This article addresses the relation of sovereignty, biopolitics and governmentality in the work of Giorgio Agamben, Judith Butler and Michel Foucault. By unpacking Foucault’s genealogy of modern governmentality, it responds to a criticism leveled against Foucauldian accounts of power for their alleged abandonment of the traditional model of power in juridico-institutional terms in favor of an understanding of power as purely productive. This claim has most significantly been developed by Agamben in “*Homo Sacer. Sovereign Power and Bare Life*”. I argue that Judith Butler’s analysis of power, in particular in her essay “Indefinite Detention”, presents a more differentiated account of power that registers the significance of practices of sovereignty and resonates with Foucault’s lectures on “Security, Territory, Population”.

Keywords: sovereignty, biopolitics, governmentality, Foucault, Agamben, Butler

I.

In 1995, the Italian philosopher Giorgio Agamben published his seminal work “*Homo Sacer: Il potere sovrano e la nuda vita*”. With its translation into English in 1998, Agamben’s controversial claims concerning the relationship between politics and life as well as his fierce criticism of Michel Foucault’s allegedly inadequate, or at least incomplete, account of power quickly made “*Homo Sacer: Sovereign Power and Bare Life*” an important point of reference in debates in contemporary political philosophy. Agamben claims to complete and even correct Foucault’s portrayal of biopolitics, which the latter began to develop expressly as early as 1975 in his lectures “Society Must Be Defended” at the Collège de France. As opposed to the disciplines, that is the individualizing “anatomo-politics of the human body”\(^1\) that sought to turn individuals into docile

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bodies that worked in favor of the new conditions of an industrialised society. Foucault explains that biopolitics is “massifying, that is directed not at man-as-body but at man-as-species”. Biopolitics is concerned with the population on the level of aleatory yet predictable events that can be observed by statistics and managed by security mechanisms. Consequently, biopolitics appears as “a matter of taking control of life and the biological processes of man-as-species and of ensuring that they are not disciplined, but regularized”. As two different technologies of power, Foucault continues, the disciplines and the regulation of man as a species-being have been “superimposed” upon one another since the eighteenth century.

For Agamben, it remains unclear where disciplinary mechanisms that target the body the individual and biopower, which regulates, administers and manages the population as a whole, converge. Passing over Foucault’s analysis, in “The History of Sexuality” (1976), of sex as being “at the pivot of the two axes along which developed the entire political technology of life”, that is the disciplines of the body and the regulation of populations, Agamben claims to have identified what he calls “bare life” as the surface on which individualizing and totalizing forms of power intersect. Rather than engaging with Foucault’s historically specific interpretation of the relationship between politics and life, Agamben argues that the political concern with the biological life of individuals is not, in fact, a modern phenomenon but is as old as Western politics itself. In fact, he suggests that the very idea of something like a natural life is part and parcel of any sovereign politics because it is produced by the sovereign constitution of the political sphere. This is to say that, for Agamben, political life does not replace or even elevate natural life; rather, sovereignty creates the idea of natural life in order to then subject it to the law. In other words, sovereign politics presupposes the notion of a pre-political or natural state in distinction from which it justifies itself. This means


In order to substantiate this claim, Agamben refers his reader to Aristotle’s distinction between \textit{bios} and \textit{zōē} and argues that the life in the Greek polis presupposed the exclusion of natural life in the household.\footnote{On Agamben’s problematic interpretation of Aristotle’s distinction between \textit{bios} and \textit{zōē} see L. Dubrueil, “Leaving Politics: Bios, Zöē, Life”, \textit{Diacritics} (2006): 83-99 and J. G. Finlayson, “‘Bare Life’ and Politics in Agamben’s Reading of Aristotle”, \textit{The Review of Politics} (2010): 1-17. It seems plausible that Agamben in fact takes the notion of bare life from his reading of Walter Benjamin, who distinguishes between mere natural life and life that goes beyond pure physical existence and contains ethical notions of freedom, justice and humanity as well as from Hannah Arendt’s idea of “naked life” in “The Origins of Totalitarianism” (1951). Cf. W. Benjamin, “Fate and Character,” in \textit{Walter Benjamin: Selected Writings, Volume 1, 1913-1936}, ed. M. Bullock, and M. W. Jennings (Cambridge and London: The Belknap Press of Harvard University Press, 1996), 201-6, W. Benjamin, “Critique of Violence,” in \textit{One-Way Street and Other Writings} (London and New York: Verso, 1997), 132-54, and H. Arendt, \textit{The Origins of Totalitarianism} (San Diego and New York: Harvest, 1973).} According to Agamben, the Greeks regarded the sustenance of man’s physical existence as a matter of the household, whereas the polis had to ensure the good life of its citizens. However, not only did the flourishing of the polis depend on the maintenance of life in the household, but life also emerged in public whenever an individual faced punishment for transgressing the law. The conclusion Agamben draws is that bare life was not really excluded from the political sphere but maintained a relationship with the polis.

This inclusion of life in the polis by way of its exclusion, which Agamben identifies as “consubstantial with Western politics,” is a relation of exception.\footnote{G. Agamben, \textit{Homo Sacer: Sovereign Power and Bare Life} (Stanford: Stanford University Press, 1998), 7.} “We shall give the name \textit{relation of exception},” he explains, “to the extreme form of relation by which something is included solely...
through its exclusion”.

Drawing from Carl Schmitt, Agamben further argues that the relation of exception is identical with the structure of sovereignty. Accordingly, Agamben contends that since Western politics is predicated on the exclusion of natural life from the political sphere, all Western politics is structured by a logic of sovereignty. As Colin McQuillan highlights, “Agamben tried to show how this logic was paradoxical, because it both excluded bare life from the political order and included it within that order at the same time”.

Because a political life is a life which is subject to sovereign power, Agamben argues, bare life must be understood as a life which has no relation to the political order and which is not governed by sovereign power. Insofar as subjection to sovereign power is something which is imposed on life, however, the idea of a political life necessarily presupposes the idea of a life which precedes political subjection. Instead of being a life which is outside of the political sphere and free from sovereign power, bare life comes to be included within the political order as life that is to be subjected.

Agamben finds the paradigmatic legal rendering of bare life as at the same time included and excluded from the political sphere in the ancient Roman legal figure of *homo sacer*, a person who could be killed by anyone with impunity, yet could not be sacrificed in ritual practices. In other words, the status of *homo sacer* indicates a position that is at the limits of the human and the divine juridical realm. For Agamben, it mirrors exactly Schmitt’s limit concept of sovereignty. “At the two extreme limits of the order,” Agamben argues, “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 *hominis sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns.”

Homo sacer names something like the originary “political” relation, which is to say, bare life insofar as it operates in an inclusive exclusion as the referent of the sovereign decision. Life is sacred only insofar as it is taken into the sovereign exception… Sacer esto is not the formula of a religious curse sanctioning the

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unheimlich, or the simultaneously august and vile character of a thing: it is instead the originary political
formulation of the imposition of the sovereign bond.\(^{14}\)

As a consequence, Agamben argues that neither the entrance of life into politics nor the political concern with life is specifically modern. Strictly speaking, modern biopolitics only makes visible the secret of Western politics that was there all along but was hidden in normal times and brought to light in exceptional circumstances. However, while originally bare life only appeared in the political sphere in exceptional situations as the object of sovereign violence, the specificity of modern politics is that “the realm of bare life – which is originally situated at the markings of the political order – gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, bios and zoë, right and fact, enter into a zone of irreducible indistinction”.\(^{15}\) For Agamben, this process culminates in the Nazi concentration camp which has replaced the polis as the “fundamental biopolitical paradigm of the West”.\(^{16}\) As the “hidden matrix and nomos of the political space in which we are still living”,\(^{17}\) the logic of the camps also appears in the “experimental life” of Allan Wilson, the biochemist who made his own body a research laboratory upon discovering that he had leukemia, as well as the overcomatose and the neomort who are kept alive solely by machines.\(^{18}\)

The conclusion to be drawn, Agamben suggests, is that “the modern State” - as if there was a constant and readily recognizable distinctly modern arrangement of institutions that could be identified as “the State” - feeds on a concealed relation between power and life that tethers modern to archaic power and that only comes to light in exceptional instances.\(^{19}\) And it is not just totalitarian regimes that depend on the politicization of bare life. Determining the liberal premise

\(^{14}\) Ibid., 84-5.
\(^{15}\) Ibid., 9.
\(^{16}\) Ibid., 181.
\(^{17}\) Ibid., 166.
\(^{18}\) Ibid., 182-86.
\(^{19}\) Ibid., 6.
that one has to become a subject before one can become the bearer of rights as “modern democracy’s secret biopolitical calling,” Agamben brings out the connection between law and life that is at work even in liberal democracy. “Law needs a body in order to be in force” and this body becomes “the bearer both of subjection to sovereign power and of individual liberties”. In the last instance, the camp as the paradigm of the entire tradition of Western politics brings out liberalism’s inability to distinguish between the body as a holder of rights and the body as the surface of sovereign power which, in an emergency (*im Ernstfall*), results in the abrogation of legal entitlements or legal protection. According to Agamben, the decision on whether a case of emergency exists and, therefore, whether rights apply, is a sovereign one. The politicization of life (or of certain lives) by announcing the impunity of its killing constitutes the original act of sovereign power.

As a result of this interpretation of the link between politics and life, Agamben believes that Foucault’s account of power fails to acknowledge the fundamental importance of the traditional juridico-institutional model of sovereignty in the production of natural life itself. For this reason, Agamben criticises Foucault for his “decisive abandonment of the traditional approach to the problem of power”, that is of a juridico-institutional model of power that Foucault replaces, or so Agamben suggests, with a microphysics of power that emphasises the productive aspects of power and neglects the role of sovereignty in processes of subjectivation. The relation Agamben

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21 Agamben, *Homo Sacer*, 5. Against Agamben’s claim, it might be suggested that it is precisely Foucault’s concern with the question of subjectivation that led him to call for a new approach to the question of power. As Thomas Flynn suggests, Foucault is concerned with the link between power and subjectivity throughout his work from “Madness and Civilization” to “The History of Sexuality”. Cf. T. R. Flynn, “Truth and Subjectivation in the Later Foucault”, *Journal of Philosophy* (1985): 531-40 and T. R. Flynn, “The Philosopher-Historian as Cartographer: Mapping History with Michel Foucault”, *Research in Phenomenology* (1999): 31-50. In this regard, consider also Foucault’s own contention in “On Power” (1990) that his archaeologies had always been concerned with power, as well as his insistence in “The Subject and Power” (1982) that, “during the last twenty years,” his goal had been “to create a history of the different modes by which, in our culture, human beings are made subjects”. Cf. M. Foucault, “On Power,” in *Michel Foucault:*. 

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identifies between sovereign power and life allows him to construe the sovereign decision as a biopolitical one. In his words, “the production of a biopolitical body is the original activity of sovereign power”.22 On this account, the sovereign decision on the political inclusion of individuals by allowing for their execution eventually becomes the ultimate biopolitical gesture and biopolitics and sovereignty are indistinguishable, if not the same thing altogether.

Agamben’s widespread reception and his massive influence across academic disciplines arguably result from his almost prophetic depiction of the political landscape in the wake of 9/11 and the War on Terror.23 Seven years before the enactment of the Patriot Act and the setting up of detention camps in Guantanamo Bay and elsewhere, Agamben warned that, since all politics is exceptional and, hence, the exception is not so much an exception as the becoming obvious of a usually hidden mechanism of politics, “we must expect not only new camps but also always and more lunatic regulative definitions of the inscription of life in the city”.24

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22 Agamben, Homo Sacer, 6.
24 Agamben, Homo Sacer, 176. In reaction to what he took to be one of those ever more lunatic attempts to inscribe biological life in the political sphere, Agamben canceled a lecture he was supposed to give at New York University in March 2004. In an article in “La Repubblica” entitled “Se Lo Stato Sequestra Il Tuo Corpo” (translated into English as “No to Bio-Political Tattooing”), Agamben explained his refusal to travel to the United States. “Some years ago,” he clarified, “I had written that the West’s political paradigm was no longer the city state, but the concentration camp, and that we had passed from Athens to Auschwitz. It was obviously a philosophical thesis, and not historic recital, because one could not confuse phenomena that it is proper, on the contrary, to distinguish. I would have liked to suggest that tattooing at Auschwitz undoubtedly seemed the most normal and economic way to regulate the enrolment and registration of deported persons into concentration camps. The bio-political tattooing the United States imposes now to
Even though Agamben provides important insights into the structural continuity of mechanisms by which law is suspended and state violence targets the life of individuals, his analysis of modern power is nevertheless a problematic generalization and fails to explain the underlying political interests giving rise to the suspension of legal norms. Agamben tends to treat present-day political practices as the logical result of an inescapable historical development of “the (liberal democratic) State.” This explanation fails to account for the complex mechanisms that have historically been, and still are used in a variety of ways and that make up very different kinds of states. As commentators have repeatedly pointed out, Agamben neglects the importance of historical as well as constitutional differences between states, instead making sweeping claims about “the modern State” – as if there was a constant and readily recognizable distinctly modern arrangement of institutions that could be identified as such. In both practical and theoretical terms, simply drawing a line from homo sacer to Nazi concentration camps to detention centers à la Abu Ghraib or Guantanamo Bay reduces to sameness what are, in fact, important differences.

In addition, Agamben explains the politicization of life in a state of exception as the effect of the general function of sovereignty. He therefore assumes that the suspension of law with regard to enter its territory could well be the precursor to what we will be asked to accept later as the normal identity registration of a good citizen in the state’s gears and mechanisms. That’s why we must oppose it”. Cf. G. Agamben, “No to Bio-Political Tattooing”, *La Repubblica* (January 8, 2004), 42. [http://www.egs.edu/faculty/giorgio-agamben/articles/no-to-bio-political-tattooing](http://www.egs.edu/faculty/giorgio-agamben/articles/no-to-bio-political-tattooing) (accessed August 14, 2010).

political subjects is the result of a certain continuity in how power is exercised. Agamben thereby fails to investigate the underlying reasons, the political interests and the changes in power relations that demand the use of certain measures. In other words, the reasons behind the precarious legal status of the figures Agamben identifies as *hominæ sacri* nor their role within a wider political context are the same.\(^{26}\) Agamben’s analysis stops short of going behind the manifestation of power in order to explain the ways in which similar techniques of power are deployed in different contexts, for different reasons, and with different intentions.

A more nuanced account of power in modern politics would therefore have to pay attention to the processes through which formal structures, institutions and practices are co-opted, diverted and inverted for actual operations of power. It might be worth considering that Agamben’s attack on Foucault for not theorizing the “political ‘double bind’” of modern power fails to understand that, for Foucault, it is a double bind precisely because there is no one single point where the two axes of power intersect or converge.\(^{27}\) Instead, it is precisely in their plurality, complexity, tension and contradiction that the various mechanisms and techniques of power constitute a governmental regime. For Agamben, sovereignty is the name of a power that suspends law or, to put it differently, a term that designates a specific relationship between power and law that is played out on the field of bare life. Foucault, by contrast, is not concerned with the structural relation between life and politics, but inquires into the ways in which a multiplicity of simultaneous legal and non-legal, disciplinary and regulative practices and procedures are colonised, transformed, and made to function in a context that is primarily shaped by a political concern with security.\(^{28}\) In other words,

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\(^{26}\) For a similar criticism see Butler who suggests that Agamben’s account is too general to explain “how this power functions differentially, to target and manage certain populations, to derealize the humanity of subjects who might potentially belong to a community bound by commonly recognized laws”. Cf. J. Butler, “Indefinite Detention,” in *Precarious Life. The Powers of Mourning and Violence* (London: Verso, 2004), 50-100, 68.

\(^{27}\) Foucault, *The Subject and Power*, 785.

the coexistence and tactical use of various forms of power allow for the constitution of a governmental regime that has its raison d’être in the security of its population. This emphasis on the at times intended, at times haphazard integration of seemingly incompatible techniques of power is also why, as Thomas Flynn maintains, Foucault “denies offering us a ‘theory’ of power” that would allow for the complete integration of multiple forms of power into one single paradigm.  

II.

Even though drawing heavily from Agamben in her examination of power in post-9/11 America, Judith Butler’s essay “Indefinite Detention” (2004) offers a more nuanced interpretation of contemporary exceptional politics that takes seriously Foucault’s emphasis on the complexities of power. To be sure, Butler’s commitment to a Foucauldian position is not at all new. On different occasions, Butler explicitly positions herself in theoretical and political continuity with Foucault.  

Foucault also figures prominently in “The Psychic Life of Power” (1997), Butler’s perhaps most


29 Flynn, The Historian as Cartographer, 39.  

sustained account of the productive role of power in processes of subject formation.\footnote{J. Butler, \textit{The Psychic Life of Power: Theories in Subjection} (Stanford: Stanford University Press, 1997).} In contrast to her concern with non-traditional and non-sovereign mechanisms of power in this text, however, Butler’s more recent work in the context of American anti-terrorism policies calls attention to the importance of practices traditionally attributed to sovereign power such as the dismantling of legal norms or the suspension of rights and liberties or the justification of state violence. By productively engaging Agamben’s work on exceptional politics within a Foucauldian framework of governmentality, Butler manages to sever the link between emergency politics and traditional juridical-institutional models of power in favor of an account of sovereign practices in the context of an understanding of power more broadly conceived. As will become clear, Butler thereby develops an account of contemporary power relations under conditions of permanent emergency which not only proposes important corrections of Agamben’s reading of Foucault as well as of the theoretical implications that follow from it but also anticipates much of what Foucault argues in “Security, Territory, Population”. Since Butler’s essay appeared five months before the first publication of Foucault’s lecture series “Security, Territory, Population” in French, it seems plausible to assume that she was unaware of the content of these lectures. The similarity of Butler’s and Foucault’s accounts is thus all the more remarkable and affirms Butler’s long-standing theoretical commitment to the Foucauldian project.

In her attempt to rethink the relation between sovereignty and biopolitics under exceptional circumstances in “Indefinite Detention,” Butler takes seriously Foucault’s contention that, in political theory, “we need to cut off the king’s head” and abandon a unitary theory of power as concentrated in a self-grounding and unified sovereign and the prohibitive function of the law.\footnote{M. Foucault, “Truth and Power”, \textit{Power. The Essential Works of Foucault}, 122 (New York: The New Press, 1994), 111-33.} She seeks to account for the divergences and transformations of different forms of power in a state of permanent emergency. Nevertheless, Butler shares Agamben’s view that Foucault’s portrayal of
power needs to be revised in order to account for the strange hybrid of sovereignty and governmentality that characterises American anti-terrorism policies after 9/11. What cannot be explained in the way of Foucault’s account, she claims, is the anachronistic resurgence of sovereignty within governmentality in a state of emergency.

Over and against Agamben, Butler insists that Foucault makes an analytic, not a temporal distinction between sovereignty and governmentality, and that it is thus possible to think a coexistence of both forms of power. “Procedures of governmentality, which are irreducible to law,” Butler explains, “are invoked to extend and fortify forms of sovereignty that are equally irreducible to law”.

Neither is necessarily grounded in law, and neither deploys legal tactics exclusively in the field of their respective operations. The suspension of the rule of law allows for the convergence of governmentality and sovereignty; sovereignty is exercised in the act of suspension, but also in the self-allocation of legal prerogative; governmentality denotes an operation of administration power that is extra-legal, even as it can and does return to law as a field of tactical operations. The state is neither identified with the acts of sovereignty nor with the field of governmentality, and yet both act in the name of the state. … (P)recisely because our historical situation is marked by governmentality, and this implies, to a certain degree, a loss of sovereignty, that loss is compensated through the resurgence of sovereignty within the field of governmentality. … The resurrected sovereignty is thus not the sovereignty of unified power under the conditions of legitimacy, the form of power that guarantees the representative status of political institutions. It is, rather, a lawless and prerogatory power, a “rogue” power par excellence.  

The guidelines introduced at Guantánamo Bay in March 2002 that allocated to state officials the power to decide who was and who was not to be tried according to national, military and international legal frameworks, illustrate her claim that, under conditions of governmentality, sovereignty is transformed and used as a tactic, thereby producing a lawless power that relies on both sovereignty and governmentality and that acts in the name of the state. Not only did the Department of Defense put the question of whether or not a trial was to be held at all at the

\[\text{Butler, Indefinite Detention, 55-6.}\]
discretion of government officials; it also maintained that acquittal would not necessarily end detention and revoked any right of appeal for those detainees tried in military tribunals. In other words, the Department of Defense suspended the separation of powers as well as basic human and civil rights, thereby extending its sovereign power to decide whether or not the law applied to terrorist suspects temporally (that is indefinitely) and geographically (that is beyond US territory).

Moreover, the decision to hold trial or to detain indefinitely was transferred to government representatives who are neither elected democratically nor members of the judiciary. As “managerial officials with no clear claim to legitimacy”, they undoubtedly belong to a governmental system.\(^{34}\) Their exercise of managerial power, however, occasions an anachronistic revival of sovereignty. For Butler, these “petty sovereigns”\(^{35}\) are “part of the apparatus of governmentality; their decision, the power they wield to ‘deem’ someone dangerous and constitute them effectively as such, is a sovereign power, a ghostly and forceful resurgence of sovereignty in the midst of governmentality”.\(^{36}\)

As a result, Butler understands this contemporary version of sovereignty as a “spectral sovereignty”,\(^{37}\) which “becomes an instrument of power by which law is either used tactically or suspended, populations are monitored, detained, regulated, inspected, interrogated, rendered uniform in their actions, fully ritualized and exposed to control and regulation in their daily lives”.\(^{38}\) This new form of sovereignty is not self-grounding and, therefore, not true sovereignty. The new sovereigns’ authority to decide over the application of law and, hence, over the life and death of certain individuals depends on a delegation of power that is circulated and distributed within a governmental field. On this view, “Governmentality is the condition of this new exercise of  

\(^{34}\) Ibid., 54.  
\(^{35}\) Ibid., 56.  
\(^{36}\) Ibid., 59.  
\(^{37}\) Ibid., 61.  
\(^{38}\) Ibid., 97.
sovereignty in the sense that it first establishes law as a ‘tactic,’ something of instrumental value, and not ‘binding’ by virtue of its status as law”.  

In contrast to Agamben’s sovereignty, which is a relation of power and law that takes the form of the law’s suspension, Butler’s new sovereignty is not the cause but the effect of the suspension of law. Under conditions of governmentality, she argues, state power creates sovereignty through the suspension of a law that is no longer binding but rather seen as a more or less useful tactic. This does not mean, however, that the state stops creating law. Yet, the law produced in circumstances of lawlessness is what Agamben refers to as “executive decree”, that is an extension of executive power into the legislative sphere, rather than law produced by a legislative body. As such, it appears, on the one hand, as illegitimate by the standards of traditional accounts of law. On the other, it perpetuates the exercise of new sovereignty. For Butler, both governmentality and sovereignty are in the last instance extra-legal; the former because of its use of law as tactics, the latter because of its being ungrounded in law. What governmentality ultimately reveals is that power is “irreducible to law”.  

What I want to suggest in what follows is that Butler’s analysis of sovereignty as a tactic of governmentality that selectively uses laws as rules in the name of security might, in effect, be more similar to Foucault’s account of governmentality than she thinks. Butler’s interpretation is consistent with Foucault’s highly sophisticated and multi-layered elaboration on modern configurations of power. As I will try to show in the following section, Foucault’s exposition of the development of liberalism as a biopolitical governmentality that is concerned with apparatuses of security effectively responds to Agamben’s criticisms. It rebuts the latter’s prima facie convincing,  

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39 Ibid., 62.
42 Butler, Indefinite Detention, 94.
but ultimately insufficiently historical account of power and supports Butler’s more careful reading of the relation between sovereignty and governmentality.

III.

It is the development of governmentality, which uses laws as rules in the game of security, that is at issue in Foucault’s 1978/79 Collège de France lecture series “Security, Territory, Population”. As opposed to traditional sovereignty, which is exercised on a territory and the subjects who live on it, governmentality extends to things - that is to say to “men in their relationships, bonds, and complex involvements with things like wealth, resources, means of subsistence, and, of course, the territory with its borders, qualities, climate, dryness, fertility, and so on”.43

In other words, the chief difference between sovereignty and governmentality lies in the way in which the common good is understood. For sovereignty in its traditional form, the common good and, therefore, the end of sovereignty is the subjects’ submission to a law imposed by God and, by extension, the sovereign (more about this in an instant). Because the subjection to the law is achieved through the law itself, Foucault explains, “the end of sovereignty is circular; it refers back to the exercise of sovereignty. The good is obedience to the law, so that the good proposed by sovereignty is that people obey it”.44 In contrast, government “is not a matter of imposing a law on men, but of the disposition of things, that is to say, of employing tactics rather than laws, or, of as far as possible employing laws as tactics; arranging things so that this or that end may be achieved through a certain number of means”.45

Until the sixteenth century, Foucault points out, the position of the sovereign was understood along a “theological-cosmological continuum” that authorised him to govern, but also provided the model

according to which he had to govern. A king was considered a good king insofar as he imitated God’s government on earth, personified the kingdom’s vital force, and ensured the common good in the same way that a shepherd cared for his flock, or a father for his family. In other words, traditional sovereignty was formulated along a “continuum from God to men in the - in inverted commas - ‘political’ order”.

The break up of this continuum was occasioned by the foundation of the classical *episteme* between 1580 and 1650. What the classical *episteme* constituted, Foucault explains, was an understanding of the world as “the unfolding of an intelligible nature in which final causes gradually disappear and anthropocentrism is called into question, of a world purged of its prodigies, marvels, and signs, and of a world that is laid out in terms of mathematical or classificatory forms of intelligibility that no longer pass through analogy and cipher”. The break with the great continuity from God to the sovereign led to the loss of God as a model of political rule. Between a transcendent God and immutable and universal laws of nature, between an omnipotent God-figure and a completely regular natural order, the sovereign had to find his own “art of government”.

The sovereign’s task became to find universal laws that applied in general, that is to a multitude of subjects, at the same time as he had to arrange things and individuals in their relations such as to increase his wealth. Put differently, the sovereign faced the problem of how to govern his subjects, how to govern them in a manner that was different from God’s sovereign rule over nature. The task of the sovereign, in other words, was to find a “ratio gubernatoria”, a governmental reason.

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The question of government had dominated a rather different field, namely the Christian pastorate, whose disintegration that, if incidentally or not we do not know, occurred roughly around the same time as the foundation of the classical *episteme*, allowed for the incorporation of forms of governing people into politics. It is here, in an essentially religious form of power, that Foucault locates the hinge which allowed the sovereign to formulate an art of government.\(^{51}\) In short, what emerged in response to the challenge of the classical *episteme* was a first form of governmentality that outlined a specific art of governing people which was tied to the structures of sovereignty and facilitated by the detachment of the question of conduct from the Church. Government of men within the horizon of sovereignty; “This,” Foucault declares, “is *raison d’État*”.\(^{52}\)

In the sixteenth and seventeenth century, Foucault explains, *raison d’État* means “that which is necessary and sufficient for the republic to preserve its integrity” as well as the knowledge of the means for obtaining it.\(^{53}\) Consequently, *raison d’État* is concerned with nothing but the state itself. It comprises “the very essence of the state, and it is equally the knowledge (*connaissance*) that enables us to follow, as it were, the weave of this *raison d’État*, and comply with it”.\(^{54}\)

As fundamentally and exclusively concerned with the state, a state that has “no prior, external purpose, or even a purpose subsequent to the state itself”, *raison d’État* introduces an indefinite

\(^{51}\) The pastorate constitutes the “prelude” to governmentality by establishing a network of relationships beyond salvation, law, and truth, a network in which a specific subject is formed through subjection and obedience as well as through subjectivation understood as confession of an individual’s inner truth. Cf. Foucault, *Security, Territory, Population*, 184. As an essentially “religious type of power” (*Ibid.*, 125), its beginning is to be found in Christianity, which institutionalised pastoral power as an art of conducting men. Unlike the Hebrew shepherd, the Christian pastor is embedded in what Foucault calls an “economy of faults and merits” (*Ibid.*, 173) in which the pastor has to look out for the salvation of each and all sheep in “a sort of generalized field of obedience that is typical of the space in which pastoral relationships are deployed” (*Ibid.*, 179).


\(^{54}\) *Ibid.*, 257.
temporality into political rationality which is always already within the state. As a result, government appears as the “continuous act of creation of the republic” that has to conserve the state and restore it in cases where its integrity is violated. In such a thinking that knows nothing but the state and its maintenance, questions of origin, foundation, or legitimacy are cancelled out. For legitimacy is not defined by legality for raison d’État, but by what is necessary for the salvation of the state. The purest expression of raison d’État’s abandonment of legality in favor of necessity comes to the fore in a coup d’État.

*Coup d’État* as it was understood in the sixteenth century meant that in times of emergency, raison d’État must suspend the law and “must command, not by ‘sticking to the laws,’ but, if necessary, it must command ‘the laws themselves, which must adapt to the present state of the republic’.” It is clear that the grappling with the break-up of the continuum between God and the sovereign had not yet emancipated itself from the model of an omnipotent God who intervened when he considered it necessary. The concept of coup d’État allowed for an integration of an art of governing men into the familiar fabric of sovereignty. As a consequence, the law, which could no longer be the expression of a sovereign will but could not yet be framed in terms of a universal principle independent of the king’s power, had to become a strategic element in the game of raison d’État. It thereby remained in force as a general rule for as long at it was useful, but could be suspended

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57 *Ibid.*, 261. The similarity between Foucault’s presentation of coup d’État and discussions of the state of exception is striking. In particular, Foucault’s analysis of coup d’État seems to echo Schmitt’s concept of the state of exception. One could argue that the necessity to bridge the gap between sovereign transcendence and legal formalism introduced by the rupture of the cosmological-theological continuum posed a problem for political thought and praxis that stuck. On this view, the integration of the sovereign as a residue of divine power would seem to support Schmitt’s claim that “all significant concepts of the modern theory of the state are secularized theological concepts.” See C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2005), 36. There are, however, critical divergences between Foucault and Schmitt. Most importantly, Foucault highlights the genealogical rather than analogous affinities of religious and political types of power. This is to say that in contrast to Schmitt, for Foucault, religious concepts do not constitute the single origin of modern political power but instead are one element in the conjuncture of a series of different developments.
when it was deemed necessary for the existence of the state. “The usual, habitual exercise of raison d’État is not violent,” Foucault states, “precisely because it readily avails itself of laws as its framework and form. But when necessity demands it, raison d’État becomes coup d’État, and then it is violent”. For Foucault, “All of this means that the coup d’État is a particular way for the sovereign to demonstrate in the most striking way possible the irruption of raison d’État and its prevalence over [legality]”.

In the level of political praxis, raison d’État implemented an economic system that was compliant to the political interest of accommodating the population into calculations of how to increase the sovereign’s wealth. Individual subjects were recognised as the source of the sovereign’s strength, and the population came into view as a productive force. The more subjects lived and worked on the sovereign’s territory, the greater his wealth would be. As a consequence, scarcity had to be prevented; for hunger and starvation not only resulted in a decline of the number of subjects and, hence, productivity, but could also lead to revolt. Both dangers would eventually result in a weakening of sovereign power and called for the implementation of mechanisms that sought to manipulate the conditions of the market in order to avoid grain shortages and ensure the largest possible number of subjects.

The first mechanism was the police which, in its seventeenth century meaning, had very little to do with what we know as the police today. In short, it was the police’s responsibility to ensure the expansion of the state’s forces to a maximum while maintaining order. This included the regulation of individuals’ lives by means of agricultural policy, effective control of marketing and the

58 Foucault, Security, Territory, Population, 263.
circulation of food and goods, as well as provisions for times of scarcity in order to secure the basic needs of the population as the main source of the sovereign’s affluence. Moreover, the police was concerned with the maintenance of health and the regulation of profession to make sure that individuals were active and contributed to the state’s wealth. In short, “the project of police hangs on the activity of men as a constitutive element of the state’s strength”.  

The second mechanism resulted from the fact that states existed as a plurality of states that were in a precarious balance whose disturbance would impair the strength of each. The creation of a diplomatic-military apparatus aimed to preserve the European equilibrium by means of war, a new diplomacy of a physics of states, and the development of a *ius gentium* and a permanent military apparatus.  

Mercantilism, Foucault concludes, thus appears as a “governmental theory and practice” that is “absolutely inseparable” from the development of the police and a European balance of states.

In other words, mercantilism relied on the introduction of a system of legal regulations that was meant to secure the sovereign’s wealth but in reality created conditions that exacerbated the problem of scarcity. “Mercantilism,” Foucault argues, “tried to introduce the possibilities given by a reflected art of government within an institutional and mental structure of sovereignty that blocked it”. It did not succeed in eradicating the very real economic problem of scarcity.

As a result, Foucault’s narrative explicates, the eighteenth century saw the development of a critique of mercantilism and the police state in the context of the basic economic question of how to respond to a shortage of grain. Against mercantilist principles, the new *économistes* or physiocrats

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argued that it was precisely the over-regulation and the lack of freedom characteristic of the police state which caused even more scarcity. In opposition to a very limited freedom that was granted to individuals only insofar as it contributed to the sovereign’s wealth, the physiocrats insisted on unrestricted individual freedom. Only the safeguarding of the liberty of each individual subject, the physiocrats predicted, would allow to increase the state’s wealth by working within and responding to the reality of the market without the negative consequences of economic micro-regulation. The decontrolling of grain prices, they argued, would result in the self-regulation of the market through the private interest of individuals. For the physiocrats, therefore, the good of all was not the result of state intervention, but of the selfish behavior of individuals. It was the responsibility of government to safeguard the conditions under which the free play of interests was possible. Security mechanisms, rather than constant interference, were to ensure the unobstructed taking place of the natural processes intrinsic to society.

This is, in a nutshell, what Foucault identifies as the beginning of liberalism as a form of governmental action that is guided by the imperative that reality develop according to the principles of reality itself. Liberalism seems to have achieved the transmission of the break-up of the cosmological-theological continuum into politics. The market, governed by its own principles, is no longer a field of political intervention, but now tells the government what to do. The economy will work for the benefit of the state if it is left to itself. While *reason d’État* subjected the economy to the interest and, therefore, to the direct control of the sovereign, the physiocrats established a view of the market as a sphere that has its own naturalness that, if respected, secures the good of each and all. The task of government, then, is to ensure the unhindered self-regulation of the market by introducing apparatuses of security. Freedom, understood as the free movement and circulation of people and things, is the correlative of these security apparatuses.
It was demographic expansion, increasing agricultural production, and the emergence of the population as a political factor to be reckoned with that paved the way for the development of liberal governmentality. For Foucault, “it is thanks to the perception of the specific problems of the population, and thanks to the isolation of the level of reality that we call the economy, that it was possible to think, reflect, and calculate the problem of government outside the juridical framework of sovereignty”\(^\text{64}\). This is not to say that the problem of sovereignty disappeared. Foucault is very clear that neither sovereignty nor disciplinary power were replaced by governmentality: “we should not see things as the replacement of a society of sovereignty by a society of discipline, and then of a society of discipline by a society, say, of government. In fact we have a triangle: sovereignty, discipline, and governmental management, which has population as its main target and apparatuses of security as its essential mechanism”\(^\text{65}\). In other words, “the problem of sovereignty was never more sharply posed than at this moment, precisely because it was no longer a question, as in the sixteenth and seventeenth centuries, of how to deduce an art of government from theories of sovereignty, but rather, given the existence and deployment of an art of government, what juridical form, what institutional form, and what legal basis could be given to the sovereignty typical of a state”\(^\text{66}\). The problem is no longer a question of integrating governmentality into structures of sovereignty but, given that governmentality has become the decisive governmental technology, of finding a place for sovereignty within this space of governmentality.

IV.

The starting point of this article was the central importance of the work of Foucault for both Agamben’s and Butler’s accounts of the relation between biopolitics and sovereignty. Having

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\(^{64}\) *Ibid.*, 104.


charted these accounts as developed in particular in Agamben’s “Homo Sacer” and Butler’s essay “Indefinite Detention” in sections I and II, I unpacked Foucault’s genealogy of governmentality in “Security, Territory, Population” in section III in order to highlight the strengths and weaknesses of Agamben’s and Butler’s engagement with Foucault. By way of conclusion, I shall now review the main discrepancies and affinities between their accounts.

It was seen in the first section of this article that Agamben accuses Foucault for his abandonment, a decisive one at that, of the juridico-institutional model of power. Agamben bemoans the lack of a unitary theory of power that accounts for the point of intersection between individualizing and totalizing mechanisms of power. However, I have suggested that the alternative offered by Agamben results in a conflation of governmentality and sovereignty according to which sovereignty was biopolitical all along. By discussing Foucault’s lecture series “Security, Territory, Population,” I tried to show that Agamben’s criticism of Foucault is not supported by Foucault’s genealogy of modern governmentality. In fact, Foucault’s account effectively debunks some of Agamben’s central claims.

In the first instance, Foucault does not abandon juridico-political models of power. On the contrary, he makes it perfectly clear that “There is no legal age, the disciplinary age, and then the age of security”.

Mechanisms of security do not replace disciplinary mechanisms, which would have replaced juridico-legal mechanisms. In reality you have a series of complex edifices in which, of course, the techniques themselves change and are perfected, or anyway become more complicated, but in which what above all changes is the dominant characteristic, or more exactly, the system of correlation between juridico-legal mechanisms, disciplinary mechanisms, and mechanisms of security.67

Given that Foucault’s lectures had not been published when Agamben was working on “Homo Sacer: Sovereign Power and Bare Life,” it might be objected that Agamben could not have known

67 Ibid., 8.
Foucault’s position. It should be pointed out, however, that the fourth of Foucault’s lecture series had appeared long before the publication of Agamben’s text, in 1978 to be specific, in the Italian version by Pasquale Pasquino.\textsuperscript{68} It is abundantly clear from this text that Foucault does not see an elimination or replacement of sovereignty by governmentality. “(O)n the contrary,” he says, “the problem of sovereignty is made more acute than ever”.\textsuperscript{69}

In the second instance and against Agamben’s claims to the contrary, Foucault does in fact address the relation between individualizing and massifying forms of power by bringing into play sexuality as the hinge between them in the first volume of “The History of Sexuality”. Given Agamben’s criticism of traditional history’s barring of access to the sources in his essay on “Philosophical Archaeology”\textsuperscript{70} as well as considering, as McQuillan remarks, “the evident pleasure he takes in making curious and unlikely connections”, his disregard for a rather obvious and plausible reference is particularly surprising.\textsuperscript{71}

In addition, there are apparent methodical differences between Foucault and Agamben. Foucault’s refusal to regard the state as a unified, constant and identifiable entity cannot be squared with Agamben’s account, which remains tangled up in a juridico-institutional thinking and reductive in its way of understanding disciplinary and biopolitical forms of power. Against Agamben’s emphasis on the state as the institutional manifestation of sovereign power, Foucault criticises this “way of overvaluing the problem of the state that is paradoxical because apparently reductive”.

This analysis consists in reducing the state to a number of functions like, for example, the development of the productive forces and the reproduction of the relations of production. … But the state, doubtless no more today

\textsuperscript{69} \textit{Ibid.}, 101.
\textsuperscript{70} G. Agamben, “Philosophical Archaeology”, \textit{The Signature of All Things. On Method}, 88 (New York: Zone Books, 2009), 81-111.
\textsuperscript{71} McQuillan, \textit{Philosophical Archeology}, 6.
than in the past, does not have this unity, individuality, and rigorous functionality, nor, I would go so far as to say, this importance. After all, maybe the state is only a composite reality and a mythicized abstraction whose importance is much less than we think.  

For Foucault, the history of the state is not the reductionist history presented by Agamben, which sees nothing but violence exercised on bare life, institutionalised in a legal order which is a sham, a cover-up for the exceptional nature of modern politics. Instead of tracing the history of power by searching for structural analogies and ascribing them to a set of presumably given institutions, Foucault insists that “there is a history of the actual techniques themselves”.

There is another history, which would be the history of technologies, that is to say the much more general, but of course much more fuzzy history of the correlations and systems of the dominant feature which determine that, in a given society and for a given sector - for things do not necessarily develop in step in different sectors, at a given moment, in a given society, in a given country - a technology of security, for example, will be set up, taking up again and sometimes even multiplying juridical and disciplinary elements and redeploying them within its specific tactic.

The state, for Foucault, “is constituted by the set of practices by which the state actually became a way of governing, a way of doing things, and a way too of relationg to government”. It is the “regulatory idea of governmental reason,” a “principle of intelligibility of reality for this political thought that was seeking the rationality of an art of government,” a “way of thinking the specific nature, connections, and relations of certain already given elements and institutions”. In other words, Foucault’s account of power in “Security, Territory, Population” is indicative of his effort to think about the development of specifically modern forms of power from a perspective that goes beyond – or behind – the purely institutional study of the state. Rather than looking at the continuities and transformations of those structures that allegedly constitute the state as the locus of political power, Foucault maintains that his analysis “is a way of identifying intelligible relations

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73 Ibid., 8-9.
74 Ibid., 277.
75 Ibid., 286.
between elements that are external to each other”. If the state is, thus, nothing but the “mobile effect of a regime of multiple governmentalities”, then Agamben’s demand for a unitary theory of power is impossible to satisfy. On a view of the state as the after-effect or a constellation of various techniques of power that are mobilised in a general field of governmentality as tactics, instruments, and strategies, theoretical closure and a unified theory of power are just not an option.

It was seen in section II that it is precisely Foucault’s attempt to locate the place of sovereignty within a governmental field that also motivates Butler’s account of power relations in the context of emergency politics and the War on Terror. Yet while Butler finds an analysis of the anachronistic resurgence of sovereignty in a governmental field under conditions of emergency lacking in Foucault’s work, our reconstruction of Foucault’s narrative in “Security, Territory, Population” has made clear that this criticism is not entirely fair. As Foucault demonstrates, this anachronistic sovereignty is not something new that is peculiar to contemporary formations of liberal democracy. Instead, Foucault argues that the roaring back of sovereignty is the result of an attempt to respond to the dissolution of the theological-cosmological continuum in the sixteenth century. The break of this continuity that led from God to the sovereign introduced a split between a transcendent and omnipotent God and eternal principles according to which he ruled. This split, however, was not translated into political practice, or rather it was not maintained in its purity. The political response, which endeavored to reconcile sovereign omnipotence and legal universalism, was an art of government that, in normal circumstances, relied on general rules but resorted to the personal power of a god-like sovereign in cases of emergency.

Similarly, Butler’s description of sovereignty as the effect of a governmental suspension of the law is a theoretical attempt to identify the place of sovereignty within contemporary regimes of

76 Ibid., 215.
This is to say that, like Foucault, Butler seeks to account for the deployment of practices of power traditionally associated with sovereignty as invoked, exploited and determined by biopolitical considerations in a generalized field of governmentality. This deployment, for Butler as well as Foucault, is historically specific and conditioned by a particular political conjuncture. In contemporary politics, its most visible expression is a global War on Terror with its suspension of national, international and military law. In contrast to Agamben’s meta-historical narrative, Butler’s attentiveness to concrete historical and political context and its importance for the relationship between governmentality and sovereignty is not only more suitable for an analysis of current politics but also a more careful and more sincere elaboration on Foucault’s work than Agamben’s account.

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