sweetness.²⁰⁸

Agamben argues that this distinction has become canonical for western politics because it establishes the metaphysical basis of politics. *Zoe* is concerned with the natural life and belongs to non-linguistic. Whereas *bios* belong to the realm of language and in this

²⁰⁸Aristotle, *Politics*, trans. Ernest Barker, (Oxford: Oxford UP, 1978), 23

sense politics involves the deliberation and reflection of desired form of life and this reflection is needed to evolve a conception of order so that life can reside and express itself in that.²⁰⁹ In this sense he takes this distinction as problematic because it establishes machinery (sovereignty) which produces “bare life” by deciding on the question of “good life”. Sovereign tries to conceive of “good life” in language and in this way, then, failure of political is the failure of language for we can’t in language develop a political order that is free from violence. When sovereign decides on the movement of biological life to political life, certain form of life fails to achieve a political status. What results is “bare life”: neither *zoe* nor *bios*. It is this distinction which Agamben tries to overcome when he introduces the realization of new politics. As he states in *Means Without End* that “life that can never be separated from its form, a life in which it is never possible to isolate something such as naked life”²¹⁰ shall be the basis of coming politics.

Andrew Norris argues that Aristotle lays the foundation of the Western tradition of political philosophy in the sense that politics has been distinguished from essentially private enterprises on the grounds that it is concerned with something more than the perpetuation of biological life. The end of politics is considered to be different from that of the various realms of bare life, such as family life, slave holding, and village association, its principle of order is different as well.²¹¹ Further, Norris states that for Aristotle the “something more” that distinguishes the political is the realization of the human capacity to structure a just common life in the community’s no coercive, deliberative reflection upon the question of what justice is and what concrete measures it entails”²¹² Aristotle enlists such capacity as: “Justice belongs to the polis; for justice, which is the determination of what is just, is an ordering of the political association.”²¹³ Agamben, however, suggests that this politico-philosophical project today stands without the foundations that Aristotle proposed for it, namely the categorical distinction between “bare life” and the good or political life. And this is not because an element foreign to Aristotle’s

²⁰⁹*Homo Sacer*, 5.

²¹⁰*Means Without End*, 3-4.

²¹¹*Politics, Metaphysics, and Death, Introduction*, 3.

²¹²*Ibid.*, 3.

²¹³*Politics*, 1.2.66.

schema has polluted or subverted it, but because the schema has deconstructed itself.²¹⁴ In this way, this sphere of justice has no meaning because politics continues to be constituted by “bare life”.

Aristotle’s distinction had no concern of separating certain life from the realm of state. His chronological account of state is based on the idea of self-sufficiency. Human beings began living in families, and then they acquired slaves and formed villages, until finally they achieved a self-sufficient mode of life. In Aristotle, it is *Polis* which makes us self-sufficient and truly human. As he states that, “The man who is isolated—who is unable to share in the benefits of political association, or has no need because he is already self-sufficient—is no part of the polis, and must therefore be either a beast or a god. To be truly human one must be a member of a polis, for it is only as such that one can truly speak: The mere making of sounds serves to indicate pleasure and pain, and is thus a faculty that belongs to animals in general. . . . But language serves to . . . declare what is just and unjust”.²¹⁵ This conception of the human life as not simply a given but an achievement is definitive of the notion of human culture. It is in this account of politics that Agamben senses the problem of “bare life”. Political life becomes the life which is lived in language and a life that fails to achieve humanity is “bare life”. This life is declared as sacred and liable to be killed. For Agamben, polis does not seem to fulfill what Aristotle desired of it. For him, it produces “bare life”.

In his discussion of Aristotle’s *Politics* Agamben argues that

Politics . . . appears as the truly fundamental structure [*struttura*] of Western metaphysics insofar as it occupies the threshold [*soglia*] on which the relation between the living being and the logos is realized [*si compie*]. In the “politicization” of bare life—the metaphysical task par excellence—the humanity of living man is decided [*si decide*]. . . . There is politics because man is the living being who, in language, separates and opposes himself to

²¹⁴ *Politics Metaphysics Death Introduction*, ed. Andrew Norris (Durham and London: Duke University Press, 2005), 4.

²¹⁵ *Politics*, 1.2.16.

his own bare life [*nuda vita*] and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion²¹⁶

Again, the problematic side of Aristotle is the idea that language can create a just political order as it is the sphere in which life has to be transformed into something called good. Unlike Marx, Agamben invokes a different system of contradictions. It is not based on the dichotomy between those “who own the means of production” and those “who don’t own” but it is a category which does not fit in this binary distinction. It is neither “good life” nor “mere life”.

“Bare life” is produced by this interaction between the binary forms of life proposed by Aristotle. As he states that “as if politics were the place in which life had to transform itself into good life and in which what had to be politicized were always already bare life.”²¹⁷ One who no longer qualifies as the member of the polis becomes “bare life”. His life is included then only in the form of exclusion which means he can be killed only. In this sense, inclusive/ exclusion becomes the logic on which a political system works. It is through the negation of “bare life” that good life is constituted. But since political life defines itself in terms of its genesis from and its nonidentity with bare life, political life is defined by its relation with the non-relational.²¹⁸ “Exteriority is truly the innermost center of the political system, and the political system lives off it”.²¹⁹

The original political relation is that of a ban. Any political order is, by this definition, complicit in the production of “bare life”. Such absolute spaces have been seen in 20th century when the world witnessed the development of totalitarian regimes. Nazism or Fascism or Stalinism uncovered this zone which is marked by violence. Liberal democracies are also working on the same logic of inclusive exclusion. In a way camp has become the paradigm of the contemporary times where “bare life” thrives. It has been the

²¹⁶*Homo Sacer*, 8

²¹⁷*ibid.*, 7

²¹⁸*Ibid.*, 9

²¹⁹*Ibid.*, 36.

product of the special power of sovereign: “state of exception”. It acted as a machine to transform lives into good lives and negate those that could not be made good lives. Different discourses have been developed to support this negation of life.

“Bare life” exists in a no man’s land the created by sovereign power. There are numerous instances of such figures given the failure of the states’ to take care of the needs of their citizens. In this regard, the concept of ‘bare life’ has been used in different disciplines to understand the limitations of the policies and the circumstances that deprive individuals of the rights needed to live a life.

This kind of conception of politics serves as a thought provoking criticism of modern nation-states which have become security mechanism to affirm and dispose lives. The problem of “refugees” arises from the way modern political geographies have been imagined and implanted. Also, the modern economic system works on this logic of good life and “bare life”. For example, in India half of the population is starving. These hungry people can resemble *homo sacer* in the sense they don’t qualify for the kind of economic policies India political elite implement. Not only this but the way India has constructed and imposed borders on people within her territory also produces “bare life”. The fact is that “bare life” exists in territories where rule of law could not be maintained.

In this chapter I discussed the method of paradigm provide answer to the concepts discussed in the previous two chapters. The first two chapters discussed the problem of state of exception and second the bare lives of the people caught in it. These are considered anomalies which means that the political life is a normal life and sometimes or for some it becomes exceptional and renders him vulnerable to violence. One understands that there are exceptions to the general rule, but one does not understand how an exception can itself become rule. Therefore, this chapter provided the way out of the problem. In other words, it cleared the idea about why Agamben thinks from exceptional or marginal figures.

The method of paradigm is important in the sense that it can tell one the general nature of the age. For example, from the state of exception Agamben tells that the modern political life has become camp like. It is not from some inductive analysis that he arrives at

such a conclusion. But from using the example from the Holocaust, he concludes that the bio-power has to be understood also from the juridical power.

It, however, does not help in resolving the question of 'sovereign power' and its relationship with the 'order'. In other words, the method does not help in understanding the alternative.

Chapter Four

Rethinking Political: Coming Community

To render inoperative the machine that governs our conception of man will therefore mean ... to risk ourselves in this emptiness: the suspension of suspension, Shabbat both animal and man.²²⁰

The western politics- liberal and Marxist- is authoritarian in its original sense as seen in the discussion, in the previous chapters of this thesis. Then, what is the alternative or way out from this machine of violence? In this chapter, I would interrogate the possibility of a new politics. Agamben calls his utopia ‘coming community’ that can be realized by disrupting the logic of sovereignty.

²²⁰ Agamben, *The Open: Man and Animal*, Stanford University Press, 2004, 92.

4.1 Coming Community: Whatever Being

Before I begin to explain his idea of ‘coming community’, it is important to reiterate that Agamben is hopeful of a society that can be without violence. The violence that exists in the form of incarcerated, mutilated, tortured and deprived lives can be saved and allowed to flourish. Such a society can be only realized only if bio-politics is abandoned and a new community is allowed to flourish. He says:

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.²²¹

We saw in the previous chapters that ‘sovereign power’ includes life in the system through the suspension of the defined legal order. This suspension of order points to the limitations of language: law cannot apply to all the situations in a definite way. How is, then, this new politics, promise of beautiful, possible if language, law, fails to apply to all situations in a normal sense? This question can be reframed as, how can sovereign power cease to act through ‘state of exception’.

The answer to the above question lies in his conception of ‘coming community’ and reinterpretation of Aristotle’s ‘potentiality’. In this section I will explain the notion of ‘coming community’.

This idea has two catchy words, ‘coming’ and ‘community’. Generally, the former denotes that something that is about to come, a project that entails the idea of a future. And

²²¹Ibid., 10.

the later denotes a group that shares an identity or a belonging which common to all the members. From this common sense understanding, one can define 'coming community' as the 'community' or 'a form belongingness' that is yet to come or that is awaited.

Contrary to the above ordinary or etymological definition of the concept, Agamben defines these words, and consequently the concept, differently. He understands the concept of 'coming' as not something teleological that one has to attain at a future point in time and the notion of 'belonging' is also understood differently as a mere possibility like 'thought'. Therefore, to understand the idea of 'coming community' one has to understand the understanding of time in Agamben. Time is related to the question of history and the goal or a desired order that it has to attain. Secondly, one has to also understand the nature of belonging as being without any content. He calls such 'identity' or beings as whatever beings.

Agamben understands history from the point of the presence. His messianic is not futuristic or backward going; rather, it looks at the possibility of change in the present only. To explain it further, the 'coming community' does not mean that we have to wait for some time to realize it. Rather, it is in the present only that one can change some structural component that can give birth to a new society. He is influenced in this understanding of time by Walter Benjamin, who understood 'time' as being a theological concept that was secularized by Karl Marx.

Agamben quotes Benjamin in his book, *Coming Community*, to show that 'progress' or 'messianic' can be thought from the present only without waiting for future. He writes²²²:

²²²In these lines, he repeats the tale told by Walter Benjamin to Ernst Bloch.

The Hassidim tell a story about the world to come that says everything there will be just as it is here. Just as our room is now, so it will be in the world to come; where our baby sleeps now, there too it will sleep in the other world. And the clothes we wear in this world, those too we will wear there. Everything will be as it is now, just a little different.²²³

This story is re-told by Agamben to make sense of what change could be possible in the present only. The room would be there without being destroyed and yet it would be different in the sense that the real community will be realized. This little difference makes it sound that not much is needed to do to change the present and not much will change. Normally, dialectics understood 'messianic' as a movement realizing its teleos, freedom or class less society, through some radical reformulation of the social conditions. The structure of history is supposed to be enmeshed in conflict and only a radical conflict will free us from this burden called past, based on inequality and unfreedom. Atleast, Marxism understood history in that way: class-conflict can be only sorted through the forceful takeover of the state and this transition can be used to socialize the means of production.

Agamben engages with the debate on Marxism on his conception of time. He says that Marxism has a revolutionary model of history but lacks a revolutionary concept of time. What is this revolutionary notion of time that is lacking in Marxism? Is not history itself progressing through different stages to arrive at a classless society where freedom will reign higher?

Agamben says that Marx did not take the notion of time seriously. This charge is based on the observation that he borrowed it from the traditions that fall into the trap of linear notion of time. The linearity assumes that progress or revolution is awaited. In other words, the redemption or the messianic moment will come itself through progression in history when the structural conditions of oppression will be abolished. This linear notion of time has a genealogy. Christianity visualized history through a linear notion of time meaning that

²²³ Giorgio Agamben, *Coming community*, p.50

there is a beginning of the world whose purpose its own end. Before the end, a messianic moment will come, depending upon the resurrection of the Christ.²²⁴

Likewise Hegel also saw time as an instant, which through negation progresses into an absolute. This is also known as a process of becoming, meaning that time is a process, flowing in a linear way. Agamben says that Greek's especially Aristotle thought about time in the similar fashion. He saw Marx repeating the same mistake and remaining trapped in linearity. In other words, his idea of history is revolutionary but needs to get rid of the Aristotelian and Hegelian conception of time as that of continuous and infinite succession of precise instants, in order to realize the class less society.²²⁵

If the linear or circular notion of time is not appropriate for a progressive theory like Marxism, then what is kind of time it shall envisage in order to make its theory of history stronger? Agamben sees such possibility in Gnosticism and Stoicism, and Heidegger and Benjamin. For him, Gnostics represented space with a broken line which denotes a different notion of time. He says that:

The time of Gnosticism is an incoherent and non-homogenous time whose truth is in the moment of interruptions when man realizes suddenly the condition of being resurrected.²²⁶

Similarly, in Stoics, he sees time as that of having an agency not relying on the outside condition in them. He says that “the stoic posits the liberating experience of time as something neither subjective nor objective but springing from the actions and decisions of man”.²²⁷

²²⁴ Ibid, 94

²²⁵ Agamben, *Infancy and History: The Destruction of Experience* trans. Liz Heron, Verso:London and Newyork, 1993, 99-100

²²⁶ Ibid, 101

²²⁷ Ibid, 101

So Agamben mentions the above two schools to show that time can be non-linear and disrupted. One does not have to believe in a linear movement of things. He, further, mentions Heidegger and Benjamin to criticize the continuous notion of time. On Heidegger and Benjamin he writes:

It is certainly no accident that every time modern time has come to conceptualize time, it has inevitably had to begin with a critique of the continuous, quantified time. Such a critique underlies both Benjamin's Theses on the philosophy of History and Heidegger's incomplete analysis of temporality in *Being and Time*. This coincidence in two thinkers so far apart is a sign that the concept of time which has dominated western culture for nearly two thousand years is on the wane.²²⁸

It is interesting to note that he sees an opposition to continuous or linear time in both these thinkers whose conceptual frameworks are different. Benjamin is a Marxist, for whom, the revolutionary politics has to free itself from the idea of waiting; the ideals can be achieved in the future. On the other hand, Heidegger sees in Dasein's own finiteness opposition to such notion of time. He invokes the notion of moment or event in which dasein realizes such and opens up possibilities for such being. But he is not averse to Marxism as in Letter on Humanism, he applauds Marxist historiography.²²⁹ Agamben thinks that opposition between these two philosophers does not exist and says that Heidegger's notion of care is not opposed to Marx's understanding of praxis.²³⁰

His own contribution to this new notion of time is derived from Aristotle's notion of pleasure. He cites Aristotle in *Infancy and History* and says that pleasure denotes that which has the nature of a whole and completeness.²³¹ This nature of a 'moment' in case of pleasure is complete and does not follow linearity. It is interesting that he invokes 'pleasure' to think about time. It is done in order to free humankind from the waiting. In this way, the word

²²⁸ *Infancy and History*, 102

²²⁹ *Ibid.*, 103

²³⁰ *Ibid.*, 103

²³¹ *Ibid.*, 104

coming does not denote the same meaning for Agamben as it does for Christianity. He writes:

For the history is not as the dominant ideology would have it, man's servitude to continuous linear notion of time, but man's liberation from it, the time of history and the Kairos in which man, by his initiative grabs favorable opportunity and chooses his own freedom in the moment. Just as the full discontinuous finite, and complete time of pleasure must be set against an empty, continuous, infinite time of vulgar historicisms, so the chronological time of the pseudo history must be opposed by kairological time of authentic history.²³²

This understanding of kairological time is provocative in the sense that it detests the belief that time is infinite and one has to wait for the real justice. This observation makes it clear that Agamben is also a philosopher of history as he sees the possibility of freedom in it. But there are problems regarding the very notion of progress. Giving agency to individuals by freeing them the linear notion of time conceptually will not help unless the materiality of conditions is altered. This analysis falls into the trap of idealism. It is didactic because it reflects a form of appeal which provokes people that stop waiting for things to happen.

In conclusion one can say that he supplements Marxism with a theory of time that is non-continuous time. Also, he says that Marxism is not only a theory of production but shall be understood as a critique of language. He says that when he considers the present as the society of the spectacle.²³³He writes:

A fuller Marxian analysis should deal with the fact that capitalism(or any other name one wants to give the process that dominates today world history) was directed not only toward the expropriation of productive activity but also and principally toward

²³² Ibid.,105

²³³ Borrows from Guy Debord the understanding that capitalism has made the society of the spectacle where capital becomes the image.

the alienation of language itself, of the very linguistic and communicative nature of humans, of that logos which one of Heraclitus's fragments identifies as common.²³⁴

After analyzing the notion of 'time' in Agamben to understand the nature of 'coming' in the 'coming community' it is important to describe the second part, 'community'. As stated in the beginning of the section of this chapter, 'community' is considered a sociological term, where members are considered to be related to each other by something largely understood as 'identity'. But Agamben is against any essentialization of identity. He does not believe in the universals, then how does he understand a belonging without any fixed content.

He follows certain thinkers who have already talked of a community not in the traditional sense of belonging. These thinkers say that the traditional idea of belonging is based on the logic of inside and outside. Maurice Blanchot and Jean Luc Nancy are particularly the philosophers who tried to think about community in a new way.

Blanchot following Beattie said that the notion of community assumed a certain form of belonging that can usher in totalitarianism. His new thinking about community tries to negate all the essentialisations that create an insider and outsider and thus imagines a community without belonging or, in other words, a community without a community or an organization based on some form of common criteria that does not exclude anything.²³⁵

Nancy also hinted towards the tendency of totalitarianism that the notion of 'community' can lead to, by saying that such an idea is always invoked to talk of a lost or pure or original community. This makes the community vulnerable to regression and can

²³⁴ Agamben, *Coming Community*, 80

²³⁵ Blanchot, Maurice, *La Communauté Inavouable*, Paris: Minuit, 1983, ii.

usher into some form of totalitarianism by monopolizing state power and crushing dissent.²³⁶ Like Blanchot, he thought the need of new ways in which the communities can be defined.

Before I begin to elucidate how Agamben builds on such analysis, it is important to note that this kind of understanding takes 'community' as being monolithic and denies any idea of 'plurality' that they share. It is primarily the Holocaust anxiety that influences these thinkers when they think of 'community'.

Agamben takes the problem with 'community' diagnosed by the two philosophers mentioned above, to think of a 'community' in which no criteria is required in its membership. His book, *Coming Community*, explains such a concept by saying that the term 'whatever' should be used for understanding the condition of being together as it relates singularity to universality. He writes:

The whatever in question here relates to singularity not in its indifference with respect to a common property (to a concept for example of being red, French or being Muslim), but only in its being as such.²³⁷

He stresses that singularity should be thought beyond the predicates and it is challenging to think of it on its own terms. He says such an act will free singularity from the false dilemma of ineffability of the individual and the intelligibility of the universal.²³⁸ He is trying to suggest that finding new paradigm is needed to conceptualize the relationship between singularity and universality, individual and community and part and whole. One such way or paradigm, he says, is that of an example which neither belongs to the individual or universal and yet belongs to both. We should think of singularities like we understand

²³⁶Nancy, the inoperative community.

²³⁷ *Coming Community*, 1.

²³⁸ *Ibid*, 1/9

example which is at the same time is a member of the set of things that it exemplifies and yet is outside of it. He writes that they can become exemplars of coming community.²³⁹ Such examples are many in his book ranging from set theory to Tiananmen.

He says that a community should be such that shall not be based on any presupposition. He writes: “The un presupposable and un presuppose principle....that as such constitutes the authentic human community and communication”.²⁴⁰ That is possible in his concept of *experimentum linguae* which represents the condition of pure potentiality of language. By this, he suggests that it is for the first time we are becoming conscious of the experience of language. He says that thought for the first time, today, is confronted by its task without any illusion and without any possible alibi.²⁴¹ This he sees as the basis of new community which will realize language as a pure possibility which can be used freely; the sign system will be seen as unmotivated without any essence and teleos. He writes:

The fact that must constitute the point of departure for any discourse on ethics is that there is no essence no historical or spiritual vocation, no biological destiny that humans must enact or realize.²⁴²

Further, Agamben understands “whatever being”, through a discussion on love. This idea is interpreted in a way where lover does not have any problem with the properties of the loved one as he does not reduce it to those predicates. He writes,

the lover wants the loved one with all of its predicates, its being such as it is. The lover desires the as only insofar as it is such—this is the lover’s particular fetishism.²⁴³

²³⁹ Ibid., 14

²⁴⁰ Ibid, 35

²⁴¹ Agamben, *Means without End*, 87

²⁴² *Coming Community*, 43

²⁴³ Ibid., 54

His experimentum lingua is then a project on love in which the lovers will not reduce each other to actuality. Rather, they would be like the condition of language as depicted in thought which is free and yet actualizes itself by making judgments about the things. He writes that it represents the

this devastating experimentum linguae that all over the planet unhinges and empties traditions and beliefs, ideologies and religions, identities and communities.²⁴⁴

The above concept has resemblance to the Christian idea of community in which love becomes the primary way to live. He borrows it from there but does not bind it to the idea of sacred. In fact, he uses the idea of profane to conceive this kind of community. He writes, “

profane is the term for something that was once sacred or religious and is returned to the use or property of men.”²⁴⁵

Here, we see the crucial relationship between use and the sacred, and indeed Agamben defines sacred or religious things as those that have been removed from the use of men, and placed in a separate sphere, subject to a “special unavailability”. In line with his earlier account of the homo sacer, who is excluded from both the realm of men and the realm of the gods, he argues that what is essential in sacrifice is always the threshold that must be crossed from the profane to the sacred.

²⁴⁴Ibid, 88

²⁴⁵Ibid., 53

Thus, Agamben uses the term “profanation” as praxis to undo the logic of sovereign power. He does that by arguing that a definition shall be given to it so that we become clear about what is it that has to be done. He writes,

There seems to be a peculiar relationship between ‘using’ and ‘profaning’ that we must clarify.”²⁴⁶

To justify the use of profanation as a step towards ‘coming community’, he gives example of pornography. He writes that “If pornography appears as a “midwife” of the future society, this is because, in denaturalizing and desacralizing sexuality, it opens the space for a new collective use of sexuality”.²⁴⁷ He further writes that

solitary and desperate consumption of the pornographic image replaces the promise of a new use. Pornography, perhaps the apotheosis of the spectacle, simultaneously frees sexuality from its naturalization or sacralization and separates it into a realm in which it can only be consumed but not used. In a similar vein, advertising frees the body from ineffability, while simultaneously subjecting it to “the iron laws of massification and exchange value”, while the media detaches language from any relation to an end but simultaneously neutralizes this new relation to the word in endless vacuity.²⁴⁸

4.2 Bartleby: Civil Disobedience

²⁴⁶Ibid, 61

²⁴⁷Ibid, 65

²⁴⁸Ibid., 73

The first section of this chapter explained the notion of ‘coming community’ in which being will be a possibility only. The essentialism of identities is done away with so that the idea of a citizen would be a mere possibility and politics will not think from actuality. How is it possible to achieve such a community? Agamben says that it is in the way Bartleby disrupted the structures of power that ‘potentiality’ shall be understood.

Before going into the debate of how Bartleby is used as a figure to rethink the possibilities of power, the idea of ‘potentiality’ needs to be introduced as it is one of the fundamental philosophical concepts in Agamben’s thought. He traces it to none other than Aristotle. He says that the conceptualization of ‘potentiality’ by Aristotle has created opposition in western philosophy which has in turn shaped politics of the western world. He mentions in his *Potentialities* that “in both his metaphysics and his physics, Aristotle at once opposed and linked potentiality (dynamis) to actuality (energia) and bequeathed this opposition to western philosophy and science”.²⁴⁹

In order to understand what Agamben is trying to do with Aristotle’s conceptualization of potentiality, one need to further explain and interrogate the latter’s idea. Agamben, in *Coming Community*, says that Aristotle’s ‘potentiality’ is understood in two modes: ‘potentiality to be’ and ‘potentiality to not-be’.²⁵⁰ The first denotes the ‘potential’ that passes into actuality or is realized from the point of actuality. The second is at the level of pure potentiality which cannot be understood from actuality. It remains a mere possibility.

As I have discussed in chapter one of this thesis that he considers that potentiality can be re-claimed by resisting the power structures. He says that the problem of ‘sovereign power’ arises from the way ‘potentiality’ has been understood. It might seem strange to draw such a connection but this is what he thinks is the problem. He thinks that sovereign power or law is considered to be site of ‘order’ and therefore language becomes the prime tool to develop such order. In other words, it is language that has to describe the ‘order’ that is called ‘law’ on which a collective life will be organized. This kind of exercise

²⁴⁹ Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, trans. Daniel Heller Roazen, Stanford CA: Stanford University Press, 177.

²⁵⁰ *Coming community*, 33.

creates problems because language is understood to apply to all the situations and create order and in certain situations, 'state of exception', it can apply only negatively.

In order to understand more comprehensively this idea that 'power' is considered to be an actuality, one needs to look at the way he reinterprets the 'idea' of 'potentiality' in order to explain, both, the phenomena of 'state of exception' and the possibility of finding a new way of organizing political life. The idea of 'potentiality' that he is talking about is the one given by Aristotle. It is sufficient here to say that he blames the interpretation of 'potentiality' understood as actual as being responsible for the paradox of sovereign. To explain it further, it means that the 'order' is understood as the actual realm to be derived from language, a realm of the potential. This is problematic for him because he thinks that everything cannot pass into actuality. We saw that in the 'state of exception', law creates a void where it cannot apply or the rules breakdown in case of this space. In other words, when the law or 'norm' is withdrawn from a particular space, it creates a zone of indistinction between 'inside' and 'outside', 'norm' and 'exception' and vice versa.

I have also mentioned that he attempts to develop this understanding of 'potentiality' through the problem of 'constituted' and 'constituting' power. 'Constituted power' can be understood as 'norm' provided in the 'juridical order'. On the other hand 'constituting power' is the ability of 'law' not to apply rather its inability to apply to 'exceptional spaces'. 'Constituted power' is thought as the power which is invested in the state and can be understood as the power which constitution provides. Its fundamental basis is the pre-established constitutional order. On the other hand, 'constituting power' exists outside the state and can be understood as the power over which law has no hold. It is the power which sovereign exercises to revise or improve the legal order.²⁵¹ Both these powers have a relationship as they show that 'law' is a dynamic phenomenon. Sovereignty relies on both these powers and as 'constituting authority' can declare that 'constituted power' has failed. From that emerges the space that is null and void. Agamben mentions in *Homo Sacer's* chapter "Potentiality and law":

²⁵¹ Ibid.

That perhaps nowhere else does the paradox of sovereignty show itself so fully as in the problem of constituting power and its relation to constituted power.²⁵²

Agamben uses Bartleby's figure to rethink and reformulate the relation between 'constituting power' and 'constituted power' by reinterpreting the connection between 'potentiality' and 'actuality'. He explicitly politicizes the concept of 'potentiality' and claims that Aristotle gave the paradigm of sovereignty to Western philosophy through this idea. He re-interprets the idea to overcome the aporia created by the sovereign power. He does that by arguing that for Aristotle "potentiality preceded actuality and conditions it, and also seems to remain subordinate to it".²⁵³ In other words, he frees identification of 'potentiality' from the act and claims that it has an autonomous existence from that of act. Therefore, potentiality is not only "to be" but also the possibility of "not to be".²⁵⁴

He uses Bartelby's act to show that the sovereign power can be resisted and it is easy to do. He does not realize that he ends up in jail. It is like creating another homo sacer by sacrificing to the beauty of the analysis. Agamben also uses the example of Glen Gould in his book *Coming Community*. Like Bartleby, he has mastered the art of playing piano and refusing to act later. This shows for him the potential in withdrawing one own actuality. It seems he is asking to introduce state of exception in one's life in order to resist the structure of power or order.

even though every pianist necessarily has the potential to play and the potential to not-play, Glenn Gould is, however, the only one who cannot not-play, and, directing

²⁵²*Homo Sacer*, 28.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*, 31-32.

his potentiality not only to the act but to his own impotence, he plays, so to speak, with his potential to not-play”.²⁵⁵

Again this example does not solve the problem of ‘potentiality’. Why should Gould refuse to play or Bartleby refuse to write notes and what is it that it might serve? How can sovereign or law refuse to act? It is not similar to think of a pianist and a sovereign because the former does not involve the question of power densely as the latter does. Also, the situation in which some people refuse to ‘act’ on the skills that they have acquired demands a certain explanation and motivation as noted in the question. That can be done by providing the logic that this act will disrupt the logic of actuality. It sounds catchy but it does not resolve the problem of power as reflected in the violence unleashed by ‘state of exception’

Thus, Agamben’s pianist cannot solve the problem between the ‘constituted’ and ‘constituting power’. Also, in the ‘state of exception’, the suspension of ‘juridical order’ doesn’t mean that the law (language) fails to actualize. Rather, it is language only that is used to define, legitimize and exercise power. It is not like the pianist or Bartleby that power as potential does not act or law does not apply. He himself says that sovereign power excludes life in ‘exception’ by excluding it. In other words, life is thrown open to the arbitrariness of the individuals who act or represent sovereign. Thus, Agamben is wrong when he says that ‘state of exception’ reflects the structure of ‘potentiality’. He says,

the sovereign ban, which applies to the exception in no longer applying, corresponds to the structure of potentiality, which maintains itself in relation to actuality precisely through its ability not to be.”²⁵⁶

²⁵⁵Agamben, Giorgio, *The Coming Community*, trans. Michael Hardt (Minneapolis, MN: University of Minnesota Press, 1993), 34.

²⁵⁶*Homo Sacer*, 46.

In this way, the structure of ‘potentiality’ is not similar to that of a pianist who is refusing to play because sovereign cannot refuse to act. It represents ‘pure actuality’ not ‘potentiality’. In other words, his ‘potentiality’ is reflected in pure actuality because he has to always act. He can withdraw the law or ‘normal juridical order’ but cannot withdraw himself or refuse to rule. This is what happens when he withdraws the order: he attains absolute power to govern the lives. Here decision of the sovereign becomes important not the problem of ontology. One should interpret as the limitation of language and therefore it is not possible to conceive ‘power’ as ‘pure potentiality’ like Gould. Agamben does that by saying,

an act is sovereign when it realizes itself by simply taking away its own potentiality not to be, letting it be, giving itself to itself. ²⁵⁷

Further, he complicates it more by saying that ‘sovereign’ is neither ‘pure potentiality’ nor ‘pure actuality’. Rather, he puts the sovereign in the zone of ambiguity between ‘potentiality’ and ‘actuality’. As he states that “sovereignty is always double because Being, as potentiality, suspends itself, maintaining itself in a relation of ban (or abandonment) with itself in order to realize itself as absolute actuality (which thus presupposes nothing other than its own potentiality).”²⁵⁸

Agamben is interested in ‘potentiality’ as a mere possibility or a category without substance. He points out that Aristotle himself discusses the potentiality not to be with respect to “the supreme theme of metaphysics---thought itself”.²⁵⁹ Thought or the ability to reflect is greater than the substance that it reflects upon or thinking exists as a ‘pure potentiality’.

²⁵⁷Ibid., 46.

²⁵⁸Ibid., 33.

²⁵⁹ Ibid, 36

While dealing with this concept Aristotle delineates the examples of ‘potentiality’ as passing into actuality as that of a carpenter or a flute player represented in the function that they perform and also makes happiness as the goal or an end in itself for the vocations that an individual takes. Agamben points to the question that Aristotle asks, if a carpenter stops his function does he cease to be a man. In the words of Agamben, is man naturally functionless or born without work?²⁶⁰ Agamben answers this question by saying that mankind has no set or defined or messianic task to perform. In the chapter, Ethics, in his *Coming Community* he writes:

The fact that must constitute any departure from ethical discourse is that there is no essence no historical or spiritual vocation, or no biological destiny that humans must enact or realize²⁶¹

This way of looking at collective existence of mankind as having no definite vocation can be also understood from the way Agamben defines his own vocation. While attending the seminars organized by Heidegger in the summer of 1966 in a village of Le Thor, in the South of France, he got influenced by philosophy and gave up the discipline of law and decided to study philosophy. Later, he wrote, borrowing from Heidegger, that Dasein does not have a specific nature or a pre-constituted vocation.²⁶² Therefore, a true vocation is a revocation of earlier or an authentic vocation is not a defined goal rather in the openness of one’s own potential.²⁶³

²⁶⁰ *Potentialities*, 365

²⁶¹ *Coming Community*,. 43.

²⁶² *Potentialities*,. 326.

²⁶³ He means that there is no defined purpose or goal that a man should seek. Vocation should remain as pure potentiality to think or act. But when one looks at vocations which are a multilayered process one finds that there is always a defined content of such acts. We are driven always social, political and economic interests. The ability to think or write has a context and both of them influence each other.

Keeping in view the way he describes ‘potentiality’ as being only understood from the point of actuality, he seems to say like ‘thought’, the vocation of humankind should be a mere possibility with no definite end. He expounds such idea through his figure of Bartleby and the term inoperativeness. Bartleby is a scribe who has mastered this art. But one day he refuses to perform and lands up into trouble. He is fired and finally repeating the same act at other places ends up in jail. His act denotes for Agamben the way potentiality can be denied to pass into actuality and hence used as a tool to resist power. The radical re-interpretation of Aristotle by him is to deny the primacy of actuality over potentiality.²⁶⁴ He derives such conception from Heidegger who said that thinking about being must be creative and not done from actuality or presence. In *Being and Time*, he defines Dasein through his potentiality not through his actuality as he says that Dasein is always and essentially its own possibility.²⁶⁵

Likewise it is related to the idea of inoperativity which he says might form “the paradigm of the coming politics”.²⁶⁶ He provides a genealogy of the term inoperativeness which leads him to Georges Bataille who used the term *desouvement* to envision the rejection of the totalizing tendency of modern age and its progressive thought.²⁶⁷ Agamben’s term is similar to it in the sense that it recognizes the refusal to be a part of coercive system but he goes beyond it and links it with his idea of potentiality as potential not to be. In other words, he says that it reflects a possibility that a thing might not pass into actuality. He says that

Politics is that which corresponds to the essential in-operativeness of mankind”.²⁶⁸

²⁶⁴ *Homo Sacer*, 44

²⁶⁵ Heidegger, *Being and Time*, Trans. Joan Stambaugh, Albany: SUNY, 1942, p.42

²⁶⁶ *Coming community*, p 93

²⁶⁷ Bataille saw modern age as trying to form a homogenous body-politic and *desouvement* as a way to reject such tendency. It meant for him disengagement with the system and using experiences like eroticism and ecstasy as possible ways to resist universalizing conception of individual and community. Decorili, p. 19

²⁶⁸ *Means without End*, p. 140.

But Agamben does not think of “coming politics” in that way. He says that this community would be different from the one we are living. It means that the sovereign will no longer be able to produce ‘bare life’. To do that, he refers that life will taken in its unity in this community and the distinction given by Aristotle will not determine the logic of politics. As already stated, in this thesis, that he considered the distinction of life into *zoe* and *bios* as being responsible for problems in the politics. It gives sovereign power to include a life in the system through ban. Instead, he says that politics shall be based on a “form-of- life” or “happy life” that supersedes this distinction between *zoe* and *bios*. He writes in *Means without End* that

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 turn it into its own subject or the impenetrable extraneity of science and of modern bio politics that everybody tires in vain to sacrilize. 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.²⁶⁹

This form-of-life or happy life corresponds to his notion of “whatever being”. As already stated, it would represent life in its own potentiality, the idea of whatever being is provided in *Coming Community* where he writes: “the coming being is whatever being”.²⁷⁰ He writes,

the whatever here refers to singularity not to its indifference with respect to a common property (to a concept, for example: being red, being French, being Muslim), but only in its being such as it is. Singularity is thus freed from the false dilemma that obliges knowledge to choose between ineffability of the individual and intelligibility of the universal. . . . In this conception such-and-such being is

²⁶⁹*Means without End*, 114-115.

²⁷⁰*Coming Community*, 1.

reclaimed from having this or that property, which identifies it with as belonging to this or that sect, to this or that class (the reds, the French, the muslims) –and it is reclaimed as not for another class nor for the simple generic absence of any belonging, but for its being-such for belonging to itself.”²⁷¹

This kind of community and politics can be realized and would be separate from the Schmitt’s notion of sovereignty. In this kind of politics, “happy life” will be a life beyond the force of law and any form of ban. Agamben claims that “coming politics” can be realized through conceptualizing abandonment beyond any conception of law. It is not that law will cease to be in force that a new politics will emerge; rather law itself shall be abandoned. He states that:

The relation of abandonment is now thought to be in a new way. To read this relation as being in force without significance –that is, as Being’s abandonment to and by a law that prescribes nothing, 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 law and destiny . . . is abandonment truly experienced as such.²⁷²

This abandonment or ban by pushing law to its extreme is drawn from Benjamin. He is influenced by Benjamin’s notion of ‘virtual’ and real ‘state of exception’. He considers that coming politics can be realized through the generalization of “real state of exception” where law will coincide with life itself and lose its relevance. As he states: “Law that becomes indistinguishable from life in a real state of exception is confronted by life that, in a symmetrical but inverse gesture, is entirely transformed into law. The absolute intelligibility of a life wholly resolved into writing corresponds to the impenetrability of a writing that, having become indecipherable, now appears as life. Only

²⁷¹Ibid., 1-2.

²⁷²*Homo Sacer*, 42.

at this point do the two terms distinguish and kept united by the relation of ban (bare life and the form of law) abolish each other and enter into a new dimension.”²⁷³

Thus, in this way sovereign cannot decide on the “state of exception”, and a community of “whatever singularity” will emerge. This community would share nothing apart from their being-such or their whatever-ness. This coming politics is not, then, that of social movements or an identity politics; it is not “a simple affirmation of social in opposition to the state”.²⁷⁴ The social movements are considered to make specific claims and demands and are formed on the basis of certain shared identities. Agamben’s community cannot resemble any social movement because “whatever being” can’t have specific demands and a shared identity. This kind of community where beings’ simply come together without any shared identity or specific demands is considered to be a threat to the state. He says that

What the state cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without any representable condition of belonging (even in the form of a simple presupposition).²⁷⁵

He provides an example of this kind of politics in the protest of Tiananmen Square. In the demonstration in Beijing in May, 1989, Agamben finds the realization of whatever singularities as the protesters have no specific demands. State resorted to violence as it cannot tolerate this form of resistance. As he states: “ Whatever these singularities peacefully demonstrate their being in common to there will be a Tiananmen, and, sooner or later, the tanks will appear.”²⁷⁶

²⁷³Ibid., 39.

²⁷⁴*Coming Community*, 86.

²⁷⁵Ibid.

²⁷⁶ Ibid.

4.3 Jamming Man-Animal Divide

In the previous two sections, I have discussed Agamben's idea of 'community of whatever beings' and the figure of Bartleby. The latter uses the logic of 'potentiality' to resist the present structures of power by deactivating them. In this section, I will supplement the debate by locating the problems that 'politics' creates when it defines human and separates and excludes animality (not animals) and renders it vulnerable to violence. I would also describe his analysis of art to help restore the being and free his experience from violence.

Agamben says that the human-animal divide shall be abandoned. In *The Open*, he says that the history of both science and philosophy suggest that it has supported the act of sovereign power in defining human. He calls politics as the "anthropological machine" for the reason that it defines human by separating it from animal. It has worked at two levels: at the level of human where some humans have been considered as animals and thus denied the participation in the human order and at the level of animals that have been considered separate and different from humans and thus denied the considerations of ethics on animal lives. He describes these two levels in this machine as:

If, in the machine of the moderns, the outside is produced through the exclusion of an inside and the inhuman produced by animalizing the human, here [the machine of earlier times] the inside is obtained through the inclusion of an outside, and the non-man is produced by the humanization of an animal: the man-ape, the *enfant sauvage*

or *Homoferus*, but also and above all the slave, the barbarian, and the foreigner, as figures of an animal in human form.²⁷⁷

The human-animal divide is the basis of ‘politics’ then and has been responsible for the production of ‘bare life’ but homo sacer does not fall within this category as he blurs this distinction.

In *The Open*, he considers the possibility of the messianic movement, and analyses Heidegger by following him in his challenge of scientific theories about being. The theories one is surely talking about are those of biological theories that talk about evolution of man from animal. This creates a zone where by man and animal coincide and thus the process of ‘constructing a human continues. Agamben says:

the world of the animal ... is not simply a degree or species of the world of man
“the animal is separated from man by an abyss.”²⁷⁸

It is the similar abyss that Heidegger talks about in his *The Fundamental Concepts of Metaphysics* between animal and human. He does that by arguing that language is something that dasien uses to form his world and hence has autonomy from the evolutionary process.²⁷⁹ He says:

It is not as if the beating of the animal’s heart were a process different from the animal’s seizing and seeing, the one analogous to the case of human beings, the other to a chemical

²⁷⁷*The Open*, p, 37

²⁷⁸*Ibid*, 274

²⁷⁹*Ibid*, 2

process. Rather the entirety of its being, the being as a whole in its unity, must be comprehended as behavior.²⁸⁰

Agamben says that the process of man-animal machine produces a category that does not fall within the logic and theories on which this divide is based. As shown in the figure of homo sacer, sacred presents an ambiguity by creating a space in which the binary of sacred and profane falls. He concludes:

What would thus be obtained, however, is neither an animal life nor a human life, but only a life that is separated and excluded from itself—only a *bare life*. And faced with this extreme figure of the human and the inhuman, it is not so much a matter of asking which of the two machines (of the two variants of the same machine) is better or more effective—or, rather, less lethal and bloody—as it is of understanding how they work so that we might, eventually, be able to stop them.²⁸¹

He also criticizes the theories of science that define the idea of human and says that it was done in the camps. He writes:

When the difference vanishes and the two terms collapse upon each other—as seems to be happening today—the difference between being and the nothing, licit and illicit, divine and demonic also fades away, and in its place something appears for which we seem to lack even a name. Perhaps concentration and extermination camps are also an experiment of this sort, an extreme and monstrous attempt to decide between the

²⁸⁰Ibid, 239

²⁸¹Ibid., 37-38

human and the inhuman, which has ended up dragging the very possibility of the distinction to its ruin.²⁸²

To achieve that, Agamben uses the idea of inoperativity and deactivation to reconstitute the nature of being by analyzing the original nature of art and the role that an artist should play. His artist becomes like Bartleby but with a different purpose. Unlike him, he does not refuse to perform but uses art to recover the lost nature of the being and restore his humanity. In his book, *Man without Content*, such a project is undertaken. This book is an inquiry into the nature and function of art, such use of the idea of 'deactivation' to develop the conception of new being. The book does that by restoring art to its original status and providing a picture of how art has been obscured and deviated from the original function that it performed. Before one goes into how he visualizes and conceptualizes art, one needs to ask the question: what is art and its original function? What is the relationship between art and power?

Agamben provides answers to such questions. He begins with showing how art has become dark. He says that art has come to resemble "a planet that turns towards us only its dark side".²⁸³ What has happened to art is not clear. All he says is that art has lost its enlightening role. As asked in the beginning of this discussion, he does not answer that question straightaway. All he says is:

Perhaps nothing is more urgent-if we really want to engage in our time with the problem of art-than a destruction of aesthetics that would by clearing away what is actually taken for granted, allow us to bring into question the very meaning of aesthetics as the systematic study of the work of art. The question however is whether

²⁸²Ibid., 22

²⁸³*Means Without End*, P. 43.

the time is ripe for such a destructionwe want the work of art to reacquire its original status.²⁸⁴

The destruction he seeks of aesthetics will only happen if he kind of clears what sort of art is desirable but he does not want to fall into the trap of definitions and begins from a negative assertion. He borrows such conception from Heidegger.²⁸⁵ There are two parts of destruction as envisaged by him; the first part deals with the way he conceptualizes it and the second part is the purpose for which it is done. Taking cue from his teacher, he says that it is a positive process and shall not be understood in a negative way as decimating something. Rather, he understands it as a practice whose goal is to reveal the concealed. Here it would mean to show the concealed nature (original) of art by bringing forth the superficial or unoriginal. In Agamben and Heidegger, the aim of the ‘destruction of western metaphysics’ is to uncover the original philosophical thought and reveal the forgotten and fundamental ways of conceiving the world.

It is easy to fathom such ‘jargon’ of destruction but it is not clear what they mean by the terms ‘forgotten’, ‘original’ and ‘fundamental’ when they talk about aesthetics. What are these first or fundamental principles of being which can be uncovered through this destruction? In *Man without Content* Agamben refers to artist as a man without content.²⁸⁶ He takes the figure of Antonin Artaud as representative of this artist who was influenced by indigenous cultures of Mexico and blamed western culture for the loss of art. He says that it is the rise of taste that created a lacerating division between artist and audience and form and content. In other words, art ceased to shape the culture because it was looked as a disinterested sphere whose value would be based in a disinterested judgement.

²⁸⁴ Ibid, p.6

²⁸⁵ Agamben borrows this idea from Heidegger who in the sixth section, The Task of Destroying the History of Ontology, of Being and Time says that it necessary to destroy aesthetics to lay bare the first principles of Being

²⁸⁶ MCW, p. 55

By showing what has gone wrong in art, he seeks to answer the fundamental question of what art originally meant. To discuss this he asks a question, “What does originality mean”.²⁸⁷ He considers original as something that is close to the base or its origin not something as authentic or unique. He writes:

Originality means proximity to the origin. By this token, an original work of art is so by virtue of remaining in perpetual proximity to its origins”.²⁸⁸

This origin is not that of a past like Greeks or Roman, where art was flourishing but a conceptual and cultural space that we all might share. In other words, his idea of art as being able to shape the common cultural symbols or simply life world is missing in the present forms of art. So the original status would be to rearrange the relationship art has with communal self. It should not become a disinterested exercise whose content would not matter rather an artist should shape the culture and define and delineate its limits. He says:

What is certain is that the work of art is no longer....the essential measure of man’s dwellings on earth, has neither an autonomous sphere nor a particular identity, but is a compendium and reflection of the entire human world.²⁸⁹

Further, he explains the original structure of art as that of rhythm which he takes back to Aristotle’s physics who defines it as nature itself or for that matter as structure which contrasts the inarticulate or juxtaposed nature.²⁹⁰ He was influenced by Walter Benjamin as well Heidegger in his analysis of art.²⁹¹ The latter saw indifference at the heart of modern art and as per Agamben shared a conceptual relationship with Heidegger when it comes to

²⁸⁷ Ibid, 61

²⁸⁸ Ibid., 61

²⁸⁹ *Means without End*, 34.

²⁹⁰ Ibid.,95

²⁹¹ All the three use Holderlin to imagine the new role for art. They see in him the original function of art.

understanding of aesthetics particularly the idea of destruction. As mentioned in the beginning of the debate Heidegger, followed by Agamben, argued for the destruction of aesthetics likewise Benjamin says that construction pres-supposes destruction.²⁹² Citing that in the historical knowledge destruction was important to break the apparent unity or harmony and show the ruptures. He saw this happening in other forms of art as well like German Baroque drama which destroyed the unity of symbolic vision and new advances in photography or sur-realists using revolutionary energies within poetry.²⁹³ All these, he sees as potentially new form of aesthetics that restore art to its original status in the sense that it offers possibilities for the present. As he says in case of history writing that

he is not interested in past to create a sense of it but to sees himself as a historical materialist who does not reconstruct the past that would in any event remain inaccessible but to construct a present by using the method of destruction.²⁹⁴

Benjamin seems to assign a positive role to art in the sense that it should help in redemption in the present. It can be quoted from his the *Theses on the Philosophy of History* reminding his reader that “every moment of every day is the narrow gate through which the messiah might enter”.²⁹⁵

Benjamin and Agamben cite Kafka’s use of parable as something revolutionary that liberated art from the burden of having a fixed meaning or content. For them his parables are inexhaustible and yet shape the culture in the most perfect way.²⁹⁶ Similarly, Agamben’s ‘man without content’ is a melancholy angel whose main job is to restore art to its original function. He has a chapter titled under such name in his book *Man without Content* and borrows this name from Durer’s *Melancholia I*.

²⁹² Benjamin, *Arcades Project*, ed. Rold Tiedemann. Trans. Howard Eiland, Eiland and Mclauighan, 470

²⁹³ Duranyate, *A Critical Introduction to Agamben*,. 45

²⁹⁴ *Ibid*,. 45

²⁹⁵ Bejamiin, 27

²⁹⁶ Duranyate, p. 50.

In his book *Stanzas*, Agamben says that something important is forgotten in western metaphysics. Like Heidegger and Derrida²⁹⁷, he says the act of ‘forgetting’ in Western Philosophy resulting from the turn in thought and practice in Plato’s dialogues begins by not taking into consideration the division that is created between poetry and philosophy. The division that he talks about is that of the kind of knowledge and experience that this split between poetry and philosophy is supposed to entail. For him a qualitative difference was created between those in which one became the site of taste and the other as the site of criticism or demonstrable theses. As he says:

Poetry possesses its object without knowing it and philosophy knows the object without possessing it.²⁹⁸

Here he is creating a distinction between taste and knowledge. As it is clear from the quote that he sees poetry as something that has a taste or experience of object of knowledge and philosophy as an enterprise which can critically or rationally demonstrate object of knowledge without having a taste of it. Such opposition between truth and beauty, poetry and philosophy and creation and criticism he sees existed in western philosophy. He sees such schism beginning in Plato’s republic where philosophy and poetry were pitched as enemies opposing each other. This distinction might not hold true as both can be present in an act of knowledge. He also sees such possibility and provides a way to reconcile such distinction. He says:

Is reconciliation possible between systematic studies, which knows the truth but cannot enjoy it and taste which enjoys beauty without being able to rationally account for it.²⁹⁹

²⁹⁷ Heidegger says that ‘forgetting’ has prevailed in western metaphysics as ontological difference was not taken into consideration which means the difference between beings and the being they share. Likewise Derrida’s logocentrism is the name for forgetting in which in western philosophy the act of speech was appreciated and the act of writing was denigrated.

²⁹⁸ Giorgio Agamben, *Stanzas: Word and Phantasm in the Western Culture*, Tran.s Ronald L Martinez. Minneapolis: Minnnesota University Press, 1992,xvii.

One way to overcome such distinction is to renounce the belief that criticism has to show the limits of knowledge and demonstrate the reality. Then only can this enmity be done away with and philosophy and poetry will converge. He gives a genealogy of thinkers who have achieved such convergence. Among others he considers Benjamin's *The Origin of German Tragic Drama* as one which achieved to perfectly conceive objects through aesthetics and criticism. In other words, he sees such art as being creative criticism.³⁰⁰

Building on this thesis that criticism has to be creative he provides such foundation to arts and humanities.³⁰¹ Such foundation involves doing away with specialization or organization of multiplicity of disciplines which he calls decadent. This he borrowed from Heidegger who saw this decadence arising from the 'technical organization of universities' and urged that philosophy dissolved in all subjects like psychology, logic, political science.³⁰² Agamben argues against such disciplinary approach to knowledge and propitiates the development of a science without object. It may mean rearranging the subject-object dichotomy. As he says:

If in the social sciences and the humanities subject and object come to be seen as identical, then the idea of science without object is not a playful paradox but perhaps the most serious task conferred upon thought in our time.³⁰³

This task is seen to be performed by Melancholy angel, an artist without content as shown in the discussion on art in his book *The Man Without Content*. Reflecting on melancholia he saw it associated with poet, scholar or a religious ascetic who reflect upon

²⁹⁹ Ibid, 20

³⁰⁰ Duranyate, 61

³⁰¹ Stanzas, xvi

³⁰² *Being and Time*, 16.

³⁰³ *Stanzas*, xvi

reality through this mood. He says that what is missing is the idea of love in this interpretation. According to him amorous and erotic component is missing in the understanding of melancholy. He says:

It is curious that this erotic constellation of melancholy should have so persistently escaped scholars who have attempted to trace the genealogy and meaning of Dührer's melancholia. Any interpretation whatever its ability to decipher one by the one the figures inscribed in the vision—that fails to understand the fundamental relevance of black pile to the sphere of erotic desire is bound to be excluded from the mystery so emblematically fixed in Dührer's image.³⁰⁴

He tries to overcome the split between enjoyment and knowledge through the phantasm or this inclusion of erotic desire as being part of the melancholia. In other words, the ability to understand or conceptualize knowledge involves the fantasy which is erotic and amorous in nature. He is not denying the other factors involved. What he is trying to add that the nature of fantasy tells us that the object of knowledge and its possession both exist. That is the reason he is against the division of experience of knowledge and allows for creative action to overshadow this distinction between poetry and philosophy. It will lead to a new form of investigation into objects of knowledge. The disinterested ways of knowing will give way to a kind of knowing which is holistic and personal.

This kind of approach to knowledge which can be called as 'fantasy approach to knowledge' for Agamben create a potential space between subject and object. Such an exercise would be the foundation of the new science of humans. Besides, he says that philological attentiveness is another important requirement in this new way of knowing. For example, he says that use of colons and eclipses in Deleuze are shown to reveal his most fundamental intuitions about the idea of immanence.³⁰⁵ This is the kind of philological attentiveness one has to have when tries to attain or interpret. He described his project as that

³⁰⁴ *Stanzas*, 18

³⁰⁵ *Potentialities*, 208

of the letter in which all the migrations, transformations, dislocations, and displacement of categories and concepts implied therein.³⁰⁶

Focusing on the minute details of art works, as done by Warburg, remains, for him the new contours of this science. He mentions Warburg, Benjamin, Claude Levi Strauss and Leo Spitzer as thinkers who worked at the limits of their disciplines and thereby developing multi-disciplinarily.³⁰⁷ For example he says that Corbin and Lacan have used interdisciplinary approach to deal with images and texts. Agamben writes:

The importance of Corbin's studies for the understanding of stilnovist lyric is yet another proof of the need for social sciences and humanities to overcome division into specialized departments.³⁰⁸

Lacan, in his psychoanalysis, integrates the concepts borrowed from linguistic theory, set theory, literary theory, mathematical topology, ontology, and other fields into his psychological speculation.³⁰⁹ This integration model is the basis of what Agamben envisions should be done to conceptualize objects and images. Agamben writes that only because truth and beauty are originally divided, only because thought can never fully and integrally possess its object can there be a love of knowledge that is philosophy³¹⁰.

Thus in *Man without Content* Agamben argued for destruction of aesthetics and in *Stanzas* destruction of tradition; he invokes the destruction of experience in his *Infancy and History*.³¹¹ It seems very ironic that he uses such extreme titles to enter into this discussion. The title is infancy and history which might mean how language and time are related. The

³⁰⁶ Ibid, 101

³⁰⁷ *Potentialities*, 93

³⁰⁸ Ibid., 127

³⁰⁹ Duranyate, 74. Write how lacan uses fantasy as a way to understand meanings of images and words.

³¹⁰ *Arcades Project*, 16

³¹¹ In the previous sections I have mentioned that he does not mean decimation by destruction rather he wants to uncover the real principles of being by uncovering them.

destruction that he invokes is that of catastrophe that modern society is confronting.³¹² One might ask then what is this destruction and how is infancy and history related to such desperation or how can one understand this catastrophe through infancy and history?

The destruction of experience presupposes an experience which for him might be authentic and there are modes or practices that destroyed it. What are such experiences and the modes that have done it? Is it the personal or firsthand experience that has been reduced by the medium of technology?³¹³

He begins his book by this announcement that experience is no longer accessible³¹⁴. In other words there is no experience available. He derives such a notion from Benjamin who in his essay *Experience and Poverty* says:

Men returned from the front in silence.....not richer but poorer in communicable experience.....And what poured from the flood wars books ten years later was anything but the experience that was communicated orally....For never had experience been so contradicted more thoroughly: strategic experience contravened by positional warfare; economic experience by inflation; physical experience by hunger; moral experience by ruling powers. A generation had gone to schools in horse drawn street cars now stood open in a landscape in which nothing was the same except the clouds with, at its centre, the thin, fragile human body caught in a force field of destructive torrents and explosions.³¹⁵

³¹² Agamben's destruction of experience does not mean extinguishing of experience. It indicates desperate set of affairs that shall be noticed. Duryante, 82.

³¹³ Our globalized world has left less scope for first experience and clarity about what sort of knowledge corresponds to our continually growing wealth of information often seems in even shorter supply. It is to this diminishing of the possibility of personal experience that Agamben is hinting to. (See Durnayate, p. 85

³¹⁴ *Infancy and history*, 13

³¹⁵ Benjamin, *Selected Writings*, Cambridge, MA: Harvard University Press 1996-2003, 2. 731. This quote demonstrates the situation after the First World War. It had stripped man of his experience. He could not say what he had gone through.

Agamben does not see war as the only precursor to this condition of man but the very everyday banality as being responsible for this destruction of experience. He says that “today we know that the destruction of experience no longer necessitates a catastrophe, and that humdrum daily life in any city will suffice. For modern man’s average day contains virtually nothing that can still be translated into experience”.³¹⁶What are these everyday practices that haunts modern man? In order to understand one need to define experience which Agamben says is:

Not in reading the newspaper, with its abundance of unreachably remote bits of information nor sitting in a traffic jam; not during the journey through the nether realms of the subway not in the demonstration that suddenly blocks the street;nor in the cloud of the tear gas slowly dispersing amid the buildings downtownnor in the fantasy land of the supermarket or in those moments of silent proximity among strangers in elevators and buses.³¹⁷

What he is mentioning is contrary to common sense. In everyday, we consider different activities as experiences and communicate them. We talk about movies, political events, discuss what we saw on roads, discuss the items/ commodities in the market etc. etc. why cannot these events be called as experience? Agamben calls them as events because for him, it seems to me, experience is something that changes one and can be communicated through expressions of pleasure or pain. Benjamin’s impoverishment of experience is more authentic because it results from an experience of war and economic hardships. Agamben is not clear what it that causes such destruction or absence of experience is. Simply saying that there is no experience rather events which cannot be communicated is not enough.

Benjamin understands that culture that provides the basis of experience is traumatized by violence which is responsible for the weakening of experience. He gives an account of

³¹⁶*Infacny and History*,13.

³¹⁷ *Ibid.*, 13-14

such loss and traces it to the loss of oral tradition which used to preserve the cultural experiences and communicate it among generations. Somewhere he blames novel for this loss as he says:

What distinguishes novel from all other forms of prose-fairy tales, sagas, proverbs, drollery, jokes-----that it does not flow from oral tradition nor comes from it.³¹⁸ Agamben seconds this analysis and says that people have lost a direct sense of experience.³¹⁹

Benjamin says that the response to such loss of experience is barbarism which means freedom from the burden of convention or tradition. On the other hand Agamben goes into the genealogy of experience wherein he says that ‘mistrust of experience’ was at the centre of modern science.³²⁰ It mistrusted mere experience and focused on experiences that can be verified and explained. It created a dialect of subject and object through Descartes and this gave new status for experience. He makes a distinction between medieval conceptions of knowledge which was changed by modern science. In Medieval conception the knowledge and experience pertained to two different realms. Knowledge was the realm of divine being in which one participate not through an individual experience but through participation through thought and faith in the divine realm.³²¹ In modern science this was relegated to the individual; both experience and knowledge. He writes:

The great revolution in modern science was less a matter of opposing experience authority than of referring knowledge and experience to a single subject which is none other than their conjunction at an abstract Archimedean point: the Cartesian ego cogito.³²²

³¹⁸ *Selected Writings*, 17

³¹⁹ *Infacny and History*, 14

³²⁰ *Ibid*, 17

³²¹ *A Critical Introduction to Agamben*, 89

³²² *Infacny and History*, 19

This was further developed by Kant who in *Critique of Pure reason* creates individual or subjectivity as the basis of experience and knowledge but at the same time splits experience by showing limits of it. As Agamben says:

The critique of pure reason is the last place in western metaphysics where the question of experience is accessible in its pure form—that is without contradictions being hidden. The original sin with which the post-Kantian thought begins is the re-unification of the transcendental subject and the empirical consciousness in a single absolute subject.³²³

Hegel's dialectic in which the experience is negated to reach the absolute knowledge further created such subjectivity and marked the end of experience. He writes about Hegel:

The fact that consciousness has a dialectical structure means that it can never grasp itself as an entirety but is whole only in the total process of becoming.....experience is only something which one can undergo and can never have.³²⁴

This idea of negativity as the basis of experience introduced in the conceptual scheme by Hegel is critiqued by Agamben through his conception of history and infancy because it led to the loss of experience. He introduces the term infancy to deliberate on the condition of being that exists prior to language. He asks questions: does a mute experience exist? Or does an in-fancy of experience exist?³²⁵ While he considers it as a stage that exists prior to language but it is not the stage in time prior to the capacity of acquiring language only but is also a part of every experience as an adult. He says about infancy that “it is not a simple fact

³²³ Ibid., 32

³²⁴ Ibid, 34

³²⁵ Ibid, 37

whose chronological place might be isolated, nor is it something like an age or a psychosomatic state”.³²⁶ To further explain this he makes an important distinction between man and animal by saying that contrary to common perception man is not the animal which has language but is deprived and is supposed to receive it or learn it.³²⁷ He writes:

Animals are not in fact denied language, they are always and absolutely language. In them the sacred voice of the unknowing earth—which Mallarme, hearing he chirp of the cricket sets against the human voice as one and indivisible—knows no breaks or interruptions.³²⁸

There is no disconnecting as per this understanding of difference between animals and humans between animals and language as they don't need mediation of any sign system while interacting. On the other hand humans need to learn language which makes it clear that it is an exterior system; something that one has to acquire and thus it takes the form of mediation. In other words we exist without language but learn to operate in the world through it. It is a mediating system.

His books have short chapters. They don't directly deal with the ideas that the titles spell out. For example the idea of communism, a chapter in his idea of prose deals with pornography. This might have to do with his idea of prose as something that should not directly deal with a linear way of answering questions. Rather it should be done indirectly and one finds that if one closely reads his chapters.

He says that the prose should represent the pure potentiality of thought itself. He writes:

³²⁶ Ibid., 4

³²⁷ Ibid, 57

³²⁸ Ibid.,52

“The ultimate limit that thought can reach is not a being, a place, or a thing, no matter how free from every and quality, but its own absolute potentiality, the pure potentiality of representation itself”.³²⁹

In sum, one can say that he is arguing for a total reformulation of the role that sciences, arts and power shall play in the ‘coming community’. This will change the nature of politics and a new day will arrive in which everyone might live with happiness. He writes,

“To render inoperative the machine that governs our conception of man will therefore mean no longer to seek new—more effective or more authentic—articulations, but rather to show the central emptiness, the hiatus that—within man—separates man and animal, and to risk ourselves in this emptiness: the suspension of the suspension, Shabbat of both animal and man.... in which living beings can sit at the messianic banquet of the righteous without taking on a historical task and without setting the anthropological machine into action”.³³⁰

The above quote makes a claim that resonate Marx. It says that then mankind will be without any historical task. It is difficult to envisage such a situation because the modern sciences don’t point to that. If we look at the developments in sciences there is a possibility that humans might shift to another planet or reach places where other intelligent beings would be there. This curiosity and the developments that are happening show that there is a historical mission which humans are trying to cover.

³²⁹ Giorgio Agamben, *Idea of Prose*, trans. Micahael Sullivan and Sam Whitsitt, Albany: State University of New York press:1995, 34.

³³⁰*Ibid.*, 92

This can be also cited from the fact that there is a development in medical sciences where human body might assume a recurrent or an invincible form to a great extent. This point to another direction contrary to what Agamben thinks.

Conclusion

Giorgio Agamben's political philosophy attempts to understand the problem of violence faced by the human life. This violence is the one that emerges from the inability of a political order to satisfy the aspirations of a human being.

He wrote the book *Homo Sacer: Sovereign Power and Bare Life* to show the problems created by the 'sovereign order'. This book is written in the form of a project. This is because it is followed by a series of books. At the first place, this kind of experiment with the philosophy points out that it is an open and continuous attempt to experiment with language and thought in order to arrive at some understanding of the being that is annihilated and also the one who annihilates.

In the light of above argument following observations can be made about this dissertation. Those observations will demand further investigation and thus enhance the scope of this study.

The first and foremost is the problem of sovereignty. It needs a philosophical interrogation in a new way. Agamben's contribution to this concept seems to be significant. He has pointed out that 'sovereign power' cannot be treated separately from the 'political order' that gives birth to it. This kind of understanding questions the very basis of contractualist philosophers like Hobbes, Locke and Rousseau who imagined a pre-existing order before the formation of state or political. They called that pre-political order as a situation that demanded that an artificial order shall be created that will guarantee certain universal principles.

Agamben does not go into the nature of those principles that the 'political order' has to protect. He puts the problem of politics as the problem of ontology by saying that being cannot be captured and therefore has to be set free from the 'norm'.

A deeper investigation can reveal that he takes the side of one form of 'understanding' of 'political' particularly close to Hobbes when he thinks of it. One can enrich the understanding of 'political' only if he is to be compared and contrasted with philosophers like Locke.

Agamben's idea of 'sovereign power and law' can be also used to put to test the contemporary theorists' on justice like Rawls and Amartya Sen. It can be shown that Rawls comes close to developing a universal order which Agamben will disagree. But the understanding of man as a economic being and thinking of contract from 'primary goods' can be supplemented by using Agamben's analysis that 'order' is not only about resources but also concepts like sacred and threats. While Rawls and people like Sen might help to satisfy the material self of the being but taking into consideration the nature of theology and its relationship to man can help create a new understanding of being and the kind of justice that is required to allow it to become such. In other words, the procedural techniques to think about justice can be refined by this kind of understanding, which might in turn shape in a more comprehensive way the ideals of equality and liberty?

Agamben's analysis of 'political philosophy' turns out to be selective because he only focuses on the nature of order with respect to the exception that is lying by its side. This binary, which he believes ceases in some cases, misses out on a fundamental notion of opposition to threat to the order. He does not take into consideration that the fact exception exists means that there are certain aspects of life that poses a danger to 'order'. It denies the possibility of the discipline like sociology and psychology. One can not ignore the importance of the, say for example, the ideas or practices like sacred or profane. One does not have to necessarily think of these categories from a theological perspective thought that is also important. Thereby, Agamben's idea of limitation of order shall be also seen in the light of the philosophical questioning where questions like what is the nature of man, why do we need state and what the end of power is, shall be asked. It might not need to go into the absolutism of categories but refine the understanding of categories by thinking from the margins that is exceptional figures.

Agamben's understanding of power can be perfectly used to describe the situation of conflict particularly political conflicts. This is because he thinks for a condition in which there is no order and life is exposed to violence. In such a condition procedures are not followed and there emerge ruptures in the linear understanding of a concept. His philosophy therefore is more close to the philosophy of war. This thesis also brings out that an attempt shall be made to interrogate the nature and source of threat. As we have seen that the 'state of exception' exists on the ground of threat to the already existing order, we need to have a separate and intense interrogation of the nature of these threats to arrive at a possibility of eliminating it through an improvement in the conception of order only.. In order to understand this apprehension clearly, I would say that the figure of "bare life" envisaged in the Roman *homo sacer* reappears in the form of many lives in contemporary times. It is considered to be paradigmatic of politics. I agree that "bare life" has been produced in different forms like refugees, coma patient, Guantanamo Bay prisoner.

The scope of *homo sacer* can be extended to the impoverished and politically suppressed nationalities in contemporary times. Dalits, millions of homeless children in India and Africa, oppressed nationalities in Kashmir, Nagaland, and so many remain as "bare lives" and their existence is marked by violence purely because they don't figure in the dominant narratives of politics. But to say that these lives are excluded on a similar context does not hold true. This can be justified on the ground that *homo sacer*, prisoner of Guantanamo Bay or impoverished and hungry in India are excluded on a different ground. *Homo Sacer* may be a murder, Guantanamo Bay prisoner is a Muslim advocating a different ideology which is opposed to western notion of democracy, a hungry or homeless or refugee is produced on another grounds. Further, in areas of resistance where "state of exception" has become the rule provides a different story. Here sovereignty and any notion of authority are questioned. For example, the idea of India nation is questioned in the territories of North East and Kashmir. Indian state has responded to such demands by introducing "state of exception" and produces "bare life" in the form of a *Kashmiri* or a *Naga* who doesn't subscribe to the idea of a body politic which India established after Independence. Their relation to Indian state remains that of *homo sacer*. Their lives are governed by exceptional laws which treat them worse than the prisoners of Guantanamo Bay and such laws make a mockery of any notion of humanity. Rapes, custodial killings, pogroms, intense surveillance and so on is a

manifestation of such logical structure of violence. These spaces are, in fact, thrown open to any form of violence. When such people take political or armed action to resist their “camp like” existence, they are labeled as terrorists; the same process of de humanization which Jews faced. A peaceful protest is labeled as a threat to idea of India and any military response to suppress that protest is considered to be legitimate. Such laws have been manufactured that make control over life in these places better than what Foucault thought about panopticon. Surveillance can take the form of death if there is a potential danger to the state. Violence at level of life is assisted by epistemic violence. The whole discourses about history and the notions of humanity are used to demonize any form of resistance. In such places, the knowledge production is completely controlled and different categories are used by the state to hegemonize. In a sense when Gramsci talks about capitalism’s hegemony as established through control on both the levels of civil society (school, religion) and coercion (army, police) , such spaces are exemplary. In such places, education serves an important tool to humanize or make them Indian. Given all this, it can be said such places are exemplary in the sense that the bio-power model of Foucault and the juridical model of Agamben co-exist. But, these places also show that the problem of politics has much deeper roots; it is the conceptualization of nation-state itself which is seen as problematic. Then, there is an issue of national-self-determination that comes up. These problems are not confined to the problem of whether rule of law has been violated or preserved. Rather, it involves a complex relation between different categories of politics.

Consequently, it demands a greater interrogation of the failure of the established ‘norm’ only. As we have seen that there have been questions that are raised against the ‘order’-liberal-Marxist-theological- as being unjust and exclusive. It is interesting to note that he accepts Marxism by revising the notion of time. It would need further interrogation to see how if people believe that it is ‘now time’ that is required for revolution to change the world.

Also, it needs to be pointed out that there are contemporary examples of Marxist role that have turned totally authoritarian and suppressive. It can be argued that Marxism or any progressive theory faces the problem of procedure. While a theory can be used as diagnosis but it cannot be effective if it does not evolve a procedure but it seems that is a necessity because human collectivity is essentially about a network of interactions or actions. In short,

it needs to be interrogated further that can a Marxist procedure exist without the oligarchy of the communist party.

Further, Agamben's philosophy can be used to understand ethics in a new way. He detests the man-animal divide. He says that this has created problems for politics having to act like a machine of humanism. That understanding involves rethinking of the role of the human sciences to treat a human body and also the way we treat animals. It can be used to interrogate the possibility of rearranging the man-nature relationship.

Lastly, this dissertation hints towards two contestations that can be better understood if that is improved. The first is that he has strong resemblance to the Gandhi's concept of civil disobedience. It is because he thinks of pure potentiality from the act of refusal as seen in the scribe, Bartleby or the Pianist Glen Gould. Both these people point out to the possibility of resistance in the power structure which is strangely similar to Gandhi's notion of Satyagraha. Further, links can be thought between them if one re-investigates their concept of being and the nature of power. He is similar to Gandhi when he talks about love to be the basis of new community. Gandhi also talked about non-violence and satyagraha as the path of truth and love. It is important to see the connection between these two as both of them argue for some sort of anarchism; a dislike for the procedure.

The second concern is that the concept of democracy can be made more universal if Agamben's criticism is taken into account. He sees only 'exception' as the problem that an order faces. On the other hand, democracy assumes that there will be conflicts so we need a procedure that can help resolve these conflicts. But this claim is contested by him when he says that 'exception' has been there in the democracies. So, the possibility of eliminating 'exception' from the procedural framework might be a way to develop a 'political order' that can be become universal.

Select Bibliography

Giorgio Agamben, *Language and Death: The Place of Negativity*, trans. Karen E. Pinkus & Michael Hardt (Minneapolis, MN: University of Minnesota Press, 1991).

.....*The Coming Community*, trans. Michael Hardt (Minneapolis, MN: University of Minnesota Press, 1993)

.....*Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998).

.....*Potentialities: Collected Essays in Philosophy*, ed. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1999).

.....*Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller Roazen (New York: Zone Books, 1999).

.....*Means without End: Notes on Politics*, trans. Cesare Casarino & Vincenzo Binetti (Minneapolis, MN: University of Minnesota Press, 2004).

.....*The Open: Man and Animal*, trans. Kevin Attell (Stanford, CA: Stanford University Press 2004).

.....*Idea of Prose*, trans. Micaheal Sullivan and Sam Whittsit, (Albany: State University of New York Press: 1995).

.....*The Man without Content*, trans. Georgia Albert, (Stanford CA: Macerata: Quodlibet, 1994).

.....*State of Exception*, trans. Kevin Attel (Chicago and London: The University of Chicago Press, 2005).

.....*The Time That Remains: A commentary on the Letter to the Romans*, trans. Patricia Dailey, (Stanford CA: Stanford University Press, 2005).

.....*The Kingdom and the Glory: For A Theological Genealogy of Economy and Government (Meridian: Crossing Aesthetics)*, trans. Lorenzo And Mandarini, Stanford University press, 2011.

.....*The Unspeakable Girl: The Myth and Mystery of Kore*, Translated by Leland de la Durantaye Sea gull publishers 2014

Arendt, Hannah, *Origins of Totalitarianism*, ed. (New York: Harcourt, Brace, 1951).

.....*The Human Condition*, (Chicago: University of Chicago Press, 1958).

.....*On Revolution*. (New York: Viking Press, 1963. Revised second edition, 1965).

.....*Between Past and Future*, (New York: Viking Press, 1961. Revised edition,

1968).

.....*On Violence*, (New York: Harcourt Brace Jovanovich, 1970).

Aristotle, *De Anima* (Cambridge, Mass.: Harvard University Press, 1986).

..... *Politics*, trans. Ernest Barker, (Oxford: Oxford UP, 1978).

Bentham, Jeremy, *The Works of Jeremy Bentham, Vol. 4* (London: Simpkin Marshall, 1843).

Benjamin, Walter, *The Arcades Project. 4 vols*, ed. Rold Tiedemann, trans. Howard Eiland and Kevin McLaughlin (Cambridge, MA: Harvard University Press, 1999).

..... *On the Origin of German Tragic Drama*, trans. John Osborne, (London: Verso, 1998).

.....*Selected Writings*, 4 vols., ed. Howard Eiland & Michael W. Jennings, (Cambridge, MA., & London: Harvard University Press, 1991–1999)

Bakshi, P M, *The Constitution of India*, (universal Law Publishing Co., New Delhi, India, 2007).

Durantaye, Leland de la, *Giorgio Agamben: A Critical Introduction*, (California: Stanford University Press, Stanford, 2009).

Derrida, *The Animal that Therefore I am*, ed., Marie-Louise Mallet, tr., David Wills, (New York: Fordham University Press, 2008).

.....*The Beast and the Sovereign, Volume I*, tr. Geoff Bennigton, (Chicago: University of Chicago Press, 2009).

Foucault, Michael, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London: Penguin, 1 979).

....., *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage, 1990).

....., *The Foucault Reader*, ed. Paul Rainbow (New York: Pantheon Books, 1984).

Heidegger, Martin, *An Introduction to Metaphysics*, translated by R. Manheim, (New York: Doubleday, 1961).

...*Being and Time*, translated by J. Macquarrie and E. Robinson, (Oxford: Basil Blackwell, 1962).

...."Letter on Humanism", translated by F. A Capuzzi and J. Glenn Gray, in D. F. Krell (ed.) *Martin Heidegger: Basic Writings*, (revised and expanded edition, London).

Hegel, G.W.F, *Phenomenology of Spirit*, translated by A.V. Miller, (Oxford: Oxford University Press, 1977)

....*Elements of the Philosophy of Right*, edited by Allen W. Wood, translated by H.B. Nisbet, Cambridge: Cambridge University Press, 1991..

Mills, Catherine, *The Philosophy of Agamben* (McGill-Queen's University Press Montreal & Kin Agamben, 2008).

Negri, Antonio and Hardt, *Empire* (Cambridge, MA: Harvard University Press, 2001).

Schmitt, Carl, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, Massachusetts: MIT Press, 1985).

.....*Political Romanticism* (1919), trans. by Guy Oakes, (Cambridge, MA: MIT Press, 1986).

.....*Dictatorship. From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle* (1921), trans. by M. Hoelzl and G. Ward, Cambridge: Polity Press, 2014.

.....*The Crisis of Parliamentary Democracy* (1923), trans. by E. Kennedy, Cambridge/MA: MIT Press, 1985.

.....*The Concept of the Political. Expanded Edition* (1932), trans. by G. Schwab, Chicago: University of Chicago Press, 2007.

Articles

Agamben, Giorgio, “The State of Exception”, in *Politics, Metaphysics and Death*, ed. Andrew Norris (Durham and London: Duke University Press, 2005).

Akoijam, Bimol “Another 9/11, Another Act of Terror, The ‘Embedded Disorder of AFSPA”, *Sarai Reader: Bare Acts* (2005).

AFSPA, see “Armed Forces Special Powers Act: A Study in National Security Tyranny” (2010):South Asia Human Rights Documentation Centre.

http://www.hrdoc.net/sahrdc/resources/armed_forces.html

Balaskus, Elizabeth, ‘Examining potentiality in the Philosophy of Giorgio Agamben’, *Macalaster Journal of Philosophy* vol 19(oct, 2010).

Bentham, Jeremy, "Panopticon; or, the Inspection House: Postscript: Part 1." *The Works of Jeremy Bentham, Vol. 4* (London: Simpkin Marshall, 1843),

Capra, Dominick La “Approaching Limit Events: Siting Agamben." *Giorgio Agamben: Sovereignty and Life*.ed. Matthew Calarco and Steven DeCaroli (Stanford, CA: Stanford University Press, 2007).

Foucault, Michel, “Society must be Defended”: *Lectures at the College de France*, edited by Mauro Bertani and Allesantro Fontana, trans. D. Macey (London: Allen Lane, 2003).

Fitzpatrick, Peter “Bare Sovereignty: Homo Sacer and the Insistence of Law” in *Politics, Metaphysics, and Death*, ed. Andrew Norris (Durham and London: Duke University Press, 2005).

Norris, Andrew, “The Exemplary Exception” in *Politics, Metaphysics, and Death* ed. Norris (Durham and London: Duke University Press, 2005).

....., “Sovereignty, Exception and norm”, *Journal of law and society* vol 34 number 1, march ,2007.

....., “Giorgio Agamben and the Politics of Living Dead” in *Politics, Metaphysics, and Death* ed. Norris, (Durham and London: Duke University Press, 2005)

Nancy, J .L , "Abandoned Being", in *The Birth to Presence* (Stanford, CA: Stanford University Press), 43-44.

Patton, Paul, "Agamben and Foucault on Bio-power and Bio-politics", *Sovereignty and Life*, edited by Mathew Calarco and Steven DeCaroli (California: Stanford University Press Stanford, 2007).