

Zones of Indistinction

Giorgio Agamben's 'Bare Life' and the Politics of Aesthetics

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Lives lived on the margins of social, political, cultural, economic and geographical borders are lives half lived. Denied access to legal, economic and political redress, these lives exist in a limbo-like state that is largely preoccupied with acquiring and sustaining the essentials of life. The refugee, the political prisoner, the disappeared, the victim of torture, the dispossessed – all have been excluded, to different degrees, from the fraternity of the social sphere, appeal to the safety net of the nation-state and recourse to international law. They have been outlawed, so to speak, placed beyond recourse to law and yet still in a precarious relationship to law itself. Although there is a significant degree of familiarity to be found in these sentiments, there is an increasingly notable move both in the political sciences and in cultural studies to view such subject positions not as the exception to modernity but its exemplification. Which brings us to a far more radical proposal: what if the fact of discrimination, in all its injustice and strategic forms of exclusion, is the point at which we find not so much an imperfect modern subject – a subject existing in a 'sub-modern' phase that has yet to realise its potential – as we do the exemplary modern subject? What if the refugee, the political prisoner, the disappeared, the victim of torture, the dispossessed are not only constitutive of modernity but its emblematic subjects?

It is with such points in mind that Italian philosopher Giorgio Agamben has developed a theory of marginalisation that goes beyond the binary distinctions to be had in dichotomies such as inside/outside, centre/margins, inclusion/exclusion. In albeit abbreviated terms for now, Agamben is interested in lives lived on the margins of social, political, juridical and biological representation, not for their exceptional qualities but for their exemplary status: the manner in which they are both representative of modernity and an admonitory warning to the ontological basis of the modern political subject. Modernity's exceptions, he argues, predicate its social structure and political reasoning. The exemplary figure of that exceptionalism in historical terms is *homo sacer*, an obscure figure of Roman law who, although once a citizen, is reduced

to 'bare life' by sovereign decree and deprived of basic rights such as representation before the law.¹ *Homo sacer*, the sacred and therefore separate man – he who is set apart from others by law – is, for Agamben, the increasingly nascent figure of our times; a time in which we are witnessing the effective re-emergence of sovereign forms of power and the concomitant production of 'bare life' as a constituent element in the democratic order. It is to Agamben's credit that he does not propose a discrete topology of victimhood in his thesis; rather, he is suggesting that the discretionary ability of the sovereign state to bring the weight of its unmediated power to bear upon the body of its subjects is an inherent part of living in a democracy. In Agamben's eyes, in fine, we are not only all potentially *homo sacer* (*homines sacri*) and the de facto bearers of 'bare life' but this exceptional figure augurs a 'coming community' that is based not on rights as such but the suspension of rights.

To date, Agamben's writings have been largely confined to issues of governmentality, international law, human rights and state power. In what follows, I will extend those discussions and suggest that his thesis has significant purchase when it comes to considering various developments in contemporary art practice. To this end, my discussion is made up of two interrelated parts. The first outlines Agamben's theorisation of political exceptionalism, 'bare life' and the 'zones of indistinction' wherein *homo sacer* resides. The second part, in so far as it outlines a possible framework within which to explore the politics of aesthetics involved in representing 'bare life' and 'zones of indistinction', is of necessity more speculative. In this latter context, it is critical that I note from the outset that the choice of artists discussed here is neither exhaustive nor predicated upon their utilitarian deployment of art as protest, propaganda or agitprop; on the contrary, it is the politics of the aesthetic that interests me here – the form that the work takes and the irreducible fact that these works circulate as part of a broader visual culture. If Agamben is indeed right when he argues that 'states of exception' have increasingly become the norm in Western democracies, and that we are seeing the re-emergence of sovereign power structures, not to mention the implications for the political subject and his/her legal status, then the 'zones of indistinction' in which we find modern-day *homo sacer* are in need of urgent representation. The question that is being posited here is therefore a relatively perennial one inasmuch as it concerns the extent to which aesthetic practices are responsive to the sociopolitical, economic, historical and cultural dimensions of the moment in which they are produced, discussed, exchanged and displayed.

POLITICAL EXCEPTIONALISM, HOMO SACER AND 'BARE LIFE'

Although Agamben's work covers topics as diverse as aesthetics and anthropogenesis, the two subjects he has been most associated with to date are sovereign power and *homo sacer*. Sovereignty is not to be necessarily equated here solely with historical ideals of monarchical power (although that is where the model for modern versions of sovereign

1 Currently professor of aesthetics at the University of Verona, Giorgio Agamben has progressed his theory of *homo sacer*, sovereignty and 'states of exception' in, respectively, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford, [1995] 1998, hereafter referred to as *HS* followed by page number, and *State of Exception*, Chicago University Press, Chicago, [2003] 2005. Agamben's use of the phrase 'bare life' is related to the Greek term *zoe* and Hannah Arendt's description of the refugee's 'naked life' in *The Origins of Totalitarianism* (1951). The phrase also has a counterpart in Walter Benjamin's use of 'bare life' (*bloßes Leben*) in 'Critique of Violence' (1921). The term 'bare life', as opposed to the literal Italian translation 'naked life' used in the original version of the book, has been largely adopted by translators and commentators alike.

2 In Roman custom *homo sacer* was exemplified by the fact that he could not be subjected to a judicial execution – he exists outside the law of the city – but, in the role of an *outlaw*, he could be killed by anyone without that act being considered murder. To fully understand this point it is pertinent to note the etymological root of the term ‘exception’. Stemming from the Latin *ex-capere*, which means ‘taken outside’, the exception is that which is ‘included through its own exclusion’ (HS 170). It is this form of inclusion through exclusion that Agamben designates as the ‘relation of exception’: a form of sovereign power and a ‘force’ of law that ‘consists in this capacity of law to maintain itself in relation to an exteriority’ (HS 18).

3 Agamben, *State of Exception*, op cit, p 87. It is precisely this creation of a ‘threshold’ space, within which juridico-political decision-making finds validity, that delimits the ‘state of exception’ itself. Agamben writes: ‘In this sense, the sovereign exception is the fundamental localisation (*Ortung*), which does not limit itself to distinguishing what is inside from what is outside but instead traces a threshold (the state of exception) between the two, on the basis of which outside and inside, the normal situation and chaos, enter into those complex topological relations that make the validity of the juridical order possible’ (HS 19).

power originates); rather, the sovereign is he who decides when the rule of law is suspended. The declaration of a ‘state of exception’, which has counterparts in the declaration of a ‘state of emergency’, the rule of martial law or the pronouncement of *état de siège*, heralds the instantiation of sovereign power. Emanating from an unusual and apparently contradictory starting point, the sovereign legal prerogative is the effective prorogation of the law itself and a ‘state of exception’ is not the rule of law as such nor is it a fact; nor is it bound to a law or to a fact. Rather, the exception is the confusion of the two – and he who decides upon that exception (that confusion of law and fact) is the sovereign. There is, similarly, a degree of elision and apparent paradox to be had in the figure of *homo sacer*: in Roman antiquity, the revocation of a citizen’s rights by sovereign decree produced the threshold figure of *homo sacer*, the sacred man who can be killed by anyone (he has no rights) but not sacrificed because the act of sacrifice is only representable within the legal context of the city – the very city from which *homo sacer* has been banished. He is an outlawed citizen, the exception to the law, and yet he is still subject to the penalty of death and therefore still included, in the very act of exclusion, within the law.² In being the interstitial exception he effectively blurs the lines between outlaw and citizen.

Two further distinctions can be made here, both of which concern the confusion to be had in a ‘state of exception’ between law/exception and citizen/outlaw. First, in the moment that the state suspends the law we see a sovereign form of power re-emerge – that is, a unilateral, unaccountable, arbitrary and extra-legal form of power. When the ‘state of exception’ begins to become the rule, rather than the suspension of rule, we witness a blurring of the two and the appearance of *homo sacer*, the one-time citizen rendered *outlaw* who has no recourse to law other than that of the sovereign’s power over his life and death. It should also be noted that Agamben’s term *homo sacer*, the sacred man, is deployed not so much to indicate the religious experience implicit in the term *sacer* as it is to highlight the other more subdued meaning of the term ‘sacred’: that which is ‘set apart’. In this structure of exceptionalism the ‘sacred’ does not reveal a religious element as such, rather, it further defines the moment of being set apart and thereafter takes on the hue of accursedness and abandonment. What Agamben effectively isolates in this apparently archaic figure is the moment when a state, through the suspension of law and the promulgation of a ‘state of exception’, turns on its own citizens and, through intimidation, banishment and the penalty of death, produces an accursed figure: the one-time citizen reduced to the ‘bare life’ of *homo sacer*.

Arguing that such ‘states of exception’ have reached their maximum worldwide deployment in our time Agamben observes that:

... the normative aspect of law can thus be obliterated and contradicted with impunity with a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law.³

In the past, it was usually the advent of war that heralded ‘states of exception’ or martial law; in the absence of actual war we created a ‘cold’ one to justify states of emergency; whereas today we have

confected a 'war on terror' that would appear to have an unlimited remit. Under the latter conditions, the spectre of terrorism has increasingly promulgated 'states of exception' whereby the sovereign state can usher in laws to curtail, contain and monitor its own citizens. In the eyes of a sovereign power that has effectively usurped the legislative branch of the state, it is a move that renders us all potentially *homines sacri*. It would not be difficult at this point in my discussion to cast around for examples of this and note, for instance, the current state of affairs in the United States and the UK.

Drawing upon the historical ramifications of Carl Schmitt's work on sovereign power, Agamben makes much of the nature of sovereignty and there is more to be said on the matter than space allows. For now, nonetheless, I want to note how a 'state of exception' produces the figure of *homo sacer* and the condition of 'bare life' to which we are all ultimately susceptible.⁴ In a 'state of exception', to continue the theme of elision and the sovereign suspension of law, the individual is deprived of national civil rights and international human rights – such as habeas corpus, appeal to systems of legality and, increasingly, recourse to the Geneva Convention and due process – and is in turn constituted (interned) within a 'zone of indistinction' where the dividing line between citizen and outlaw, legality and illegality, law and violence, and ultimately life and death are strategically and at times fatally blurred. In the blurring of politics, bio-politics and thanatopolitics, we find a veritable continuum in which the modern subject is increasingly subjected to a sovereign power over his life and death; 'not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element' (HS 88). This may seem, on the face of it, to be over-stating the case, until we consider the historical precedents for such a state of affairs and, perhaps more crucially, the etymology of the term 'life' itself.

Underwriting Agamben's thesis is the incremental manner in which life, mere life or 'bare life', first became politicised; how, that is, it became the object of a controlling and delimiting politics. There was a time before bio-politics. Which is to say, there was a time when life existed in a sphere other than the (bio-)political. To fully understand this, it is crucial that we note, as Agamben does from the outset of *Homo Sacer: Sovereign Power and Bare Life*, that the Greeks, the progenitors of the *polis* or city-state, had no one term to define life itself: 'They used two terms that, although traceable to a common etymological root, are semantically and morphologically distinct: *zoe*, which expressed the simple fact of 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' (HS 1). As a form of life common to humans and other animals, *zoe* was usually confined to the *oikos*, or privacy of the home, and was considered to be largely beyond political interference. To this day, the privacy of the home and what we do in it is central to discussions of state power and laws protecting privacy. *Bios*, on the other hand, denoted the form a life could assume in the public realm and suggested entry into the *polis* or a politicised form of life. Within a 'state of exception' the difference between *bios* (prefigured in the citizen and therefore in the rights of the citizen) and *zoe* (mere life) is decided upon by the sovereign/state. And it is between these two states of being, *bios* and *zoe*, that 'bare life' emerges within a

4 In *Political Theology*, Carl Schmitt proposed that the legal order ultimately rests upon the decision of the sovereign. It is the sovereign who determines a 'state of exception' and it is therefore the sovereign who suspends legal order – discontinues or defers its authority – so that legal order can be re-established at a later, less calamitous date. This is perhaps the central paradox of the rule of law under sovereign power: a state of exception – martial law for example – initiates the suspension of law so that the rule of law can be reinstated down the line. The problematic, as Agamben puts it, is when the 'state of exception' – the suspension of law and all that such prorogation entails – becomes the rule. See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans George D Schwab, MIT, Cambridge, MA, [1922] 1985, *passim*.

sovereign-declared 'zone of indistinction'. Although a politicised form of life from the outset, 'bare life' is nonetheless excluded from the *polis* and becomes, in effect, an interstitial figure that resides between the *polis* and the *oikos*.

These points are not to be taken lightly inasmuch as they disclose, for Agamben, the very foundations of democracy and the emargination of *bios* and *zoe* in the modern state. The management of 'bare life' is, moreover, both a primary function of the state and a predicate to the latter's emergence. 'Politics', Agamben notes in this respect, 'is now literally the decision concerning the unpolitical (that is, concerning bare life)' (HS 173). In effect, this thesis seeks to complete Michel Foucault's truncated discussion of bio-politics with a decisive redaction that sees modern politics as the process not so much of including the 'bare life' of the marginalised within the political order of the citizen (*bios*), but the means by which the exception – the penumbral figure of *homo sacer* and its 'bare life' – becomes the experience of modern subjectivity:

... the decisive fact is that, together with the process by which exception everywhere becomes the rule, the realm of bare life – which is originally situated at the margins of the political order – gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoe*, right and fact, enter into a zone of *irreducible indistinction*. (HS 9; emphasis added)

To accept as much is to entertain a number of interrelated points: the original political element was 'bare life' and it has in turn become increasingly indiscernible from the political (*bios*) as a whole. What we are left with is the emergence of the bio-political in the modern age and, for Agamben, this co-option of 'bare life' into the political realm effectively plots the passage of the pre-modern to the modern subject.⁵ As a paradigm of modern subjectivity, *homo sacer* is a form of subjectivity ('bare life') that is lived precariously under the rule of sovereignty and its power over the life and death of its subjects. It is, in a milieu that sees sovereign forms of power in the ascendancy, *the* life of the subject. Agamben writes:

If it is true that the figure proposed by our age is that of an unsacrificable life that has nevertheless become capable of being killed to an unprecedented degree, then the bare life of *homo sacer* concerns us in a special way. Sacredness is a line of flight still present in contemporary politics, a line that is as such moving into zones increasingly vast and dark, to the point of ultimately coinciding with the biological life itself of citizens. If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*. (HS 114–15)

So where, we may ask, are the contemporary 'zones of indistinction' in which modern-day *homines sacri* live? As the originary political element, 'bare life' once resided between the home and city or the outskirts of the *polis*; however, Agamben alights upon a far more localised and modern version of this in his discussion of Auschwitz. It is the apparent exceptionalism of the concentration camp that draws his attention in so far as it is in the camps that we find the overt (bio-)politicisation of 'bare life' and the abandonment *in extremis* of internees to an extra-legal no-man's

⁵ The present enquiry', Agamben writes of his project, '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 biopolitical body is the original activity of sovereign power*' (HS 6; emphasis in the original).

6 'Whoever entered into the camp moved in a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense' (HS 170).

7 In a review of Agamben's *State of Exception*, 2005, Malcolm Bull paraphrases the argument thus: 'We have moved from Athens to Auschwitz: the West's political model is now the concentration camp rather than the city state; we are no longer citizens but detainees, distinguishable from the inmates of Guantánamo not by any difference in legal status, but only by the fact that we have not yet had the misfortune to be incarcerated – or unexpectedly executed by a missile from an unmanned aircraft.' See Malcolm Bull, *London Review of Books*, 16 December 2004, p 3.

8 In this context, Klaus Ronneberger writes: 'Agamben suggests that inclusion in a political community assumes the simultaneous exclusion of people who are not accorded a legal status. Politics thus commences with a kind of demarcation and the establishment of a space that is removed from protection by law. Agamben terms this space *bare life*. This does not involve some return to an origin but a state that is artificially created. The suspension of legal stipulations, so he argues, eliminates the distinction between public and private life, and engenders that bare life over which the sovereign can unconditionally dispose at will.' See Klaus Ronneberger, 'Bare Life or Just Existence?', *Documenta Magazine*, no 2, Taschen, Cologne, 2007, p 40.

land.⁶ It is in the camps that we encounter the subject who possesses physiological life without any political significance or representation before the law; it is there that we witness the subject who can be killed with impunity but not sacrificed – he is, after all, beyond the law and therefore unrepresentable within it; and it is there that we see the subject precariously inhabiting a 'zone of indistinction' between life and death, *zoe* and *bios*, law and violence, citizen and refugee, survivor and victim – or, to gloss Primo Levi, the drowned and the saved.

There is a clear provocation underwriting Agamben's reading of Auschwitz and its aftermath. Long seen as the schismatic exception to the teleology of Western modernity, the concentration camp is here understood to be the law (*nomos*) of a sovereign power re-emerging in modernity and made manifest in the architecture of genocide. What is more, to suggest that the camps at Auschwitz provide a blueprint for the political structure of modernity and the subject's relationship to power and politics is to go against another widely held belief: that such camps, in all their horror and abjectness, were not only fundamentally unrepeatable but were without historical precedent. The figure and fate of *homo sacer*, for Agamben, questions any such assumptions. Aspects of Agamben's argument at this point may seem immoderate if not controversial until we consider that the ambition of power in the camps was the banalisation of life: the stripping away of political community (*bios politikos*) so as to produce 'bare life' – a life beyond political and legal representation. We have moved here from the city-state, in all its idealism, to the abject horror of the camp – and yet the transition, for Agamben, is not one of disjunction or schism but one of correlation and continuity: the ambition of modern sovereign power under a 'state of exception' – a state of emergency, martial law, or *état de siège* – is the banalisation of life so that it can be reduced to 'bare life' and thereafter monitored, contained, curtailed and, if needs be, killed with impunity. And it is to this transition that we must turn to fully explicate the gravity and purchase to be had in Agamben's argument and its significance for a politics of aesthetics.

'BARE LIFE', THE SUBJECT OF MODERNITY AND THE POLITICS OF AESTHETICS

If 'bare life' is the disavowed and yet originary political element of sovereign power, an apparently anachronistic form of power that has nonetheless re-emerged with alarming frequency in our contemporary political landscape, then a connection can be made – via the unforgiving lens of bio-politics – between the democracy of the *polis* and the totalitarianism of the modern-day camp.⁷ Both prefigure the originary political relation in terms of a ban and both presage the abandonment of *homo sacer*, 'bare life', to a juridico-political hinterland.⁸ Exempted from the *socius* of a political community, not to mention its protection, the individual who entered the camp found himself in that most absolute of bio-political spaces where his 'bare life' came into an unmediated relationship with absolute sovereign power. 'This is why', Agamben continues, 'the camp is the very paradigm of political space at the point at which politics becomes biopolitics and *homo sacer* is virtually

confused with the citizen' (*HS* 171).⁹ We move here towards the crux of Agamben's argument, a thesis that is not so much concerned with the anomalous nature of the camp as historical fact, as it is with the camp as 'the hidden matrix and *nomos* of the political space in which we are still living' (*HS* 166).

The ongoing politicisation of life today demands that a series of decisions be made about the delimitation of the threshold beyond which life ceases to be politically relevant – where life becomes 'bare life'. These thresholds, moreover, need to be redrawn from epoch to epoch; so much so that every society modulates the limit of the threshold. The camp was the limit in Nazi Germany at a particular moment in time; however, as Agamben argues, 'every society – even the most modern – decides who its "sacred men" will be' (*HS* 139). Politics, in the context of the camp, concerned itself with that which was apparently unpolitical – 'bare life' and its abandonment by the political community – and the implications of this reach beyond the singular abjection of the camps:

If this is true, if the essence of the camp consists in the materialization of the state of exception and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, then we must admit that we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography. (*HS* 174)

Jacques Rancière has also detailed the scenario of modernity in terms that expand the *nomos* of the camp: 'Correspondingly', Rancière writes:

... the Holocaust appears as the hidden truth of the Rights of Man – that is, the status of bare, undifferentiated life, which is the correlate of biopower. The camp can be put as the 'nomos' of modernity and subsume under one and the same notion the camps of refugees, the zones where illegal migrants are parked by national authorities, or the Nazi death camps.... *In such a way, the correlation of sovereign power and bare life takes place where political conflicts can be located.*¹⁰

In this context, and adding further detail to the 'zones where illegal migrants are parked by national authorities', Agamben highlights the stadium in Bari where Italian police rounded up illegal Albanian immigrants in 1991 before returning them to their country; the winter cycle-racing track to which the Vichy government consigned Jews before giving them over to the Germans; the *Konzentrationslager für Ausländer* in Cottbus-Sileow where the Weimar republic gathered Jewish refugees from the East; and the *zones d'attentes* in French national airports. 'The camp', Agamben argues:

... 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 recognise in all its metamorphoses into the *zones d'attentes* of our airports and certain outskirts of our cities. (*HS* 175; emphasis in the original)¹¹

At the heart of these sites remains a far from resolved question: what does it mean to be reduced to 'bare life' and coerced into adopting the accursed role – that which is set apart and abandoned – of *homo sacer*?

9 It is no coincidence that if the person entering the camp was a Jew he had already been deprived of his rights as a citizen by the Nuremberg laws (the so-called *Nürnberger Gesetze* of 1935) which, in the moment of deploying a pseudoscientific approach to biological antecedents and dubious classifications of progeny, effectively denaturalised the Jews on the grounds of race. Denaturalisation, in this instant, heralded the suspension of political community (*bios politikos*) and the instantiation of 'bare life' as physical fact – a life that can be eliminated without the prosecution of homicide because it is a life considered to be without value.

10 Jacques Rancière, 'Who Is the Subject of the Rights of Man?', *South Atlantic Quarterly*, 103:2/3, 2004, pp 297–310, p 301 (emphasis added)

11 For Andrew Norris, the camp prefigures the grounds for a number of contemporary thresholds: 'contemporary instances of this threshold abound, from refugees and people in concentration camps, to "neomorts" and figures in "overcomas" whom we are tempted to turn into organ farms'. Andrew Norris, 'Giorgio Agamben and the Politics of the Living Dead', in *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's 'Homo Sacer'*, ed Andrew Norris, Duke University Press, Durham, NC, 2005, pp 1–30, p 10.

12 Joanna Mytkowska, 'Too True Scenarios', in *Artur Zmijewski: If it happened*

only once it's as if it never happened, Cantz, Ostfildern Ruit, 2005, pp 12–16, p 15 (emphasis added)

13 Ibid, p 24

14 Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans Daniel Heller-Roazen, Zone Books, New York, 2002, pp 59–60

15 It should be noted here that whilst Agamben's writings in *Homo Sacer: Sovereign Power and Bare Life* effectively preface his discussion of the 'state of exception' that is Guantánamo, his critique of such a state of affairs has been mostly outlined in

In his film *80064* (2004), the Polish artist Artur Żmijewski convinced a ninety-two-year-old survivor of Auschwitz, one Józef Tarnawa, to have his prison tattoo number, the eponymous title of the film, re-tattooed on his arm. This survivor of Auschwitz recalls throughout the film the inhumanity of the camps and the degradation he witnessed there. Writing of this work, Joanna Mytkowska has noted that the artist wanted to reaffirm that 'surviving the camp succeeded usually at the cost of consent to *inhuman* rules, acceptance of one's fate, and conformity'.¹² Asked by the artist whether or not he had felt any impulse to protest against his treatment in the camp, Tarnawa replied, 'Protest? What do you mean, protest? Adapt – try and survive!'¹³ Echoing this sentiment, and writing in *Remnants of Auschwitz: The Witness and the Archive*, Agamben notes that:

... it is implicit in many testimonies that at Auschwitz everyone somehow set their human dignity aside... The survivor is therefore familiar with the common necessity of degradation; he knows that humanity and responsibility are something that the deportee had to abandon when entering the camp.¹⁴



Artur Żmijewski, *80064*, 2004, single channel video, 11 min, courtesy of the artist and Galerie Peter Kilchmann, Zurich

State of Exception, 2005, which has been read as a sequel to the former volume. Drawing a line from Carl Schmitt's work to the present-day emergence of sovereign forms of power in the United States, it is in *State of Exception* that Agamben brings his argument to bear on the political exceptionalism that has been deployed by the Bush administration in its 'war on terror' and its transcendentalist appeal to democracy, God and justice. It is germane to note in this context that Peter Weiss, vice-president of the Center for Constitutional Rights, makes a direct connection between Carl Schmitt's thinking on sovereignty and President Bush's views on the powers of the executive branch of government. Commenting upon a recent Supreme Court decision in favour of detainees in Guantánamo, Weiss enquires into the source of the disagreement

The tragedy here is that in the very moment of being stripped of their political rights and legitimacy, inmates such as Józef Tarnawa became that most politicised of subjects, namely, the inhuman figure of *homo sacer*. *80064* brings into play a number of issues, not least the thorny subject of ethics in so called interventionist or collaborative art and the provocations of memory and its potentiality in the catharsis of commemoration. In other works, such as *The Game of Tag*, 1999, in which participants chased one another around a former Nazi gas chamber, and *Crank*, 2000, a series of five photographs in which the artist reconstructed an experiment carried out by German doctors on prisoners in Auschwitz, Zmijewski goes some way to portraying not only the 'zones of indistinction' within which camp inmates resided but the 'bare life' to which they were subjected.

In the present-day, for Agamben, the single most pertinent and emblematic 'zone of indistinction', the space within which 'bare life' is routinely politicised, is Guantánamo Bay, a threshold space where the rule of law has been usurped and the fundamental right to trial and prosecution after arrest has been effectively suspended.¹⁵ It is again a source of fatal irony that the very moment in which the inmates of Guantánamo are left bereft of political community – the very moment in which they are reduced to 'bare life' – is that most politicised of moments.¹⁶ On the occasion of the 51st Venice Biennale in 2005, Christoph Buchel and Gianni Motti staged their 'Guantánamo Initiative' so as to draw attention to the interstitial location of this so-called detention centre and the suspension of legality that brought it into being. Requesting a new lease from the Cuban government for Guantánamo, so as to transform it from



Omar D, *Devoir de Mémoire/A Biography of Disappearance*, Algeria 1992. Courtesy of Autograph ABP

over inmates there:

'Basically, it was over the president's opinion, which owed a great deal to that of vice-president Dick Cheney and Cheney's chief-of-staff David Addington, that the primary duty of the executive branch is to defend the national security of the state at whatever cost. That this opinion may be sincerely held is beside the point; that it partakes more of autocracy than of democracy is beyond doubt. In this it represents a considerable departure from the thinking of America's "founding fathers", but comes close in some ways to that of Carl Schmitt, the influential German jurist who furnished the philosophical basis for the Nazi regime.' Peter Weiss, 'Boumediene v. Bush: Guantánamo and Justice', *Open Democracy*, available at <http://www.opendemocracy.net/article/boumediene-v-bush-guantanamo-and-justice-0> (accessed 26 June 2008).

- 16 At the time of writing the Supreme Court of the United States ruled by a 5–4 majority on 12 June 2008 in favour of a case brought on behalf of detainees held at Guantánamo. The ruling was as follows: those incarcerated in Guantánamo have full rights of habeas corpus under the US constitution. This follows a number of similar rulings that have dogged the Bush government's attempts to have these trials held in military courts.

- 17 In *Torture Team: Deception, Cruelty and the Compromise of Law*, Philippe Sands clarifies a number of issues in relation to recent debates regarding Guantánamo Bay and Abu Ghraib. First, and despite opposing assertions from the Bush government, Sand argues that the 'illegitimate' torture techniques used in Abu Ghraib can be traced to the so-called 'legitimate' interrogation techniques

a military to a cultural base, the artists displayed treaties and documents to expose what they viewed as the illegitimacy of the US lease contract imposed on Cuba in 1903. They also displayed forty-seven annual rent cheques – all of which the Republic of Cuba has refused to cash – that have been issued by the United States to the Cuban Government since 1959. At the time of writing, Guantánamo Bay, that most conspicuous of indistinct zones, still housed 270 detainees of whom only nineteen had been formally charged.

Guantánamo Bay may be the most obvious 'zone of indistinction' where the banished figure of modern-day *homo sacer* languishes in an interstitial space wherein legality and illegality, legitimate interrogation techniques and outright torture, unlawful and lawful enemy combatant, the rule of law and its suspension and life and death become strategically blurred.¹⁷ However, such zones do not necessarily have to have a localised topography and can be national in their scope. We could highlight here the 6000 plus disappeared and tortured since the onset of civil war in 1992, many of them at the hands of the security forces, in the ongoing political tragedy that is modern-day Algeria. In Algeria a 'state of emergency' has become the rule. In Algerian-born Omar D's photographs of the disappeared, we encounter images not only of the disappeared but also of what they have left behind.¹⁸ One of the more common refrains from those relatives and friends left behind is that they do not know whether the disappeared are alive or dead. Again, the blurring of life and death is seen to be connected to the manifestation and effect of a 'zone of indistinction'; an extra-legal space wherein which citizenship can be blurred into 'bare life' and life itself into death. Elsewhere, in the mid-1990s, the Argentinian photographer Marcelo Brodsky returned to his homeland equipped with his camera and a 1967 photograph of his eighth-grade classmates. In *Buena Memoria*, 1996, Brodsky enlarged the photograph and annotated it, noting in turn where his classmates had ended up. Whilst some had married and some had gone into exile two members of the class had been 'disappeared'. In this act of tapping into collective memory Brodsky brings to the fore the role of photography in addressing that which is now absent; the moment when that which no longer exists as anything but trauma can be nonetheless reified in visual culture. Drawing on the troubled past of Colombia, Oscar Muñoz's video 'Proyecto para un memorial (Project for a Memorial)' (2005) shows the artist hand painting portraits of disappeared people on a concrete sidewalk. Instead of paint, however, he uses water, which evaporates before each portrait is fully realised. Aesthetically, in the very form being used, Muñoz's water-paintings become a metaphor for the disappeared of his native country.

In all of the above instances, artists have used their practice to examine the very moment when states turn on their people and, in so-called states of emergency, set about terrorising their own citizens. In all three instances martial law and states of emergency were declared and individual's were *outlawed* to 'zones of indistinction' – detention camps, holding cells, torture chambers – where their recourse to the law was not only suspended but the political legitimacy of their lives brought to its fatal conclusion. We could continue here with a depressing litany of countries from as far afield as Chile, the one-time USSR and fascist Spain, all of which wanted, to use the nomenclature of Nazi Germany,

authorised for use in Guantánamo Bay. These 'techniques' include the deployment of so-called 'water-boarding', sleep and sensory deprivation, the use of stress positions, sexual and religious humiliation, and environmental manipulation – all of which are in contravention of Common Article 3 of the Geneva Convention. On the subject of these methods, a three-page memorandum listed eighteen techniques of interrogation methods that were all new to the US military, including the use of 'mild, non-injurious physical contact'. The document was signed by Donald Rumsfeld on 2 December 2002. Philippe Sands, *Torture Team: Deception, Cruelty and the Compromise of Law*, Allen Lane, London, 2008, passim. From 2002 Ayreen Anastas and Rene Gabri have been collaborating on a series of projects that have sought to address, amongst other things, the legal status of prisoners in Guantánamo and the subject of human rights. These have been archived on their website, <http://www.16beavergroup.org>. For a fuller discussion of these projects, see T J Demos, 'Means with End: Ayreen Anastas and Rene Gabri's Camp Campaign', *October*, no 126, 2008, pp 69–90.

18 Omar D, *Devoir de Mémoire/A Biography of Disappearance, Algeria 1992 –*, ed Tom O Mara, Autograph ABP, London, 2007

19 One of the central figures for Agamben is the refugee, a figure, it has been argued, that he prioritises 'by relating his hypothesis to European deportation policies and declaring the refugee to be the avant-garde political subject'. Klaus Ronneberger, op cit, p 41.

20 I have written elsewhere on Yto Barrada's 'The Straits Project', Anthony Downey,

to cleanse their territory of 'unwanted elements'. In our present-day, terms such as 'ghost detainees' and 'special rendition' bring to light, so to speak, the spectre of the disappeared in an era where plausible deniability on behalf of government officials effectively precludes them from answering questions about the covert use of torture and internment that is routinely practised by democratically elected governments who are (apparently oblivious) co-signatories to the Geneva Convention.

Sovereign power and 'states of exception' need not be intra-national and we could look here to the many instances of individuals such as refugees, migrants and those who are confined to one region or another by international law.¹⁹ Between 1998 and 2003 the Tunisian-born photographer Yto Barrada returned to her hometown of Tangiers to photograph its inhabitants. What she found there was a city that exists as a 'zone of indistinction'; a de facto bottleneck or *zone d'attente* for the many Africans who travel there in order to attempt a crossing to Europe over the Strait of Gibraltar. Before 1991 any Moroccan wishing to travel to Europe could do so with an appropriate passport; since the introduction of the European Union's Schengen Agreement, however, this passage has been effectively closed off to all but a chosen few. Those who have made the journey illegally are referred to as the 'burnt ones' because they burn their passports before embarkation so that they cannot be returned to their homeland as no proof of where they have come from exists. In the act of burning their passports before departure the 'burnt ones' have effectively waived their rights as citizens to legal redress. Reduced to the 'bare life' of *homo sacer* they have been rendered 'non-persons' in a move that is singularly paradoxical: in the very moment of attempting to attain citizenship they must destroy that which gave them citizenship in the first place.²⁰

These images of Tangiers, as do all images of 'zones of indistinction' and 'bare life', return to haunt discourses on 'human rights' and social (in)justice. We could note in this context the Palestinian-born photographer Ahlam Shibli's images of the Palestinian Bedouin of the Negev region. Dispossessed of their homelands since the 1960s to make way for Israeli settlements, the Bedouin of the Negev have been consigned to either seven designated townships, in which over 130,000 people live, or, as with the other half of the community who have refused to live in these makeshift towns, to over forty-five unrecognised villages where the laws of the Israeli state effectively disallow any development or access to public services such as education, healthcare and sanitation. In the photographic series *Unrecognised* (2000), the artist focuses on Arab al N'aim, a village in the Galilee region that does not actually exist on the official map and is therefore, for now at least, literally beyond political and legal representation. For the Bedouin of the Negev, living as they do in a 'zone of indistinction' which is effectively a series of camps, life has become the fact of 'bare life' – a life pared down to its essentials and beyond either recourse to law or *bios politikos*. We could also look here at Joakim Eskildsen's careful documentation of the Roma people which traces their diasporic spread across seven separate cities, a dispersion that speaks – and leaving to one side here the legacy of the concentration camps for this community – of constant unsettlement and precarious resettlement, of lives lived in liminal zones where the distinction between legality/illegality, citizen/refugee, immigrant/emigrant is consistently



Ahlam Shibli, *Awakening*, from *Unrecognised* series, Arab al-N'aim, Palestine, 2000, 60 × 91 cm, digital print, courtesy the Artist, © Ahlam Shibli

'A Life Full of Holes',
Third Text, 20:82, 2006,
pp 617–26.

- 21 See Joakim Eskildsen, *The Roma Journeys*, Steidl, Gottingen, 2007. At the time of writing it was

blurred for political ends.²¹ The liminality of these zones, the sense of temporal and spatial hiatus, is all the more eloquently addressed in Adrian Paci's *Immigration Removal Centre* (2007), a short video in which we see a group of 'immigrants' trudge dejectedly towards a waiting aircraft's passenger steps. The camera lingers on individual faces in the crowd and follows them up the steps as they patiently await either



Yael Bartana, *Wild Seeds*, 2005, single-screen video, courtesy of the artist, Annet Gelink Gallery, Amsterdam, and Sommer Contemporary Art, Tel Aviv

reported that the Italian government was planning to fingerprint all Roma children. The interior minister, one Roberto Maroni, argued that the proposal would make it easier to identify child beggars. The move is opposed by both Italian opposition parties and Unicef in Italy. See Tom Kington, 'Unicef among critics of Italian plan to fingerprint Roma children', *Guardian*, 27 June 2008, p 24.

- 22 The subject of Palestine has proved a relatively fertile ground for artistic commentary in recent years. For a more detailed analysis of this tendency, see *Wanderland: Israel–Palestine*, Kerber Verlag, Leipzig, 2006. The catalogue was published on the occasion of an exhibition of the same name held at Museum Haus Lange in Krefeld in 2006 and included artists such as, *inter alia*, Rineke Dijkstra, Yaron Vesham,

admittance or refusal; however, as the camera pulls away from the stairs we become aware that there is no plane to be boarded, or any journey to be undertaken. These unfortunate individuals are stranded in a form of political purgatory, a limbo-land of neglect in which they are ferried from place to place without ever really moving.

Returning to the oft-cited subject of Palestine, a notably interstitial zone, in 2003 the Milan-based organisation Multiplicity, made up of architects, geographers, artists, city planners, photographers, sociologists, economists and movie-makers, produced a deceptively simple but nonetheless revealing film in and around the city of Jerusalem.²² *In Solid Sea 03 – The Road Map* (2003), members of the group took two taxis: in one they were accompanied by an individual with an Israeli passport, whilst in the other they travelled with a driver who had a Palestinian passport. The roughly similar routes of both took one and five hours respectively. To the extent that this journey exposed the entanglement of zones, enclosures, controlled corridors and borders in general, it also showed up, to use the term deployed by Multiplicity, that the territories of Israel and Palestine are the 'laboratory of the world'. The Israeli artist Yael Bartana has likewise confronted aspects of the settlements in Palestine and Israel in her video work *Wild Seeds* (2005), in which young Israelis – some of whom were about to refuse service in the Israeli Defence Forces – play a game based on the forced ejection of Jewish settlers from Gilad's Colony in 2002. The fact that Palestine exists under a continuous state of emergency – enabling the unilateral and largely uncontested appropriation and redistribution of land alongside the application of laws that contravene international law – effectively renders Palestinians outlaws

Luc Delahaye, and Zatorksi and Zatorski. See also, 'The Conflict and Contemporary Visual Culture in Palestine and Israel', eds Haim Bresheeth and Haifa Hammami, *Third Text*, 20:81, 2006.

- 23 'A conversation with Yael Bartana', by Galit Eilat, in *Yael Bartana: Videos and Photographs*, eds Charles Esche and Esra Sarigedik Öktem, Van Abbemuseum, Eindhoven, n d, pp 35–43, p 39
- 24 In a provocative account of borders and threshold states of being, Jacques Derrida has outlined three types of border limits: those associated with territories and states; the border limits that exist between domains of discourse; and the demarcation between life and death itself. In the context of my discussion, it is of interest that life/death and the possibility of passage between two *states* of being – bearing in mind the transnational and extra-territorial context of my argument – should be somehow equated, not

within their own land (a further blurring of the distinction between citizen and refugee). However, this also goes some way to veiling the fact that Israel is equally under a constant state of emergency. In interview, Bartana has observed that:

Israel is under a state of emergency, but it is a social and civic state of emergency. The government's emergency policy causes neglect of social problems and gaps, pushing the public agenda to the margins.²³

It seems there are no winners to be had in a 'state of exception' and these increasingly ubiquitous threshold spaces that we observe in the no-man's land of the disputed territories become intersections in time and space that register both the limit of justice and legality and the point of its transgression, that is, injustice and illegality.²⁴

We return here to the effects of a 'state of exception' and the re-emergence of sovereign power under cover of an executive usurpation of both national and international legislature. Law becomes a law unto itself and yet beyond law too. In the midst of such states of emergency, the citizen is strategically confused with *homo sacer* so as to further monitor, control, marginalise and, if sovereign-ordained power sees fit, put him/her to death. To our list above we could add the countless political prisoners languishing in cells the world over, from modern-day Russia to the emerging superpower that is China. We could also note, somewhat nearer to home, how the policy of internment without trial initiated in Northern Ireland in the 1970s, under the Civil Authorities (Special Powers) Act, introduced a law giving the authorities the power to detain suspected terrorists without trial. One of the more notable events to emerge in Northern Ireland following on from this period was the so-called 'Hunger Strikes' in 1981 during which ten men starved



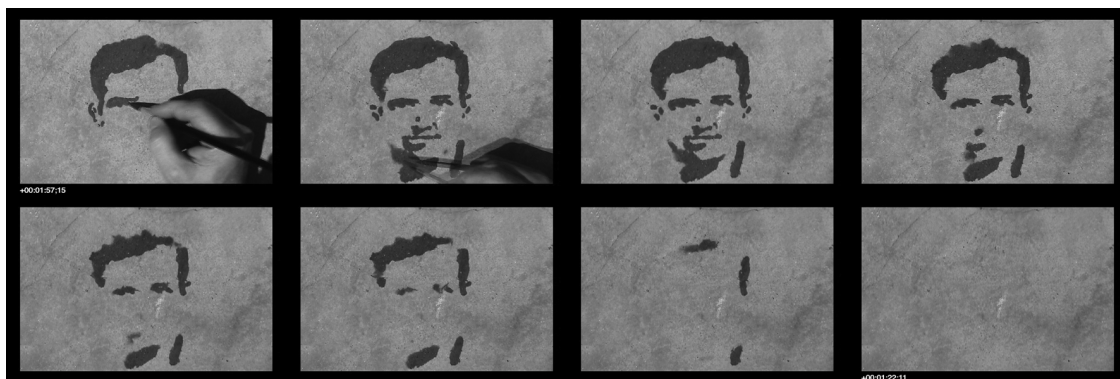
Adrian Paci, *Centro di Permanenza Temporanea*, (*Centre of Temporary Permanence*), 2007, framed photograph, 105 × 186.5 cm, courtesy of Francesca Kaufmann, Milan

least when we consider how Agamben details the threshold of life/death and the plight of the refugee in a similar 'zone of indistinction'. See Jacques Derrida, *Aporias*, Stanford University Press, Stanford, 1993, passim.

- 25 Noting the issue of aesthetic form, McQueen has observed that: 'it's all about the idea. If the idea can translate best in wood, then great. If the idea's best as a painting, then that's great too. This idea [*Hunger*] happened to work as film because it translates best as narrative. Because in art, you're trying to invent a form.' See Joan Dupont, "'Hunger': An artist-turned-filmmaker's take on a coming-of-age protest", *International Herald Tribune*, 21 May 2008, p 10.
- 26 In interview McQueen has made his own parallels to more recent events: 'When Jan Younghusband at Channel 4 [the film's commissioners] approached me at the beginning of 2003 there was no Iraq War, no Guantánamo Bay, no Abu Ghraib prison, but as time's gone by the parallels have become apparent. History repeats itself, lots of people have short memories and we need to remember that these kinds of things have happened in

themselves to death in protest at the withdrawal of Special Category Status, that is, political rather than criminal status. Although ten men died, the first of these, Bobby Sands, is perhaps remembered better than others on the international stage. Sands, who died on 5 May 1981, has recently become the subject of the film *Hunger* (2008). Directed by Steve McQueen, the film premiered at Cannes and won the Caméra d'Or award for first-time directors.²⁵ That Sands died in the cause of attaining political status, after six weeks on hunger strike in the Maze prison (formerly an internment camp opened in 1971 to house detainees without right to trial), goes some way to exposing the originary political relationship under a 'state of exception' to be that of the ban and the sovereign power over life and death: not only was Sands a citizen of the United Kingdom, he was an elected member of the British parliament at the time of his death and yet his status was that of *homo sacer* in all but name.²⁶ There is much to be written on the subject of hunger strikes in prisons; however, for now I want to note how the citizen can be reduced to the 'bare life' of the hunger striker and yet become that most politicised of subjects: *homo sacer*.²⁷

There is another discussion to be had here, one that would take in the efficacy of human rights to address the 'states of exception' that seem to be multiplying around us. When an individual (such as a refugee) is deprived of nation-statehood or sociopolitical identity, the very rights that should protect him cannot do so because he has been abandoned to the 'bare life' of being merely 'human': the non-citizen bereft, that is, of political community. The refugee (denuded of statehood or citizenship) is deprived of human rights at the very moment when he becomes, somewhat paradoxically, human. This is precisely what Hannah Arendt was proposing in her chilling indictment of the treatment of refugees in post-war Europe: stateless, and therefore lacking national rights, the refugee is reduced to 'bare life' and abandoned, for whatever reason, by the *bios politikos* and international law.²⁸ The stateless refugee, the political prisoner, the disappeared, the victim of torture, all are without community and yet symptomatic of a 'coming community' – a community of the rightless to which anyone of us could one day belong. To be indifferent to their plight is to be indifferent to our own potential plight. It is to refuse to the refugee and figure of the dispossessed the *socius* of community and



Oscar Muñoz, *Proyecto para un memorial* (*Project for a Memorial*), 2005, video, courtesy of INIVA



Marcelo Brodsky, *Buena Memoria, The Classmates*, 1996, altered gigantograph, 69 in × 46 in, courtesy of the artist and La Marca Editora

Britain.' Steve McQueen quoted in Vanessa Thorpe and Henry McDonald, 'Anger as new film of IRA hero Bobby Sands screens at Cannes', *Observer*, 11 May 2008, p 12.

27 It has been widely reported that up to 128 detainees in Guantánamo Bay went on hunger strike in 2005. Of the eighteen people hospitalised, at least thirteen were force-fed through nasal tubes and five were given intravenous hydration. See Carol D Leonnig, 'More Join Guantánamo Hunger Strike', *Washington Post*, 13 September 2005. Agamben's thesis whilst studying at the University of Rome was written on Simone Weil who is widely considered to have starved herself to death in sympathy with the citizens of Occupied France. The coroner's report into her

the protection of political representation. It is to deny, in sum, the very community that each of us takes for granted and yet that each of us could one day find ourselves without. Taking his cue from Arendt, Agamben has argued that, in the context of the nation-state:

... the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer take the form of the rights belonging to the citizens of the state. (HS 126)

This can be summed up even more succinctly: human rights are the rights of the citizen, not *homo sacer* – the latter being our modern-day refugee, the political prisoner, the disappeared, the so-called 'ghost detainee' and unlawful combatant, the victim of torture and the dispossessed. And, in a 'state of exception', sovereign power, which has effectively usurped legislative (legal) power, will decide upon the distinction (or, more likely, non-distinction) between the two; decide, that is to observe, between the fact of life or death.

CONCLUSION

If Rancière, writing in *The Politics of Aesthetics* (2004), gives art the same capacity for re-imagining (or envisioning) the possible (or the

death noted that 'the deceased did kill and slay herself by refusing to eat whilst the balance of her mind was disturbed'. Quoted in David McLellan, *Utopian Pessimist: The Life and Thought of Simone Weil*, Poseidon Press, New York, 1990, p 266.

- 28 'The conception of human rights based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human.' Hannah Arendt, *The Origins of Totalitarianism*, Harcourt, New York, [1948] 1976, p 299.
- 29 Jacques Rancière, *The Politics of Aesthetics*, Continuum [2000], London, 2004

thinkable) as he gives to politics, then he is prioritising art and politics in terms of their potential to effect shifts in thinking: their potential to not only re-frame the visible but, perhaps more crucially, to en-vision the invisible, interstitial and contested sites (sights) of modernity. Aesthetics, in sum, is given the same capacity as Rancière allows politics: it can re-think possibility, impossibility, contingency and all the modalities of the probable that lie between.²⁹ And it is precisely this which gives it not only critical but political, if not ethical, purchase. In the moment of representing *homo sacer* and 'zones of indistinction', contemporary artistic practices, such as those examined above, can address the paradoxes of human rights through exposing the very 'zones of indistinction' in which *homo sacer*, he who is without rights, continues to languish. One of the more pervasive cultural features of modernity, finally, has been the privileged role accorded to art when it comes to the representation and reification of that which modernity has excluded, abandoned and repressed. If contemporary aesthetic practices have produced a realm within the sociocultural, economic and political domain it is one of aesthetic speculation regarding the ambivalent margins and dissonances that underwrite modern life. In the context of Agamben's 'zones of indistinction' such practices would appear well suited to interrogatively envisioning that which is often disavowed. And it is in the moment of representing these zones that we can see the subject of 'bare life' for what it is: the abandoned subject of modernity that nonetheless exposes the potential relationship of all subjects to modern forms of power.