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Theories of Foucault and Agamben: the Issues of Borders and Sovereignty”

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“Theories of Foucault and Agamben: the Issues of Borders and Sovereignty”

Master’s Research Paper

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A Major Research Paper submitted in partial fulfillment
of the requirements for the Degree of
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ABSTRACT

Michel Foucault and Giorgio Agamben have developed theoretical lenses for depicting how we should understand individuals in sovereign states, and the way in which these states interact with said individuals. Through an approach that assesses the framework of biology, race and ethnicity contribute to the notions of biopolitics and of 'bare life,' and exemplifies the constructs of how discrimination against the 'other' is embedded in western thought. These systematic processes are utilized through notions of biopower and the 'state of exception' as a means of maintaining hierarchical power structures. This paper will be assessing the role of the international in these processes of analysing borders, and humanitarian intervention in the promotion of western values. At the individual level, those who are classified under these 'biopolitical' or 'bare life' find themselves as victims of sovereign power; their existence is dependent on majoritarian and cultural feasibilities. Individuals are unpredictable, which makes them the target of norms and ideologies of the sovereign state, framing them as a threat and security risk to the western order.

INTRODUCTION:

The theories of Foucault and Agamben have been used in relation to one another to discuss the significance of biopolitics and the state of exception in the international realm. Recent public debates on race demonstrate the need to explain human actors, and the responsibility states hold when dealing with racialized bodies at the international level. The concepts of 'immigrants' and 'refugees' stem from these debates, whose presence poses significant threats to the security of sovereign states. Non-western states and citizenship are framed as threats to international liberal norms, making them the targets of Westernization. While the state reflects Westernized ideals, the

bodies found within states remain subject to either a 'biopolitical' or 'bare life' status, resulting in the refusal to be integrated into the Westernized sovereign ideal.

In analyzing biopower and the biopolitical through the work of Foucault, the idea of the biopolitical person includes those who are under the jurisdiction of the sovereign state, including bodies that exist beyond borders who have the potential to pose a threat to western norms. These people are framed as possessing certain biological traits, such as skin colour, as a way of creating racialized peoples and groups. The construction of the biology of humanity is an emphasis of Foucault's work, in the context of these racialized peoples, as those who do not fit the Westernized ideal of white-eurocentricity are often classified as the 'other'. Biopower is the means by which sovereign states conduct their practices, allowing them to cast the 'other' as a threat to state security and citizen wellbeing. This allows sovereign states to develop legal mechanisms to maintain human and state security at the expense of these borders. The 'other' is most commonly known to include people who are racially and ethnically different from that of the Western ideal, following cultural and biological characteristics defined by western states.

Agamben builds upon Foucault's concept of the biopolitical to describe what he calls the 'bare life,' developed as a means of establishing a threshold between the *zōē* and the *bios* which frames the relationship between the public and private spheres of political life. While *zōē* takes on a key role in identity, *bios* is subjective as it allows cultural and social experiences to be dependent on norms and ideologies of the state in which they reside. The classification of persons under Agamben's framework makes them a means to an end, resulting in control over their lives (or lack thereof) determined by their affiliation to a state or polity. Their associations within a state give them not only citizenship, but grants them more than Foucault's biopolitical framework, and maps them with cultural and ethnic characterizations. This plays a significant role in

discriminatory politics, and gives the state the means of excluding populations from political and social representation. Human security rests on the states to be able to provide their needs, so long as their behaviour follows that of the *polis*. Citizenship does not correlate to representing Westernized ideals, but rather, establishes a standard that if not followed, these ‘bare life’ subjects face harm and even death at the hands of the sovereign power.

A state of exception, where an ‘atypical’ event such as a terrorist attack has occurred, it allows for the suspension of the legal order for purposes of security, resulting in legislation that targets both racialized and other groups to satisfy motions of protecting state sovereignty, through means of enhanced security and retaliation. This allows for Westernized sovereign states to take international control of the ideological space, and has been used as a means of obtaining a liberal standard in states who have not previously adopted these ideals. This is framed as humanitarianism, whereby efforts to satisfy the international legal order which is purported to protect individuals in fact transform non-western states to conform with Western ideology.

With these concepts outlined, ‘biopower’ and the ‘state of exception’ are a means of controlling and regulating human behavior at home and abroad. Racialized categorizes of ‘biopolitical’ bodies and ‘bare life’ threaten the norms established by western states, reforming ideologies within and beyond borders as they stifle alternative ways of being. This review will examine the literature that engages with Foucault and Agamben’s ideas, expanding on their interpretations of biopolitics and sovereignty in relation to the behaviors exhibited by states and international actors. This expands on the idea of borders and humanitarianism, and will be used to extrapolate these concepts, and how each author’s theory engages with these focus areas. These issues are significant in understanding modern international politics, especially observing recent debates over migration, counterinsurgency campaigns, and the current war on terror. To conclude

the discussion, this paper will outline the limitations of both Agamben and Foucault will be discussed as a means of establishing the groundwork for future literature in the field of international relations.

FOUCAULT: BIOPOWER AND THE BIOPOLITICAL PERSON

Section 1.1: What does it mean to be a biopolitical subject?

The terminology of the ‘bio’ within Foucault’s concept of the biopolitical is an analytical framework, developed by Foucault to explain how state behavior impacts bodies. Through human experience, ‘bio’ is able to transcend beyond what is established at birth, allowing the physical characteristics in individuals to be framed as constant, despite collective experiences. The ‘bio’ is “tied to one side of a series of dualisms, including physical contra ideal or ideational, and permanent and predetermined contra the historically contingent.”¹ The subject’s characteristics of individual bodies is in tension, but the historical nature of the biology is developed as a way to represent a series of genetic and physiological associations that cannot be removed or changed. The physical contra that Foucault frames goes beyond that of race and ethnicity, but rather, the experiences on our bodies is constructed through ahistorical frameworks of culture and social interactions. It is in ‘biology’ for Foucault that “refers us to a life that is tied to modern formations of knowledge and relationality.”² These modern formations establish shared and collective knowledge, similar to the concept of ethnicity; racialization is an aspect of the associations made between the individual and the state, and the individual to their collective identity. This analysis

¹ Claire Blencowe, *Biopolitical Experience: Foucault, Power and Positive Critique* (New York: Palgrave MacMillan, 2012), 35

² Ibid, 160

unpacks the physicality of biology in an effort to understand human experience through culture and social construction.

Biology in the form of racialization becomes the first point of contact when interacting with a sovereign state, as cultural and social aspects are learned and exhibited through actions and human behaviors. Biopolitical groups are the development of cultural and social experiences, where the biological aspects that incorporate race and ethnicity are supposed. Culture has a key role in the establishment of a racially homogenous nation, found as being the commonality between groups, providing a clear picture of the values of the state. Judith Butler has examined this bodily significance, claiming that bodies are “productive, constitutive, one might even argue *performative*, inasmuch as this signifying act delimits and contours the body that it then claims to find prior to any and all signification.”³ Performative in this context represents a series of perpetual actions that develop into behaviors that states provide as a means of maintaining order amongst individuals. In examining Foucault’s discussion on the soul as being an instrument of political anatomy, Bulter suggests that

*“this operation produces the subjects that it subjects; that is, it subjects them in and through the compulsory power relations effective as their formative principle. But power is that which forms, maintains, sustains, and regulates bodies at once, so that, strictly speaking, power is not a subject who acts on bodies as its distinct object.”*⁴

States produce cultural experience, which is developed and practiced by the individual through their integrations with these collectives. As mechanisms of power, states dictate the behavior of individuals to sustain the legal order appropriate, as resistance from these groups threatens the legitimacy of the state’s power.

³ Judith Butler, *Bodies that Matter* (New York: Routledge, 1993), 30

⁴ *Ibid.*, 34

Those who are included in the biopolitical framework, in concepts such as ‘developed societies’, or ‘western states,’ produces the idea of human security, and intervention, as a continuation of colonial expansion. In Mark Duffield’s analysis of Foucault’s approach to human security, he addresses the idea of biopolitical collectives, stating that the

*“distinction between an ‘insured’ and a ‘non-insured’ population broadly understood is suggestive of how development and underdevelopment can be distinguished biopolitically. Populations defined by ‘development’ exist in relation to massified and pluralistic welfare regimes that, in addition private insurance cover, include comprehensive state-based or regulated safety-nets covering health care, education, employment protection and pensions. In contrast, those classed as ‘underdeveloped’ are distinguished by the absence of such massified life-support mechanisms; they are, essentially, non-insured.”*⁵

The significance of state-based protections, such as the health care, education, and employment protections is that they are considered to be privileges in comparison to non-insured states, whose human security focuses heavily on meeting physical needs, including protections from violence, famine, and natural disasters.

In order to protect biopolitical persons, human security is cast at the individual level, yet the needs of both the individual and the political must be satisfied in order to establish a healthy relationship between the individual and the state. Top-down approaches take lead from the state, while bottom-up approaches depend on community actors to identify needs; both are used to establish human security in a sovereign state. A person’s ability “to enjoy complete, safe and fulfilled lives – their human security – has moved from the shadows of domestic affairs onto the

⁵ Mark Duffield, “Human Security: Linking Development and Security in an Age of Terror” in *New Interfaces between Security and Development: Changing Concepts and Approaches*. Edited by Stephan Klingebiel. (Bonn : Dt. Inst. für Entwicklungspolitik, 2006), 15

international political agenda,” found mainly within the framework of human rights law and legislation.⁶ This results in a top-down approach, however, both top-down and bottom-up approaches to human security work in tandem with one another on a domestic level. The relationship between the state and these groups, in an effort to prevent harm within its border, stems from a need at the local level, and can only be fulfilled at the state level. It is with this bottom-up framework that “the interconnection between development and security can be seen as a recurrent and episodic strategisation of power in which securing self-reliant species-life and maintaining its cohesion is essential for the defense of mass society and international order.”⁷ What this symbolizes is the need for politics to be fulfilled on a local level in order for biopower to be fulfilled at the international scale. Bottom-up strategies that support human security are the most effective, but are less likely to be used; sovereignty, and the norms that the state possesses, will be prioritized above the needs of minority groups.

The differentiation between the individual and the group is through biological and political associations, which is brought into the international realm when a Westernized state interacts with those who do not follow similar norms. Foucault argues that two levels of politics are characterized the way modern powers intervene on the individual’s human body, and ‘biopolitics’ referring to the population as a biological species.⁸ With the distinction between these two levels of analysis, both are used to link the relationships between a state and its citizens, alongside the obligations of an international community. This involves framing biological features of race and ethnicity to be embedded in cultural and social practices.

⁶ Ibid, 12

⁷ Ibid, 17

⁸ Alison Howell & Melanie Richter-Montpetit, “Racism in Foucauldian Security Studies: Biopolitics, Liberal War, and the Whitewashing of Colonial and Racial Violence.” *International Political Sociology* 13, no. 1 (2019): 4

Section 1.2: What is Biopolitics?

Foucault's biopolitics understands that biology and humanity are intertwined in the ways they are reflected through the state, where biological characteristics of race and ethnicity are inflicted through the pretenses of citizenship. Biopolitics produces a "multiplicity of men which forms 'a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on.'"⁹ All of these elements are hierarchical, and are able to reflect who is considered human. At a domestic level, Foucault would caution that "the impetus to internal purification of populations is innate to all modern states," meaning that citizenship is a biological characteristic that makes certain groups to experience higher levels of discrimination in comparison to others.¹⁰ Citizenship is considered meaningless, as the legal order is used as a means of monitoring and interpreting 'deviant' behaviour, while sorting bodies into racial categories. At the international level, however, citizenship is used by powerful sovereigns to rank nationals who are included and excluded from human society. This includes those classified as refugees, whose statelessness leaves them vulnerable in the international realm.

Biopolitics is a state-led campaign that produces an idea of the 'other', providing grounds for enacting security measures against those who are portrayed as threats to state structures, and the citizens who fall under sovereign protection. To put it simply, biopolitics in the form of power is classified as biopower, in which Foucault describes it as the ability to "cast enemies as threats to the health, wealth, and wellbeing of the population, and thus 'the death of the other – that is, of those deemed dangerous, unfit, or diseased – will make life in general more healthy and pure.'"¹¹ This classification suggests that enemies, or the 'other', pose the most risk to the state; it is

⁹ Kaspar Villadsen, "Michael Foucault and the Forces of Civil Society" *Theory, Culture, Society* 33, no.3 (2016): 21

¹⁰ *Ibid*, 21

¹¹ Alison Howell & Melanie Richter-Montpetit, "Racism in Foucauldian Security Studies: Biopolitics, Liberal War, and the Whitewashing of Colonial and Racial Violence." *International Political Sociology* 13, no. 1 (2019): 5

inherently subjective, reflective of the sovereign's norms and culture. Internationally, biopower projects the 'other' as an entity that opposes the norms and ideologies of the modern international system. By incorporating life itself, biopolitics therefore "focuses on collective phenomena that [has] long-term political effects and strives to regulate them."¹² Internationally, the sovereign states use these distinctions to identify threats in other states, and enact international law and regulations to take control of these states and their populations, who have not obtained significant power in the global community.

Section 1.3: Sovereignty and the Role of Biopower within it.

Sovereignty is the legal order that allows for legislative bodies to operate effectively within the state, granting power to its governing structures that establishes norms for citizens to follow, and as a means of limiting international interventions from other states. This is reflective of a realist approach to international relations, as the security dilemma is used as a means of preventing international influence, whether it be from sovereign states or the individual. Schmitt highlights the question of who is entitled to take action when a legal system fails in basic competence.¹³ He offers both a general and specific framework to sovereignty, in which

*"every legal order is based on a decision, and also the concept of the legal order, which is applied as something self-evident, contains within it the contrast of the two distinct elements of the juristic – norm and decision."*¹⁴

The legal order rests upon the decision, rather than a norm, as decisions set the precedents for norms to be established. The norms that work for Westernized states, such as the United States

¹² Katia Genel, "The Question of Biopower: Foucault and Agamben" *Rethinking Marxism* 18, no. 1 (2006): 46

¹³ Carl Schmitt, *Political Theology*, trans. by George Schwab. (Chicago: The University of Chicago Press, 1985), 11

¹⁴ Ibid, 10

and Canada, are not always applicable towards biopolitical collectives who require necessities that exist beyond the norms. This includes examples of universal medical care and social security, as they are state mandated rather than internationally founded. The state is also claimed to belong to the “formation of law, because all law is simultaneously a problem of the existence of the state order.”¹⁵ Schmitt’s definition of authority suggests that order has ingrained itself into a states’ constitution, by which norms keep the subjects of the state accountable in upholding said order. This means that decisions are the most sovereign practice a state can accomplish, as it allows for a state to decide on its own legal order that develops norms and decisions in order meet the human security needs of its biopolitical populations.

International norms are integrated into constitutions and legal orders, while being reworked to meet the needs of biopower. For Foucault, norms established through biopolitics is

*“no longer the principal form of power but simply one element among others; it is organized within a power of the management of life, not to be understood strictly as labor-power (the indispensable basis of capitalism), but as an element of biohistory in which one acquires the scientific possibility of transforming life, ultimately, for itself, into well-being or health.”*¹⁶

The health and wellbeing of a sovereign states population is prioritized before the needs of the ‘other’. In the international context, such acts to uphold human security are classified as the Responsibility to Protect (R2P), where the intervention in another sovereign state’s affairs has the potential to be justifiable if the state believes such these conditions are not being met. A disruption in the order itself leads to the international community to enact the Responsibility to Protect,

¹⁵ Ibid, 26

¹⁶ Katia Genel, “The Question of Biopower: Foucault and Agamben” *Rethinking Marxism* 18, no. 1 (2006): 46

placing the state under scrutiny and into the global spotlight, while determining how the state will behave when it faces an atypical human security crisis and retaliation from other states.

The Responsibility to Protect (R2P) establishes three pillars in response to the violation of rights, giving individuals a form of biopower that allows racialized groups who have been harmed to receive support from sovereign states. The first pillar states that it is the international community's responsibility "to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement."¹⁷ If biopolitical groups are facing significant rights violations, it is the role of the international community to intervene in order to protect, even if it violates the sovereignty of another state. The second pillar claims that Member States are to commit to "the international community to assist states in meeting those obligations," encouraging international cooperation.¹⁸ Those who assist are likely sovereign states who follow western ideals, which has the potential to mirror colonial expansion. The final pillar reflects the need to respond quickly to human rights violations, stating that success "lies in an early and flexible response, tailored to the specific needs of each situation."¹⁹ These legal obligations are for the benefit of the biopolitical group, and are actively working against the sovereignty of a state. The norms that are developed through the Responsibility to Protect reflect Westernized norms, so although they work against the sovereign state, they are established to benefit the colonial expansion.

¹⁷ United Nations. "Implementing the Responsibility to Protect - Report of the Secretary-General." United Nations General Assembly. Date Published January 12, 2009.

https://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677

¹⁸ Ibid, 9

¹⁹ Ibid, 9

Section 1.4: Examples of Biopower

The terrorist attack on September 11th in the United States showcased how the sovereign power of a primary state in the international community impaired by the ‘others’, whose ideological stances vary differently from the norms that operate within western contexts. In Joseph Pugliese’s work, he offers an example of the role of biopower in the context of the September 11th attacks. As he outlines:

“in the wake of the 9/11 attacks against the US, former President Bush, he called on the US Department of Justice, Office of Legal Counsel, to establish guidelines for the interrogation of captured so-called ‘enemy combatants,’ as subjects who, under that designated rubric, failed to qualify as prisoners of war and who were thus disqualified from claiming the limited rights and protects outlined in the Geneva Convention on Prisoners of War.”²⁰

States are able to determine the classification of individual bodies through their associations and characteristics, regardless of the legislation established at the international level, as their actions are reliant on the effects attributed to the state in question, rather than the international community. These classifications enable countries similar to the United States to exercise sovereign authority over the bodies of those that threaten the state’s sovereignty in both domestic and international realms. The detainment, and even targeted killing, of these actors who pose a risk to the sovereignty of a state, has been legislated as justifiable under a legal order through the enactment of the Patriot Act.

When these ‘targeted killings’ are pursued by powerful sovereigns through means of insurgency, whose ideological justification stays within the realm of Westernized political norms,

²⁰ Joseph Pugliese, *State Violence and the Execution of Law: Biopolitical Caesurae of Torture, Black Sites, Drones*. (New York: Routledge, 2013), 162

biopower would claim to be justifiable as they are targeting the ‘other’ as a means of protecting its own sovereignty, and through practice, developed into an international norm in pursuit of national security. Finnemore and Sikkink argue that “the definitions of norms as ‘standard[s] of appropriate behaviour for actors with a given identity’,” and builds the concept of practices that encourage state violence, or the violation of human rights, to develop into norms.²¹ When the United States pursues behaviour that targets individual persons through violent practices, and develops legislation that violates individual human rights under existing international conventions, sovereignty is considered more powerful than human life. National security is prioritized even as the physical safety of humans are violated through the breaches on human security. After having their human security breached by a terrorist attack, the United States pursued similar actions, creating a back-and-forth relationship of human rights violations between individual actors and states.

Experiencing conflicts is dependent on the state bodies are located in, and the norms these states possess. These individual bodies play a significant role in understanding the legal and physical ramifications of going against the sovereign state. Leerom Medovoi compares Foucaultian discussions on biopolitics in the context of international neoliberalism, arguing that “judicial borders become much less important than the analysis of regulatory regimes that may cut across the borders in all sorts of ways.”²² This is inclusive of physical borders between nation-states, and the borders between the state and its own legal domain, converging upon that of the everyday life of the civil society. Many eighteenth-century debates modelled “progress as ‘civilization’ through the development of commerce, civility, and market exchange; ‘civil society’ was advanced society, civil being related to civilised and polite, as opposed to the rude, savage,

²¹ Betsy Jose, “Bin Laden’s targeted killing and emerging norms” *Critical Studies on Terrorism* 10, no. 1 (2017): 45

²² Leerom Medovoi, “Swords and Regulation: Toward a Theory of Political Violence in the Neoliberal Movement.” *Symploke (Bloomington, Ind.)* 20, no.1 (2012): 23

and barbarian.”²³ By determining human behavior as being civilised and polite is only attributed to the way individual conduct themselves towards the state; any form of rudeness and savagery depicts acts against the sovereign. These bodies are located within a state whose ideological framework reflects the ‘other’ as being savage, and if these individuals cannot behave under the norms of the state, the threat of these bodies remaining leads to significant actions being taken by the state. The ambiguity of location is relevant to bodies, as the legal jurisdiction of bodies grants the state the opportunity to decide itself how it would proceed in handling of rights (or lack thereof) that pose risks to sovereignty in the international realm.

In the context of the ‘enemy combatants’ that the United States had captured post-9/11, the state’s capacity to overrule foreign powers, based their national security interests, is determined by how effective state influence is on establishing norms. Pugliese claims that the United States’ legal system sanctioned the September 11th attacks as being unqualifiable for international jurisdiction under the Geneva Convention, establishing that those who threaten the constitutional structure, and with it the legal order, of a sovereign nation are able to be denied protections, and can be exposed to the legal and physical jurisdiction of the sovereign state in question. This precedent was the context for torture and extrajudicial imprisonment, but also provided an opportunity to deny bodies their human rights so long as the threat against state sovereignty persisted. This is where race, ethnicity, and migration are key; movement can be framed as a threat, where biopolitics incites fear in a state’s sovereignty due to their unknown and unpredictable nature. Foucault argues that “what is being managed in this kind of biopolitics is the entire array of life processes of bodies and populations, not the legal standings of those bodies

²³ Samantha Ashenden, “Foucault, Ferguson, and civil society” *Foucault Studies*, no. 20 (2015): 37

and their protection from or exposure to political violence.”²⁴ So long as a state is able to control individual processes, such as birth, death, and production, it is able to establish its own legal standings for these groups that allows for the repression and discrimination at both the domestic and international realms. The United States did not take the legal standing of these biopolitical groups into consideration during the invasion of Iraq, but rather, produced counterinsurgency as a means of controlling the biopolitical groups found within their borders, in order to expel ideologies that pose a security risk to the United States sovereignty. This leads us to analyse Agamben, and the distinction between biopolitics and the bare life.

AGAMBEN: THE STATE OF EXCEPTION AND BARE LIFE

Section 2.1: What is the Bare Life?

Agamben expands on the Foucault’s biopolitical person through the thesis of the bare life, breaking down two distinct characteristics of law in order form their identity; the separation of *zoē* from the *bios* is used as a means of justifying the relationship between the state and bodies. Used by the Greeks, “the term ‘*zoē*’ [refers] to the mere biopolitical aspect of life - natural life - the ‘simple fact of living common to all living beings (animals, men, or gods)’ and the term ‘*bios*’ to refer to ‘the form or way of living proper to an individual or a group’ - ‘a qualified life’.”²⁵ The *zoē* is important as it determines the physiological life of the individual, focusing intently on the biological characteristics such as race, ethnicity, and gender. Relatively, the *bios* is a complementary element of that is reflective of Foucault’s biopolitical knowledge, in which the experiences of collectives are taken into account. The association of *bios* to the *polis*, however,

²⁴ Leerom Medovoi, “Swords and Regulation: Toward a Theory of Political Violence in the Neoliberal Movement.” *Symploke (Bloomington, Ind.)* 20, no.1 (2012): 23

²⁵ Daria Davitti, “Biopolitical Borders and the State of Exception in the European Migration ‘Crisis’” *European Journal of International Law* 29, no. 4 (2018): 1180

and *zoē* being excluded from the *polis*, foregrounds that the idea of bare life “could only develop his or her full potential by being a member of the *polis* and, therefore, by learning to navigate and inhabit the distinction between the private and public spheres - the separation between *zoē* and *bios*.”²⁶ *Zoē* alone does not make an individual a citizen of the sovereign, but rather, the individual is only reduced to their biological characteristics under this aspect; the way in which they operate in the *bios*, whether alongside or against state norms, creates a generalization of the capabilities of those who share biological characteristics.

The threshold between the *zoē* and the *bios* explains the way in which a sovereign state interprets the biopolitical entity, creating generalizations that define the scope of political power as a means of maintaining sovereignty controls. Davitti claims that “the intersections [of] natural, biological life (*zoē*) and politics have become more visible in the way in which the state regulates, controls and manages people’s lives.”²⁷ As *zoē* represents the biological aspect of the individual, race and ethnicity as a hierarchy, alongside the *bios* of an individual, determines how the state treats these collectives when under a rule of law. Race and ethnicity are a key aspect that contributes to the development of the individual, and how they are viewed by the state. There is, therefore, an “inherent danger in the politicization of life, ‘which threatens to reduce humanity to biopolitical life that can be kept alive or killed with impunity’ ... sovereignty is not merely a political or judicial concept but, rather, ‘the originary structure in which law refers to life and includes it in itself by suspending it’.”²⁸ When sovereignty allows for race to become legislative, it would determine the treatment of biological persons. Having Westernized ideals is personified against a racialized person, or group, and gives the sovereign a means of creating discriminatory

²⁶ Ibid, 1180

²⁷ Ibid, 1181

²⁸ Jessica Whyte, *Catastrophe and Redemption: The political Thought of Giorgio Agamben*. (New York: State University, 2013), 23

legislation that takes control of groups based on biological characteristics. This not only threatens the integrity of these groups, but places them as victims to a sovereign whose purpose is to support its own norms, and rid itself of those who threaten the existence of said norms.

Section 2.2: Who is considered to have a Bare Life?

Agamben uses the concept of *homo sacer* as a means of classifying the bare life as being sacred; it is not applied as a means of identifying the bare life as being untouchable, but rather it is reflective of a martyr, whose existence and death allows for norms and ideals to emerge within the state, and upon its biopolitical population. The *Homo sacer* translation is defined as representing the sacred man, in which Agamben claims that *homo sacer*

*“is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide; in the first tribunitian law, in fact, it is noted that ‘if someone kills the one who is sacred according to the plebiscite, it will not be considered homicide.’ This is why it is customary for a bad or impure man to be called sacred.”*²⁹

The *homo sacer* under these descriptions transforms an individual, who has been given a form of symbolic meaning, and outlines the behavior that is considered to be appropriate and inappropriate if it is conducted against the sovereign state. The death of the individual sends a message to not only other groups, but other sovereign states, showcasing the power one nation has over another, and sets precedents on how behavior is handled when it crosses the norms and ideologies of the state. This justifies Agamben’s thought where “the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life

²⁹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. (California: Stanford University Press, 1998), 47

– that is, life that may be killed but not sacrificed – is the life that has been captured in this sphere.”³⁰ What is meant by sacrifice in this context is reflective of ancient Roman practices of ritual ceremonies; the action of killing the individual, rather than going through the processes of ritual ceremonies, is the conceptualization of the *homo sacer*. Having an individual killed, who poses a threat to national security of the sovereign, does not constitute as a sacrifice, instead, the aftermath of such killing is used as a means of signifying that any threat to the norms and ideologies of the sovereign will be met with retaliation, and uses the means of national security as a justification for such action.

An example of the *homo sacer* in modern contemporary politics is the case of Osama bin Laden, whose assassination on behalf of the United States signaled to the international community that threats to the sovereign power will be met with force. Kevin Govern makes the claim that is applicable beyond such an example, stating that

*“it has been a continuing political and legal trend to kill, rather than capture, those suspected of terrorism. Since the death of Osama bin Laden, this trend has been strongly influencing international responses to terrorism as well as that in the US. Significantly, on 16 May 2011, the UK House of Commons indicated that ... ‘The more states act in this way, the more likely it is to become accepted, at least politically if not as a matter of international law’.”*³¹

The lives of those who victims of targeted killing are *homo sacer*, as their deaths are not within the legal order, but symbolize normative change at the international level, granting states that follow Westernized norms to proceed in similar ways to deviants who threaten state norms. Why

³⁰ Ibid, 47

³¹ K. Govern (2011) “Expedited Justice: Gaddafi’s Death and the Rise of Targeted Killings.” JURIST Blog, October 25. Accessed July 25, 2020. <https://www.jurist.org/commentary/2011/10/kevin-govern-gaddafi-killing/>

this sentiment is bare life is reflective of the United States' targeting of certain individuals and groups, which allowed for the extrajudicial killing of these people. Govern goes on to states that "this trend towards killing instead of capturing following the death of bin Laden is seen in the targeted killings of Anwar al-Awlaqi, Samir Khan, Ibrahim al-Bana and Al Abdul-Rahman al-Awlaqi."³² It allows for legal orders, in both domestic and international realms, to be suspended when nation security faces threats from those who do not follow similar norms, to be justified. The *homo sacer*, in this case, is a symbol for which sets precedent in how states behave internationally with other states, and the bare lives that lie within them.

Section 2.3: What is the State of Exception?

Carl Schmitt's *Political Theology* is used in Agamben's work to describe the exception, where law and order are upheld through legislative practices in order to produce exceptional instances justified in disrupting the sovereignty of the state. He details sovereignty as those "who decide on the exception," in which this exception is able to be applied towards cases of conflict, alongside routine enforcement of emergency measures that are used to uphold law and order consistently.³³ The exception is meant to signify what classifies the 'atypical case,' which includes granting the state the ability to suspend a legal norm as a response to this exceptional event.³⁴ It is a "suspension of all legal norms and their normal application, and finally, also the factual situation, 'the extreme emergency'," are prevalent and required in order to be in a state of exception.³⁵ Brännström claims that "as long as the organization of the state continues to be

³² Ibid, Govern 2011

³³ Carl Schmitt, *Political Theology*, trans. by George Schwab. (Chicago: The University of Chicago Press, 1985), 5

³⁴ Leila Brännström, "Carl Schmitt's definition of sovereignty as authorized leadership" in *The Contemporary Relevance of Carl Schmitt: Law, Politics, Theology*. (New York: Routledge, 2016), 26

³⁵ Ibid, 26

effective, and as long as social order has not turned ‘abnormal’, sovereign authority is valid and in force, even if legal norms are not.”³⁶ This suggests that laws do not inherently impact the state structure once it has been established, but rather, law and constitution work against one another to protect different sects of bodies; both prevent the other from dominating in the governance structure, while creating direction for law and order upon its citizen population.

By maintaining a continual state of exception as a means of maintaining legal order, the state diminishes internal and external conflict, as it may turn into an atypical event and threaten to overthrow existing state structures that benefit the sovereign. Within the twentieth century, Agamben would claim that we have experienced what is defined as a “legal civil war,” which is prevalent in modern totalitarianism; this legal civil war allows for “the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system.³⁷ By claiming that “a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones,” it allows the inclusion of borders in state of exception discussions.³⁸ This continual and perpetuated state of exception attempts to maintain existing power structures, and allows for state sovereignty to become prioritized under the guise of national security. One may argue that the current political climate of the United States is based upon this permanent state of exception, due to the attacks on September 11th in New York City, and is backed through means of the Patriot Act. This is supported by Agamben, as this paradigm is both an “extension of the military authority’s wartime powers into the civil sphere, and on the other a suspension of the constitution,” creating a singular juridical phenomenon, in

³⁶ Ibid, 26-27

³⁷ Giorgio Agamben, *State of Exception*, trans. Kevin Attell. (Chicago: The University of Chicago Press, 2005), 2

³⁸ Ibid, 2

this case, the executive branch of the United States government.³⁹ Parts of the U.S. constitution were nullified after the events of September 11th, as threats to national security allowed the government to impede on the rights of its citizens in order to preserve the state's sovereignty in both domestic and international contexts.

Biopolitical actors rely on such notions to garner change, as the system established benefits those who see no need for revolution or resistance; a right to resist against sovereign states, as a legal norm, creates a vulnerability within the status quo of the state structure. It is with this thought that the problems stemming from the state of exception “present clear analogies to that of the right of resistance; it has been [highly] debated, particularly during constituent assemblies, whether the right of resistance should be included in the text of the constitution.”⁴⁰ What is important here is that within both the right of resistance and the state of exception,

“what is ultimately at issue is the question of the juridical significance of a sphere of action that is in itself extrajudicial. Two theses are at odds here: one asserts that law must coincide with the norm, and the other holds that the sphere of law exceeds the norm. But in the last analysis, the two positions agree in ruling out the existence of a sphere of human action that is entirely removed from law.”⁴¹

With this position being taken, where the sphere of human action is reflected in resistance measures, those who act against the state are working against the norms established by the state in question. The sovereignty of the state and its existing structures being threaten by internal biopolitical actors offers the same need for the state of exception, maybe even more so. Its extrajudicial nature of the state of exception in this case is established in complex socio-political

³⁹ Ibid, 5

⁴⁰ Ibid, 10

⁴¹ Ibid, 11

ideologies, some in which challenge current structures in order to benefit the biopolitical populations that are least represented.

The state of exception under these pretenses, against its own citizens, is theoretically justifiable under Agamben and Schmitt, yet legally unjustifiable, as those who resist the sovereign's legitimacy are also rightfully justified in resisting when the state cannot meet their biopolitical needs. If resistance was considered to be right or duty granted to citizens of the state, "not only would the constitution end up positing itself as an absolutely untouchable and all-encompassing value, but the citizens' political choices would also end up being determined by juridical norms."⁴² Norms develop during temporal periods of exception; in the face of significant exceptional events taking place both domestically and internationally, there is a potential for an "abrupt halt, even total collapse of all legislative and judicial activity - state, local, and national - and an all but total collapse of public administration."⁴³ The most extreme of cases is in the context of a nuclear attack, as it is warranted to be classified as being an exceptional event as it deals with matters of national and human security. What is so profound about such an approach is the idea of what a nuclear attack would theoretically do to various levels of society after mass destruction, is regarded just as significantly as the physical destruction it has on the sovereign state.⁴⁴ The impact on political life, economic well-being, and social stability can contribute towards the fall of current governing structures, allowing for new constitutional developments to be made that threaten current norms and allow for the establishment to maintain and succeed power. This can also be used towards arguments that favor permanent states of exception; if the likelihood of exceptional events occurring is highly probable, such as nuclear war and conflict, then establishing

⁴² Ibid, 11

⁴³ Clinton L. Rossiter, "Constitutional Dictatorship in the Atomic Age" *The Review of Politics* 11, no. 4 (1949): 396

⁴⁴ Ibid, 396-397

a permanent state of exception is favorable in order to maintain current power structures benefitted by the state's constitution.

Section 2.4: How Does Sovereignty relate to the State of Exception?

Schmitt uses the work of Thomas Hobbes as a means of framing discussions of human nature through concepts of savagery, the laws of nature, and as a means of legitimizing state authority over its populations. In Hobbes' *Leviathan*, *justice, equity, modesty, mercy, and doing to others, as we would be done to* results in a form of restraint on human nature in order to preserve the collective from their own passions.⁴⁵ When there is "no visible power to keep them in awe, and tie them by hear of punishment to the performance of their covenants, and observation of those laws of nature," that humanity succumbs to their anarchic ways.⁴⁶ When sovereign states establish their legal principles upon norms, the state of nature would bind citizens to these norms, thereby establishing law and order within a structured state environment that enforces a certain behavior from its citizens. This is where terminology such as *just* and *unjust*, also known as natural law, come into account, as it is "when they are attributed to men, they signify conformity, or inconformity of manners, to reason. But when they are attributed to actions, they signify the conformity, or inconformity to reason, not of manners, or manners of life, but of particular actions."⁴⁷ These notions often apply to an individual's responsibility to others within the state in question, but is then backed by a legal system to enforce the idea of just behaviours, while prosecuting unjust behaviour as they arise. By associating the Leviathan as the state in question, it is indicative that the state has its purpose in setting the norms of not only its governing and

⁴⁵ Thomas Hobbes, *Leviathan*. Edited by J. C. A. Gaskin. (New York: Oxford University Press, 1998), 111

⁴⁶ *Ibid*, 111

⁴⁷ *Ibid*, 98

legislative operations, but the operations of its citizens. With the state determining such norms, they are able to establish how human action is to be controlled, and punished accordingly, in order to meet the needs of the sovereign.

The importance of the legal order allows for human nature to be repressed, and re-organized, in a constructive and hierarchal way in order to prevent harms and injustices from being perpetuated from not only individual to individual, but individual to state. It is with this that Bodin would claim that “a free man is subject to the sovereignty power of another,” meaning that there is this colonial fantasy where there is an authority over all individuals residing within and beyond a state.⁴⁸ By that decree, and in such examination, assigning a singular power such as that of religious significance, including God of the Christian faith, or be those who act in his stead such as an emperor, a prince, or be they the people themselves, it is shown that pinpointing a singular authority limits the scope in which a state can be defined as being sovereign.⁴⁹ Such a thought is mirrored in Hobbes, as he states:

*“For he that performeth first, has no assurance the other will perform after; because the bonds of words are too weak to bridle men’s ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possible be supposed. And therefore he which performeth first, does but betray himself to his enemy; contrary to the right (he can never abandon) of defending his life, and means of living.”*⁵⁰

This idea suggests that words are not to be trusted, and trust between individuals leads to vulnerabilities between actors. Through means of legal order within the state itself, it offers

⁴⁸ William A Dunning, “Jean Bodin on Sovereignty” *Political Science Quarterly* 11, no. 1 (1896): 91

⁴⁹ Carl Schmitt, *Political Theology*, trans. by George Schwab. (Chicago: The University of Chicago Press, 1985), 10

⁵⁰ Thomas Hobbes, *Leviathan*. Edited by J. C. A. Gaskin. (New York: Oxford University Press, 1998), 91

written and defined guidelines for individuals to follow. It is through mutual collaborations, with the addition of new additions and norms, that allows states to evolve progressively by means of legislative amendments. By establishing guidelines with the state, it enhances the state's own legitimacy, and holds its citizens accountable to the sovereign under a domestic scope.

When this interpretation that the state is the highest power on a domestic front, it is due to the state's pursuit in establishing norms that preserve and maintain the existing power structures. The conception of sovereignty that Schmitt provides suggests that "sovereignty is supreme power over citizens and subjects, unrestrained by the laws," which sets the idea of the state's ability in stone as being above all else.⁵¹ This may suggest that sovereignty goes beyond words on a page declared as being a constitution, but rather it is the norms developed through a continual maintenance process that allow for its existence to persist beyond its citizens' lifespans. This is confirmed in his position that "authority which is truly sovereign must be not only supreme, but perpetual – that is, without limit of time," using the Roman dictator as an example of how the limitations of his term only allow power to be held as a formality.⁵² By it is not just a formality, as he goes on to point out; although sovereignty is above the people, it is the people's will, and the passing down of such responsibilities, does the state remain sovereign. Without the individual upholding sovereignty for the state, the state itself loses its ability to be considered sovereign. This is where formal governments come into relevancy, as "sovereignty in this sense may be bestowed by a people on an individual, or be transferred from one individual to another, and in either case it is equally valid, so long as it is free from condition."⁵³ The transference is a formality that showcases the illusion of healthy democracy; rather, the state structure has its own agenda separate

⁵¹ William A Dunning, "Jean Bodin on Sovereignty" *Political Science Quarterly* 11, no. 1 (1896): 92

⁵² *Ibid*, 92

⁵³ *Ibid*, 93

from what governance parties and organizations dominate the parliamentary discussions during that temporal period.

The largest problem for Schmitt in this case resides in the international realm, where the connection between actual powers legally and the concept of sovereignty must operate in tandem to achieve legitimacy in global politics. In the international realm, it is the political reality that there lacks an “irresistible highest or greatest power that operates according to the certainty of natural law.”⁵⁴ To quote Krabbe, he mentions that

*“we no longer live under the authority of persons, be they natural or artificial (legal) persons, but under the rule of laws, (spiritual) forces. This is the essence of the modern idea of the state; these forces rule in the strictest sense of the word. Precisely because these forces emanate from the spiritual nature of man, they can be obeyed voluntarily.”*⁵⁵

This message reflects the notion that a state’s sovereignty relies upon the international rule of law, which has been incorporated reciprocally in western states and their constitutional foundation, allowing for them to continue operating beyond the changes of governments and persons in its system. Internationally, the mutual recognition inherent in the system appeases the anarchic nature of the global political system. Sovereignty itself is the highest power a state is able to receive, allowing it to be legally independent from other nations that are relative in geographical location, along with cultural and ethnic identification.⁵⁶ By allowing for states to become sovereign, it also allows for individual nations to operate in their own interests, relative to the socio-political and economic climate within the international community.

⁵⁴ Carl Schmitt, *Political Theology*, trans. by George Schwab. (Chicago: The University of Chicago Press, 1985), 17-18

⁵⁵ Ibid, 22

⁵⁶ Ibid, 17

Sovereignty allows in the most extreme of cases, authoritarianism and dictatorships, to claim legitimacy despite the western international order. This has taken issue with authors such as Ying Khai Liew, in which the critique suggests that by “identifying himself with the Hobbesian ‘natural law of science’ tradition, Schmitt is not concerned about the *content* of decisions, but with the fact that a decision is taken at all.”⁵⁷ This represents an persistent issue in his work, that the abstraction of decisions render context irrelevant. The idea of positive and negative decisions are disregarded, and are posed as being part of this ‘permissibility of representation’. This explores whether “the constitutive element of the ‘will of the people’ can exist without content; and further, whether that constitutive element remains as a unity regardless of the fact that many (sometimes, even a majority) of the individual wills will have contents which significantly differ from that formed by the sovereign.”⁵⁸ The disconnect between meeting the individual needs versus that of the state’s interests feeds upon the abstractness by making comparisons between nations, which are used as a means of justifying actions that control human nature.

BORDERS AND REFUGEE SETTLEMENTS:

Borders, as a biopolitical medium, are used as a means of establishing what is, and what is not, under legal jurisdiction. This separates the biopolitical from the political power, as those who cross borders are no longer represented adequately, as their associations are bound to their state of origin rather than the host-state. It is claimed that the “biopolitics of race are ‘new’ in part because the relationship between biological knowledge and political power is decoupled,” so analyses

⁵⁷ Ying Khai Liew, “Carl Schmitt’s Sovereign: A Critique.” *Ratio Juris* 25, no. 2 (2012): 263

⁵⁸ *Ibid*, 265

should aim to intervene upon consequences of inequality rather to legitimize them.⁵⁹ This separation of the biological knowledge, determined earlier as being the cultural and social aspects of a biopolitical collective, from the political powers is based upon a reaction to an atypical event, rather than a gradual disengagement that is through in its entirety. The reason behind this disconnect is relative to the movement, and the expanding communities, of biopolitical persons entering borders and establishing themselves under another sovereign state.

Once those depicted as subjects of bare life have crossed borders, they can be found as a security risk to the host-state, whereby their status becomes a tool for promoting anti-immigrant legislation, in which such acts include the closing of borders in the name of national security. An example of such a phenomenon is that of the migratory crisis within the European Union, that “whilst the situation at the southern borders of Europe [is] depicted as a humanitarian emergency demanding immediate intervention, those same refugees – whose lives these enhanced EU measures were ostensibly devised to save – were simultaneously portrayed as a potential security threat.”⁶⁰ What this signifies is that humanitarianism cannot, and will not, come before the sovereignty of state, regardless of the human security threat these individuals face. Even states within multi-governmental organizations, such as the EU, see how sovereignty of the most powerful of actors is extrapolated and enforced more than others. Such an example includes the likes of Greek Prime Minister Kyriakos Mitsotakis, who has accused the European Union of “treating countries on the bloc’s external frontiers as convenient places to park migrants,” suggesting a significant power asymmetry between powerful international actors, and those who

⁵⁹ Ruha Benjamin, “Recasting Race: Science, Politics, and Group-Making in the Postcolony” in *Reconsidering Race: Social Science Perspectives on Racial Categories in the Age of Genomics* by Kazuko Suzuki and Diego A. Von Vacano (2018), 3-4

⁶⁰ Daria Davitti, “Biopolitical Borders and the State of Exception in the European Migration ‘Crisis’” *European Journal of International Law* 29, no. 4 (2018): 1179

face these situations within their borders.”⁶¹ The European Union is not a state in and of itself, but rather, it is a compilation of multiple sovereign states. The treatment of Greece by other sovereign states in the European Union showcases that no matter how much a state can hold on Westernized and Eurocentric ideologies, the state will pursue its own sovereign security needs over that of the individual person. This is established through means of physical infrastructures, and the legal infrastructures, that prevent biopolitical movements of borders.

The liquidation of borders is a racialized practice insofar as it identifies the course of action necessary for handling what Foucault would call the ‘other’, as these physical and legal infrastructures are already predetermined to reflect the biopower of the sovereign nations attached to them. It is authors like Daria Davitti who would argue that

*“these borders are liquid – that is, they are characterized by non-linear (externalized and outsourced) enforcement infrastructures. These are both physical infrastructures (such as corridors and spaces of confinement and connection through which refugees are ‘managed’) and borderline legal infrastructures aimed at avoiding international obligations (such as concepts of ‘safe third country’ or forced return measures through agreements aimed at readmission).”*⁶²

Borders as a liquid entity enforces a confinement and restriction of biopolitical entities; dominating culture and ethnic demographics are spearheading the legal order which benefits some collectives over others. Under an international analysis of biopolitical actors, such as refugees and those seeking asylum, these borders racialize bodies and permit certain collectives while restricting

⁶¹ The Guardian. “Greece to replace island refugee camps with ‘detention centres’” *The Guardian*. Date Published November 20, 2019. <https://www.theguardian.com/global-development/2019/nov/20/greece-to-replace-island-refugee-camps-with-detention-centres>

⁶² Daria Davitti, “Biopolitical Borders and the State of Exception in the European Migration ‘Crisis’” *European Journal of International Law* 29, no. 4 (2018): 1176

others. Lisa Laplante, who studies the European Union and its relation to International Criminal Justice, states that “a narrow focus on restoring political order and the rule of law often overlooks the underlying and long-term issues relating to development and socio-economic rights.”⁶³ With these short-term pursuits of maintaining sovereignty within an international realm, the concept of the ‘other’ is established not as a means of pursuing development measures to assist these biopolitical collectives, but as a means of identifying the security threat these groups hold. These biopolitical groups will be victimized by the state so long as their existence poses a threat to the structural and legal orders of the state, hence the desire for these biopolitical collectives to pursue collective self-determination.

With collective self-determination, the biopolitical community has the opportunity to establish their own form of governance amongst one another through physical infrastructures, such as refugee camps, and legal infrastructures in relation to maintaining order within allocated spaces. The case of the Agamé Refugee Camp in Benin exemplifies the biopolitical as a security threat to sovereignty by pursuing collective self-determination. In studying the Agamé Refugee Camp case study in further detail, Clara Lecadet states that the desire for migrants and refugees to establish what is known as a ‘refugee government’ allowed these groups to “achieve their political project and find forms of self-governance that was useful for dialogue with the humanitarian organizations.”⁶⁴ The biopower these groups are striving to achieve would give individuals an opportunity to meet their own needs, in comparison to relying on the sovereign state. These groups dictate their own norms and decisions through the practice of legal and physical infrastructures established around refugee camps. These threats of mass migration do not affect a singular state

⁶³ Lisa Laplante, “Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework,” *International Journal of Transitional Justice* 2, no. 3 (2008): 293

⁶⁴ Clara Lecadet, “Refugee Politics: Self-Organized ‘Government’ and Protests in the Agamé Refugee Camp (2005-2013),” *Journal of Refugee Studies* 29, 2 (2016): 10

in this instance, but rather, affects a collective identity of the Eurocentric model. As the European Union attempts to keep refugees alongside its outer borders, it shows it is the threat of the ‘other’ that allows for legal infrastructures to avoid their international duties, leaving biopolitical actors vulnerable to statelessness for fear that a state’s sovereignty will be breached.

The involvement of international actors, such as the United Nations and the UN Charter, frames how human rights responses are unsustainable, as the act of mass migration is seen as an exceptional instance that threatens legal infrastructures on a global scale. With the establishment of the Executive Committee in 1958, it allows for the adoption of significant conclusion around the work of the United Nations High Commissioner for Refugees (UNHCR).⁶⁵ Its purpose is to reflect “the evolving consensus of states regarding their obligations towards refugees, and hence service as important evidence of customary refugee law.”⁶⁶ In more specific terms, the adoption of the Declaration on Territorial Asylum by the UN General Assembly authorized the state the ability to grant asylum “in the exercise of its sovereignty, to persons entitled to involve article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.”⁶⁷ When discussing the biopolitical actors who struggle against colonialism, the conception of race is relevant under this context, as it is those from racialized communities who are limited in their scope of legal representation in comparison to their white counterparts. It is, therefore, clear that when these actors face a certain level of exception due to their displacement, they are subjected to the international realm of law.

⁶⁵ Chantal M.J Bostock, “The International Legal Obligations owed to the Asylum Seekers on the MV Tampa.” *International Journal of Refugee Law* 14, no. 2 (2002): 284

⁶⁶ Jennifer Moore, “Restoring the Humanitarian Character of U.S. Refugee Law Lessons from the International Community.” *Berkeley Journal of International Law* 15 (1997): 2

⁶⁷ Chantal M.J Bostock, “The International Legal Obligations owed to the Asylum Seekers on the MV Tampa.” *International Journal of Refugee Law* 14, no. 2 (2002): 285

The movement of these biopolitical actors create states of exception upon crossing borders, and arriving in a host-state, in which physical and legal infrastructures are challenged by sovereign beings with a standing in international law. In relation to such movements of bodies, “such discourse may not manifest itself ‘on the ground,’ but over time, this may happen if the national-level discourse is accompanied by two other processes - the exclusion of moderates, or those who resist the ethnicization process on the local level with their own identities, values, or actions, and the production of borders.”⁶⁸ This framework takes refugees as sovereign international actors, who are inherently biopolitical, and brings them onto a localized level of understanding. This is the basis of the United States post-9/11; Agamben states that “what is new about President Bush’s order is that it radically erases any legal status of the individual, thus producing a legally unnameable and unclassifiable being.”⁶⁹ By taking control of these biopolitical collectives, the United States is able to strip such individuals of their legal status on both international and domestic terms; their exceptional status has no legal backing to support them, leaving them to the anarchic reality of statelessness. This is supported by Agamben, in which “neither prisoners nor persons accused, but simply “detainees,” they are the object of a pure de facto rule, of a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from judicial oversight.”⁷⁰ This denial reinforces the idea that state security, and the protection of the state’s sovereignty, takes precedent before the legal representation for these biopolitical collectives, who are inherently racialized, and targeted regardless of citizenship status.

⁶⁸ Mila Dragojević, “Immigration, Identities, and the State of Exception” *The Disorder of Things*. Accessed July 28 (2020). https://thedisorderofthings.com/2020/07/14/immigration-identities-and-the-state-of-exception/?fbclid=IwAR1uNQ6HnS4QlomvtRkAchCJnAB5gWv_SxQZ5ADdw59B1T3I0mqVnP84Vs

⁶⁹ Giorgio Agamben, *State of Exception*, trans. Kevin Attell. (Chicago: The University of Chicago Press, 2005), 3

⁷⁰ Ibid, 3-4

The perspective of borders that surround a sovereign state has changed towards models of enhanced security, in which the unknown or potential risks crossing over borders challenge the sovereignty of a state. The violation of sovereignty gives way to the creation of a state of exception that limits the legal representation of racialized collectives. The events of September 11th in the United States offer a basic framework in understanding the limitation of biopolitical movements in and out of the nation on domestic terms. Relatively, the concept of humanitarianism on behalf of the Westernized world mirrors the liberal ideal; a state rids another biopolitical entity that does not meet western ideals in order to preserve this notion of democracy bring peace between nations. It is, however, important to discuss the significance of borders alongside international liberal intervention, as the establishment of borders depict identity just as importantly as the physical biopolitical entity would.

HUMANITARIANISM AND CONFLICT

Counter-insurgency and international policing campaigns within other sovereign states are used as a means of controlling populations, similar to humanitarianism, where norms and ideologies of the invading force are prioritized over the biopolitical group. The development of counterinsurgency “was the means of ensuring that modernization was not channeled into extremist appeals to redirect this revolution, inasmuch as ‘scavengers of the modernization process’ aimed to capitalize on the discontent and disarray.”⁷¹ What this represents is the need for Westernization to flourish within the conceptualization of the modern process of politics on the international scale. With other groups and collectives attempting to capitalize on the conflict within states of exception, their ideological lenses had the potential to reformat legal order in their

⁷¹ Stuart Schrader, *Badges Without Borders: How Global Counterinsurgency Transformed American Policing*. (California: University of California Press, 2019), 81

favor. With this, modernizers would support “new physical infrastructures, land reform, urbanization, industrialization, and the adoption of consumer-oriented lifestyles [and] would unsettle settled modes of living, they believed, leaving many susceptible, in the disarray and confusion of ongoing social upheaval, to the appeals of the invading sovereign. Counterinsurgency would aim, therefore, to “maintain the system in the status quo or to restore it.”⁷² Schrader does not mean ‘status quo’ in relation to the state being entered, but rather, establishing what norms are considered to be ‘status quo’ in Westernized ideology as a means of state reconstruction to favor the invading sovereign.

Where humanitarianism, counter-insurgency, and policing are enforced on a sovereign state, its reasoning is focused on promoting human security; with a hyperfixation on combatting violence, through a means such as through the Responsibility to Protect, biopolitical groups are targeted when their actions go against existing state structures. Mark Taylor claims that

*“unfortunately, the social reality of violence is a reality with which the international use of force is simply not equipped to deal. The ‘revolution in military affairs’ had made it possible for the US and others to conduct a counterinsurgency in Iraq and Afghanistan, but it has not – and, in all likelihood, will not – enable it to win, that is declare victory with credibility in the eyes of Iraqis, Afghans, or Americans. More important, it will severely compromise the Americans’ ability to leave the country with a legitimate governing authority in place.”*⁷³

With the international community not able to handle conflict, or have successful campaigns in state-reconstruction, biopolitical groups are being affected as a means of establishing norms rather

⁷² Ibid, 83

⁷³ Mark B Taylor, “Humanitarianism or Counterinsurgency?: RP at the Crossroads” *International Journal* 61, no.1 (2006): 152

than bringing humanitarian relief. Whether it is “for the success of regime change in Iraq, or the effectiveness of multilateral peace operations in defense of human security, success is in no small part a function of our ability to grasp the social (and political) mechanisms of governance.”⁷⁴ Without establishing social and political norms that are reflective of the biopolitical groups within an invaded state, the state will be expected to comply with a Westernized process of structural integration of western norms and ideologies. Americans will never be satisfied with state reconstruction efforts; although the system established reflects Westernized norms, the issue of human behavior is reflective of the biopolitical groups that occupy the location will not meet the standards of the United States, and these groups will never respect an invading force.

The international campaign for the imposition of liberal political structures through a means of humanitarianism is an attempt to use a state of exception to favor Westernization; state-reconstruction efforts incorporate international actors who share the same norms. In the analysis of John Vincent, it considers itself an “activity undertaken by a state, a group within a state, a group of states or an international organization which interferes coercively in the domestic affairs of another state... it is not necessarily lawful or unlawful, but it does break a conventional pattern of international relations.”⁷⁵ This is inclusive to Westernized organizations such as the United Nations and NATO, whose principle of liberalism dominates the international realm in establishing itself as an ideal. It is through multilateralism, alongside the United Nations and NATO, that the United States “created the space for, and often led, the building of universal human rights norms that would shame the Soviets and their satellites, undermine their regimes, and at the same shore

⁷⁴ Ibid, 152

⁷⁵ Adam Roberts, “Humanitarian War: Military Intervention and Human Rights” *International Affairs* 69, no. 3 (1993): 431

up support for US leadership in allied countries.”⁷⁶ Their goal in these proxy wars and insurgency campaigns was not to uphold human rights, but rather, was to diminish the international influence of the Russian state during the cold war. The United States pursued domination in the international realm as a means of stifling Soviet controls, using less influential states to build a growing community that follows Western norms.

Human behavior in its most violent of forms, against either their host or home-state, is a reflection of a necessity continually not being met in accordance to international standards of human rights, in which the biopolitical people and the bare life attempt to expel state structures that prevent their needs from being met. Rather than take a long-term approach to meeting the necessity of biopolitical groups, “the long-term approach involved in conflict prevention is frequently knocked off course by the imperatives of short-term crisis management.”⁷⁷ Human security under the short term approach is a temporary solution to a much larger issue of conflict; by establishing measures to outline long-term goals of conflict prevention strategies, it ensures permanent human security as its main focus of state-reconstruction efforts. It is with this that

*“human insecurity, even in conflict, is not just about the impact of military violence; it is also about the consequences of human rights violations, violent crime and the material consequences of conflict. In contemporary wars, only a minority of deaths occur in battle. Most people who die do so either because of violence deliberately targeted against civilians as a result of terror, ethnic cleansing or genocide, or because of the indirect effects of war: lack of access to health care, disease, hunger and homelessness.”*⁷⁸

⁷⁶ Mark B Taylor, “Humanitarianism or Counterinsurgency?: RP at the Crossroads” *International Journal* 61, no.1 (2006): 155

⁷⁷ Mary Kaldor, Mary Martin & Sabine Selchow. “Human Security: a new strategic narrative for Europe.” *International Affairs* 82, no.2 (2007): 278

⁷⁸ Ibid, 279

This significant literature on human security describes human needs beyond that of physical protections; the indirect effects of conflict are prevalent within developed nations across the international community, even within the United States itself. This demonstrates a problem with biopolitical groups, as their existence both within and outside Westernized norms creates a standard of living that is unequitable in comparison to naturalized citizens. Race and ethnicity is handled differently when concerning human security within its own border, in comparison to the same campaign in developing nations. Any discussions surrounding an attempt to achieve human security in the United States would be met with significant opposition, and claims of violating international sovereignty would be prevalent.

Social construction as a concept is present in discussions of state reconstruction, as it incorporates race and ethnicity, as well as gender. This is outlined in the work of Jessica Vasquez, in which concept of ‘controlling images’ are used to “demarcate the boundary of belonging and are ‘major instrument[s] of power’ in that they create and maintain race, class, and gender oppression.”⁷⁹ Although Vasquez focuses on Mexican immigrants, and third-generation Mexicans in the United States, this terminology and application are universal. The consensus of this idea is that borders depict the area in which a state can sovereignly control at an international level, and even the county lines and inner-state borders that domestic governing structures can control. This leads into her definition of what ‘flexible ethnicity’ entails, being referred to as the “ability to deftly and effectively navigate different racial terrains and be considered an ‘insider’ in more than one racial or ethnic group.”⁸⁰ This flexibility does not reflect the idea of the ‘other,’ as the fear of the ‘other’ is a proposed threat to sovereignty, and therefore, race and ethnicity are focused on the

⁷⁹ Jessica M. Vasquez, “Blurred Borders for some but not “others”: racialization, “Flexible Ethnicity,” Gender, and Third Generation Mexican American Identity.” *Sociological Perspectives* 53, no. 1 (2010): 46

⁸⁰ *Ibid*, 46

visibility of biopolitical people. Those blend into multiple groups and follow norms are seen as invisible, and those who oppose are considered highly visible, and targeted by the state.

Julian Reid outlines interventions of sovereign states on other sovereign states; states go through motions of humanitarian intervention as a means of controlling and transforming biopolitical entities in nations that are represented as being ungovernable. Humanitarianism's alternative function is to establish mechanisms that support a liberal rule of governance that mirrors that of Westernized sovereign states, allowing them to better interact within an international political and economic perspective. It is said that

“Humanitarianism became a source of support for military interventions, lending legitimacy to the military practices by which human life is killed, providing support to post-interventionary strategies of political and social reconstruction in which specifically liberal frameworks for governing life are promoted in destruction of others, and in which distinctions are regularly drawn between deserving versus less deserving recipients of care and protection. Concepts of ‘humanitarian intervention, and even ‘humanitarian war’ have been used with increasing regularity in legitimization of military campaigns and subsequent reconstruction programmes since 1989.”⁸¹

These military interventions not only affect the governing structures existent in the state they are targeting, but the way of life for the groups who inhabit the area. The norms and values that liberal ideals clash with are quickly expelled from the state through physical force, while the idea of choosing sides in such interventions alienates one biopolitical group from another. This ‘humanitarian war’ has “hardly made war less cruel,” as the violence they proliferated has rather

⁸¹ Julian Reid, “The Biopoliticization of Humanitarianism: From Saving Bare Life to Securing the Biohuman in Post-Interventionary Societies” *Journal of Intervention and Statebuilding: Post-Interventionary Societies* 4, no. 4 (2010): 392

created more brutality, instead of alleviating such violence.⁸² Although disguised as being an act of humanitarianism, the invasion of states, and the behaviors exhibited on biopolitical groups, and done to establish norms that reflect a colonial expansion.

Adam Roberts claims that humanitarianism is notoriously “a principle based more on order than on justice, but as such it does have a serious moral basis,” as it is able to provide a clear rule for “limiting the uses of force and reducing the risk of war between the armed forces of different states.”⁸³ It is claimed, however, that it would be easier for states to identify as acting in self-defence, than to cite that they are invading sovereign states in order to protect human rights outline in the United Nations charter.⁸⁴ This intervention takes place “against a background in which state structures have broken down in some parts of the world, giving way to anarchy and violence,” prevalently found within not only failed states, but states of exception.⁸⁵ The state of exception may not be at the same degree as a failed state, but an exceptional moment limits certain human right aspects in order to preserve the legal order of the sovereign nation. The example of Auschwitz is used to justify Agamben’s work, as the camps lack of legal order within its physical borders violated the bodies that were tortured there. The classification of biopolitical people as being separate from the norms established by the Nazi regime is Agamben’s way of justifying the atrocities committed by the German state.

The idea of humanitarianism as an argument in favour of pursuing human rights on an international scale is exclusively Westernized for sovereign states operate in order to pursue their liberal ideals in nations who do not share similar political and social norms. Reid states that “the

⁸² Robin Andersen, “The Impossibility of Humanitarian War: Libya and Beyond” in *The Routledge Companion to Media and Humanitarian Action*. (New York: Routledge, 2018), 523

⁸³ Adam Roberts, “Humanitarian War: Military Intervention and Human Rights” *International Affairs* 69, no. 3 (1993): 434

⁸⁴ *Ibid*, 434

⁸⁵ *Ibid*, 436

inabilities indeed, not just of societies, but of ‘individuals’ to ‘accept discrepant information and beliefs that do not cohere with their own established mindsets and reconceived notions’ explains, Kent argues, the ‘genocides’ of the post-Cold era.”⁸⁶ Biopolitical entities, or ‘castes’ as Ruha Benjamin uses, has been a “long-standing debate that pits the view that caste is an ancient, naturalized hierarchy against the idea that it is a colonial fabrication built upon social fault lines.”⁸⁷ How these hierarchies are determined, however, is dependent on the dominating norms that exist in the international realm. These castes are relative to the discussion of race and ethnicity, especially in modern political climates, and when norms dictate the international community, this leads to hierarchies between races being developed where those who have stronger ties to western norms are granted a higher state. The placement of biopolitical collectives into castes within sovereign states are used to keep colonial powers dominant through political and legal means.

The international push for liberalized political structures through a means of humanitarianism is an attempt to recreate state structures, during a period of a state of exception, to favor a Westernized form of legal and political norms. Reid analyses Kent’s brand of humanitarianism, which he proclaims is “more concerned with promoting the liberal governance of life than it is with the traditionally limited humanitarian aspiration to provide relief to life where disasters occur.”⁸⁸ It is with this that “developing new knowledge as to the adaptive capacities of the human is perceived to be a means not just of dealing with particular humanitarian disasters as and when they occur, but of shaping the entire predispositions of societies as a means of preventing

⁸⁶ Julian Reid, “The Biopoliticization of Humanitarianism: From Saving Bare Life to Securing the Biohuman in Post-Interventionary Societies” *Journal of Intervention and Statebuilding: Post-Interventionary Societies* 4, no. 4 (2010): 398

⁸⁷ Ruha Benjamin, “Recasting Race: Science, Politics, and Group-Making in the Postcolony” in *Reconsidering Race: Social Science Perspectives on Racial Categories in the Age of Genomics* by Kazuko Suzuki and Diego A. Von Vacano (2018), 2

⁸⁸ Julian Reid, “The Biopoliticization of Humanitarianism: From Saving Bare Life to Securing the Biohuman in Post-Interventionary Societies” *Journal of Intervention and Statebuilding: Post-Interventionary Societies* 4, no. 4 (2010): 399

their emergence at source.”⁸⁹ This is a sovereign state’s purpose when humanitarianism comes into account, while claiming self-defence to create rhetoric that liberal ideals are being targeted.

LIMITATIONS OF AGAMBEN AND FOUCAULT:

Foucault and Agamben’s theories reflect an interdisciplinary approach, combining the fields of law and biology within a political framework. However, there is a lack of representation of both of these authors, used together, in transitional justice and post-conflict reconstruction literature, as association with the biopolitical justifies state behavior on those who reject Westernized norms. It is recognized that transitional justice is a more recent development within legal and political literature, however the lack of use with both authors in such an interdisciplinary concept is a missed opportunity for scholars. An example of an author who has used the theories of Agamben and Foucault together is John Nagle. Nagle tackles the idea that

*“the recognition of victims’ rights is hardly standard practice in postwar states: many states deny victims’ rights as part of a concerted project of political amnesia. This quintessential peace versus justice trade-off in divided societies demands that the immediate exigencies of state building take precedence over the individual requirements of victims.”*⁹⁰

Victimhood being analyzed within these two distinct post-conflict contexts showcases that state development is determined to be a priority in comparison to the individuals or groups. Through a state’s practice of norms, victimhood is disregarded and unresolved so that states can meet their

⁸⁹ Ibid, 398

⁹⁰ John Nagle, “The biopolitics of victim construction, elision and contestation in Northern Ireland and Lebanon.” *Peacebuilding* (2019): 1

needs. It supports the thesis that regardless of being either categorized as a biopolitical person, or falls under the bare life, these individuals will be victims to the sovereign.

Although the theories of Agamben and Foucault are applicable towards topics in transitional justice, such as colonialism, victimhood, and humanitarianism, their claims have the potential to make justifying claims for the harms committed to individuals on both local levels, and on international levels. As mentioned briefly in an earlier section, Agamben attempts to justify the Nazi regime in his work on the state of exception, not taking the crimes committed against biopolitical groups that did not follow by their established norms. The fear here, in studying transitional justice and post-conflict reconstruction, the threshold between what is acceptable and what is not will become blurred, setting a precedent that does not protect individuals and groups against Westernized norms. Areas that would benefit, however, from Agamben and Foucault are the discussions on repair and development, as it showcases how western norms influence how the international community addresses post-conflict reconstruction efforts.

CONCLUSION:

The works of Agamben and Foucault offer an understanding of the biopolitical in relation to the power dynamics it imposes on the individuals and biopolitical groups found within its borders. Through an extensive analysis of both literatures, those who are categorized as being either a biopolitical person, or part of the bare life, are victim to the sovereign. Life of these groups threatens the norms established by the state, which keeps Westernized ideologies powerful within and beyond borders. Biopolitics is used as a means of defining a hierarchical categorization that allows Westernized states, and the norms that they follow, to dominate political structures on both a local and international level. It is reliant on the individual and the group to behavior in

accordance with these norms. The state of exception nullifies legal order as a means of controlling and regulating human behavior in order to prevent biopolitical subjects from violating the interests of the sovereign state. So long as individuals, and biopolitical groups, follow Westernized norms, the threat of death is not warranted. This concept is not only found within the state's own sovereign borders, but is seen frequently infringing upon the sovereignty of other states under pretenses of international security and human security.

As the Agamben and Foucault literatures do not go extensively into an application of their theories, discussions regarding borders, migration, and humanitarianism have been missing frequently in political science literature, especially in the subfield of transitional justice. Borders are not only established as a means of dictating which biopolitical subjects are under legal jurisdiction, but establish physical and legal boundaries that dictate which groups or individuals are welcome in the state. Through discussions on humanitarianism and conflict, states do not have to wait for biopolitical subjects to cross their borders; rather, the counterinsurgency campaigns of the United States offer an analysis of colonial expansion. By pursuing post-conflict reconstruction efforts, the colonial expansion is seen through a means of establish Westernized norms in failed states, and states that require human security assistance. With an extensive analysis of pre- and post- conflict events, which involve all concepts mentioned here, strong interpretations of current human security violations can lead policy makers to adapting long-term humanitarian goals that effect existing biopolitical groups and individuals.

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