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Abstract

In Homo Sacer Agamben proposes a vision of politics as biopolitics since its Greek origins. While this new awareness becomes the conceptual domain in which re-interpret some political categories, at the same time it shows how sovereign power, in this biopolitical perspective, reduces individual human beings to mere life and makes every kind of right, included human rights, a screen hiding what reveals to be a tyranny. For a possible way out of this dead end we can look at the Foucauldian reading of power as domination. In this article we will try to show how Foucauldian replacement of sovereignty with domination is rooted in a vision of history to Nietzsche's genealogies, and that seems having interesting contacts with some concepts of Benjamin, in particular the idea of reactivation of apparently exhausted historical lines. Waiting for further studies about the compatibility of domination with human rights, this article suggests that the historico-philosophical tools Foucault uses to oppose domination to sovereign power can be used to set human rights free from the dead end the sovereign vision constrains them. A comparison between the Foucauldian and the Agambenian reading of Hobbes will be used to better illustrate the differences among the two perspectives.

Keywords*: human rights, biopolitics, sovereign power, domination, genealogy, history*

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Introduction

Agamben's thought is rich and problematic, and raises interesting questions in many fields, from philosophy to politics, including human rights. On this last point, what emerges from some parts of his work (in particular Agamben 1996 and 2005), in part inspired to Arendt (Arendt 1973), is that the vision of human rights as tools for protecting human beings from states is jeopardised under a biopolitical paradigm linked to a vision of power as sovereign power. We think that it is precisely the biopolitical structure of sovereign power a possible source of inconsistencies for human rights. Therefore we will compare Agamben's biopolitical perspective based on sovereign power to the Foucauldian one, built on concepts such as domination, discipline, scattered power, to check if a different conception of power can possibly dodge these difficulties.

In this article, we will try to single out some elements Foucault uses for building his idea of *domination*, and to understand how they can be used to set human rights free from the dead end Agambenian biopolitics seems to put them in. However, being *domination* a concept closely related to history, we will illustrate the genealogical approach that Foucault, in the wake of Nietzsche, proposes to history. The effects of this approach will be put in relationship with Benjamin's vision of history and the concept of *reactivation.* The different way Foucault and Agamben read the *Leviathan* will better illustrate the dissimilitudes between *sovereign power* and *domination.* The idea is that *reactivation* can be used to reconsider human rights under a perspective which does not necessarily connect them to the sovereign conception of power. This could be a possible first step for revisiting the relationship between human rights and biopolitics. However, further study has to be devoted to understand if this alternative is a viable one, and what its implications are for a different reading of human rights.

1. Frame and Main Concepts

In a chapter of *Homo Sacer* Agamben states that we have to stop watching at declarations of rights as proclamations of eternal, metajuridical values. They are, rather, *the originary figure of the inscription of natural life in the juridico-political order of the nation-state* (Agamben 1998, 140) and, at the same time, the point of transition from royal to national sovereignty. Agamben frames this reading referring to what Arendt wrote in her famous work *Origins of totalitarianism* where human rights are mainly described as rights of citizens that become void when referred to human being as such (Arendt 1973, 290-302).

According to Agamben, in the declaration of rights of French Revolution bare, natural life appears to be the real bearer of sovereignty, so that the declaration can say that sovereignty belongs to the nation in the etymological meaning from the Latin verb *nascere*, born (Agamben 1998, 140-141). This life, the biological act of coming to be in a given political space, however immediately disappears, and leaves place to citizen which, therefore, becomes the bearer of rights and the owner of sovereignty. The mere fact of birth makes a person to immediately belong to a nation, to be citizen, and to be part of the mechanisms of decisional power. According to Agamben birth, which in the ancient juridical tradition made the subject a property of the sovereign, after the Declarations becomes origin and foundation of sovereignty. Individual is not a subject to a power: by birth she becomes part of the national community, citizen, and immediate bearer of sovereignty. The subject of rights is still, following the liberal tradition, a well-defined individual; but such an individual now appears to be composite of life and citizenship. An underlying *bare life*, previously never accounted for, now shows up and reveals to be the real kernel around which all political issues spin. Citizenship defines that life is the origin and foundation of sovereignty. This national sovereignty is what initiate the new biopolitical vision identifying life as source, although immediately disappearing, of power.

This complex relationship between birth and citizenship is what the question of human rights has to deal with. According to Agamben the critical point is the immediate disappearing of biological life into citizen, which creates the illusion that life and citizenship are inseparable elements of one single entity. This illusion got broken after World War I, when a significant amount of people lost the citizenship due to the dissolution of Austro-Hungarian empire, and when national legislations introduced laws allowing to deprive individuals of their citizenship (Agamben 1998, 146; Arendt 1973, chapter 9). So, a large number of people fleeing through Europe showed how deceptive was the overlap between life and citizenship. These refugees showed that human being can exist separated from citizen and that, when human being appears, is not any longer a right bearer or foundation of power, but she is a bare life exposed to violence and to sovereign power. The link between birth and nation loses its regulatory power, and the nation-states started distinguishing a full life of their citizens, from a bare life of non-citizens deprived of political rights, which previously were automatically attached to them because of birth.

What we are seeing at work is not only a separation of bare life from citizenship but, as well, the activity of a sovereign power which at any time can separate them. Such a power can disconnect naked life from its link to citizenship and, therefore, make any human being to be exposed to the

rejection outside any political and juridical protection. Role and structure of sovereign power, along with the way it keeps its hold over *bare life*, is clearly revealed in the state of emergency, where sovereign power is at a same time inside the legal order, being part of it and being able to rule using legal measures; and outside it, because of its capacity to suspend such an order, and however to make legal decision even outside it. This suspension of the legal order unveils the tyrannical side of power. According to Agamben it exists here a kind of symmetry between sovereign power and *bare life* which makes the two concepts to interact. *Bare life* is included in the political realm through its exclusion; sovereign power is at the same time inside and outside the juridical order. It is through its links with state of emergency, and this relation with *bare life*, that sovereign power gets better understandable and makes understandable biopolitics, because it sovereignly decides about inclusion of *bare life* in the political realm.

This is the frame in which human rights emerge as a defence of this bare, non-political, life expelled to the borders of nation states, and not any more protected by the veil of citizenship. But, once rejected out of any political environment, no political or juridical tool seems available to effectively protect it. Moreover, trying to defend this bare life, human rights accept the existence of a sovereign power severing the link between life and citizenship, and making life de facto not truly defensible. This, in turn, implies that human rights focus more on trying to patch the effects of the separation between life and citizenship, than to act on its causes: sovereign power and state of emergency. They, somehow, become accomplices of this power that, through the state of emergency, creates an anomic space where to act outside any legal control, and where not even human rights seem able to provide protection. Refugees are an outcome of this mechanism, making evident the fundamental tyrannical role that sovereign power directly exerts over bare life. All lives can be isolated, made sacred, and excepted making potentially ineffective the protection that human rights are supposed to offer to them. So, the legal structure supposed to sustain and legitimise human rights is the same which in its depth undermines and denies them. The vision of power as sovereign seems not to offer a real way out to this dead end. Law, rights, democracy (and the possibility to legally suspend it) will then be only the mask of a political relation which remains grounded on anomic violence of the sovereign power. In a vision like that no space seems to exist for individuals' freedom, but only an uncertain messianic perspective (Whyte 2013). If western politics is biopolitics; and if the symbols of biopolitics are the sovereign decision, the state of exception and the subject biologically considered; then, the unavoidable result will be that the real political space of the contemporaneity is the camp and not the city (Agamben 2005, 202).

We think that such a perspective makes difficult any consistent foundation of human rights, unless we are able to reconstruct a political space and an idea of power upon preconditions others than the sovereign, and the oppression he carries out over the subjects.

A different vision of biopolitics and power is offered by Foucault. According to the French philosopher, biopolitics is a new political rationality emerged around sixteenth century as an alternative to sovereignty, the main modality of power till the end of Middle Age. Biopolitics is a multidimensional phenomenon characterised by a double shift of power. A first shift is related to a change in the modalities of showing itself. A *negative* power, previously exerted over subjects treated as a property of the king which had the right to take their life or let them live, becomes *positive* making subjects to live and letting them die. Instead of showing itself as the right to seize from the subjects commodities, money, time and ultimately life itself, this new power focuses on generating forces and making them grow (Foucault 1976, sect. V). Power to 'make' live and 'let' die is opposed to the old power having the right to take life or let live (Foucault 1976, 181; 2001a, 159). The second shift is connected to the emergence of a new political subject, population, which is not a newly born and ontologically determined object of power. It is, rather, a new way of power to deal with individuals: not any longer as single bodies but as species. Species does not just mean the sum of all the single existing bodies; it is, rather, an autonomous biological organism affected, as such, by overall processes such as birth, death, production, illness, and so on (Foucault 2001a, 160). This Foucauldian biopolitics contains an idea of power conflicting with sovereign vision, and it seems, rather, connected to the concept of *domination*. This power in Foucault is a key element in the creation of individualities; it is shared and not concentrated in the hands of a sovereign; it comes from the bottom and it has historical and not metaphysical origin.

It is turning back to this vision of power that maybe we can find a different and better foundation for human rights after that the perspective of sovereign power restrains them in the realm of the anomic violence and of the whim. A *genealogical* reading of history can support this change of perspective.

Two short, introductory and terminological, clarifications about the terms *domination* and *right*.

Foucault defines *domination* not so much the power carried out by an individual over a group, or by a group over other groups as, more in general, the multiple forms of control which can be established inside a social complex. *Domination* is not, then, considered a top down built structure, but a horizontal and web-shaped fabric of relations among individuals which are defined by multiple assignments. It is not, then, the sovereign in its central

and apical position the owner of power and the one who subjugates the subjects; but the subjects (in the sense both of individuals and of subjugated to these relations of power) themselves will draw the lines of the domination (Foucault 2001a, 22). Consistently, power has not to be studied where it stems from, but where it becomes capillary, namely where it shows and articulates itself in its concrete manifestations under the form of techniques and tools of material irradiation (Foucault 2001a, 23). Power is analysed at the level of the horizontal weft of the relations among subjects, and not anymore only at the level of the decision, namely the sovereign. It is described and defined not starting from who owns power, but from the effects, and the reasons why it is owned (Foucault 2001a, 23).

Right, according to Foucault, it is not only the law, but it is the totality of apparatuses, institutions and regulations which are finalised to the application of the law. It is the tool of the domination, and it has to be seen not only as an instrument of historical and juridical legitimisation of sovereign power, but as well from the perspective of the procedures of subjection which it contributes to enact (Foucault 2001a, 22).

2. Genealogy

If sovereign power finds its theoretical roots in a social compact or in a devolution of power to a Leviathan, both of which happen outside historical time, understanding *domination* requires a historical perspective. This opposition between metaphysics and history is a first key of the different vision of Foucault and Agamben. It is matter of explaining how currently in charge power has been legitimised and, if it is the case, of finding historical roots to justify a possible new power which replaces this. History Foucault appeals to is not the one which, following Nietzsche, surrendered herself to metaphysics, which gave herself up to teleological temptations and, through these, to a view about the flow of events which presupposes they have an eternal truth. Nietzsche, since his second *Untimely Meditation*, criticises that kind of history which reintroduces a supra-historical perspective, implies a completed development and fulfilment of events, and pretends to base its judgements on the objectivity of the end of times. (Foucault 2001b, 1014). We can say that this kind of history is characterised by a uniform, centralising and finalistic vision of the events: it looks at them as if they were a series of steps forward in the direction of the improvement, the progress, and the enhancement of humanity; and as if their succession was ordered toward a unified goal. A unified knowledge corresponds to this unified vision.

According to Foucault, *genealogy* is a kind of historical knowledge which, paying attention to little truths and to seemingly marginal and negligible

events, is characterised by a meticulousness (Foucault 2001b, 1004). Its attention to particular, to forgotten, to negligible, does not make genealogy a snob form of historical knowledge which completes a picture already perfectly drawn by the historian, adding anecdotes and details. Neither it makes genealogy a form of knowledge conflicting to *official* political history made of big events, wars, treaties. Genealogy is, from an erudite perspective, a punctual and meticulous rediscover of forgotten fights; and from a more popular side is a simple memory of combats (Foucault 2001a, 11). Genealogy, or genealogies (the plural is to stress that they are not unified), present themselves as an alternative to the unifying vision of history criticised by Nietzsche. It is some kind of anti-science, a series of disparate knowledges promoting an insurgency against the centralising and unifying effects of power and of historical perspective. Against this, genealogical knowledges claim, instead, their being local, peripheral, irreducible to a unitary vision, stubborn to any project trying to unify them in the name of a true knowledge (Foucault 2001a, 11).

Unlike what the term may recall, genealogy is not the quest of an origin (Foucault 2001b, 1008). To investigate the origin of something presupposes that we face an ontologically defined object, with a steady essence over time. That way we can track the developments of such an essence or, starting from that essence, we can go back and back to its origins. To the ontological steadiness of the object corresponds an equally steady knowledgeableness, which allows history to be constituted as a science. To investigate into origins is, therefore, to seek this truth, something that exists since a while, and that only needs to be brought to the light. This kernel of truth can also be re-interpreted in different ways over time; it can manifest itself under different forms and shapes, keeping however its own unchangeable essence. This steadiness of the object is what gets lost in the genealogical research. Through his analysis and the meticulousness of the knowledge, the genealogist discovers that behind the object of the research some other thing is hidden, and behind this other still another; and that the things have not a stable being. Their essence results, instead, to be a twist of events accidentally aggregated (Foucault 2001b, 1006). Only the will of the historians, their reciprocal hate, their need to prevail upon each other (Foucault 2001b, 1006 quoting *Human, all too Human*) impose the accuracy of a scientific methodology which endows the thing with an apparently stable essence. At the root of what we know and of what we are there is not, then, the truth and the essence, but the exteriority of accident (Foucault 2001b, 1009). According to Foucault genealogy is, then, a hunt for a source (*provenance*), which is something making the events not to go back to an original being -which would represent the true and unchangeable essence-

but rather to a disordered and haphazard proliferation of events without any specific necessity. Contrary to the mission entrusted in time to historians, the genealogist has not to show that, despite time passing, the essence remained in its place and evolved following a finalistic path. He has, instead, to maintain the original dispersion the object originates from. The genealogical and true history does not rely on regularities, and it will be *effective* to the degree that it introduces discontinuity into our very essence, and places in a process of becoming everything previously considered immortal in human beings (Foucault 2001b, 1015).

This changeability and haphazardness of the objects that genealogy shows, impacts both on relations of power and individuals. Relations of power are not any more unchangeable and unified under the cap of a sovereign power established by divine will, or social compact, or devolution of liberties. Individual subjects, too, are involved in this deconstruction that genealogy brings about, because this changeability questions the principle of individuation. Individual is not an established essence, but a result of power relations (Foucault 2001a, 24). So, through the genealogical method, we seem losing at once the two elements of Agambenian perspective: a unified sovereign power, and the kernel of a unified individual upon which the power can display its absolute control.

In the political tradition re-read through Agamben's lenses the sovereign has an ontologically defined, although in biological terms, subject to rule upon. Sovereign power, deciding over the state of exception and distinguishing bare life and citizen, acts upon a subject whose political existence depends on that decision. To be a citizen is an unstable situation: citizenship can be withdrawn at any moment, and at any moment the sovereign, through the state of emergency, can unveil the hidden *bare life* that is the real dimension of human beings, and the real object of a sovereign and tyrannical, hold. In the deconstructed Foucault's perspective, it is, instead, the chaotic causality of the genealogies and the thick fabric of power's relations which creates an individual, whose essence is not given once and forever, but is re-shaped and re-interpreted over and over, escaping to the sovereign hold.

We will try to show more clearly in the section devoted to *reactivation* how genealogy, denying the existence of a stable being, opens to the possibility of re-reading and re-writing what things have been. This requires, however, a quick a look at the Benjamin's concept of history.

3. History

A history guided by a genealogical perspective is able to escape metaphysical and teleological temptations, and to look at the flow of events

not as if it was presupposing an eternal truth. It will not look any more for the roots of the individual identities hidden in the succession of events, but it will try to disperse such identities (Foucault 2001b, 1022) acknowledging, instead, the confusion and the haphazardness which originates them. To better understand some implications of this perspective we propose to refer to Benjamin's work *On the concept of history* which presents interesting similarities with Foucault.

In this text, composed in 1940, Benjamin criticizes historicism and social democratic vision of history which postpones to a mythical future the emancipation of human beings, and which motivates through tomorrow's freedom, today's suffering. In this perspective history should be one-directional, continuously progressing and improving, and its ultimate goal would be the classless, communist, society. This perspective builds on an idea of progress with a few dogmatic instances. First, the fact that progress is outlined as the progress of all mankind; then, the fact that such progress is considered endless and kind of mirror of the perfectibility of humanity itself, who is the protagonist; finally, the fact that the progress is constant (Benjamin 2006, thesis 13), that is unidirectional. Such an idea of mankind's progress is inseparable from history understood as a movement travelling through a *homogeneous, empty time* (Benjamin 2006, thesis 13). The saying *homogeneous, empty time*[1] indicates the time of the positivism, to which Benjamin opposes the *Jetztzeit*, the here-and-now, the actual time. *Jetztzeit*, in Benjamin's words, 'comprises [*zusammenfaßt*] the entire history of mankind in a tremendous abbreviation, [and] coincides exactly with the figure which the history of mankind describes in the universe' (Benjamin 2006, thesis 18). The emptiness and the homogeneity of time of positivism, instead, requires this time to be filled through a historicist procedure whose methodology is the addition and the mustering of data (Benjamin 2006, thesis 17). In this way the critique of this vision of historical time is the basis for the critique of the idea of progress as such. There is a contrast between the positivist myth of the uninterrupted and relentless progress, the linear and one-directional movement of history, and a vision where history is not closed, nor accomplished, but is waiting to be redeemed starting from the *Jetztzeit.*

To redeem history starting from the *Jetztzeit* means to revise, study and consider the past not for what is closed and crystallised in it, but in its *contingency*, namely for that part of it which bears something still opened, unrealised, unexpressed. Under these conditions, present is something where

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[1] This saying recurs several times: in the thesis 14, 17 and B. For a more detailed analysis see Greenberg 2016, 24.

nothing of what has gone by is really lost, and where the opportunities, only temporarily closed in the past, can be taken back and re-actualised. The historical object become, in opposition to historicism, a construction, a monad where it is possible to recognise a Messianic cessation of the happening, which can be reactivated in a revolutionary opportunity in the fight for the oppressed past (Benjamin 2006, thesis 17)[2]. While, then, the relationship between past and present is purely temporal, the relationship between what has been and the *now* is dialectic, meaning that it is 'image, suddenly emergent'. The place where one encounters such dialectical images is language (Benjamin 2002, N 2a, 3 462). That image has in itself past and present coming together in a flash. Truth is consequently not timeless, but linked to 'a nucleus of time lying hidden within the knower and the known alike' (Benjamin 2002, N 3, 2 463). The knowledge of past as redemption, thus, occurs in a cessation of the happening, because to this view of history belongs not only the movement of ideas, but their Messianic arrest as well.

The act of redemption passes through the reactivation of memory. To articulate the past does not mean to know it in its essence, for how it really is done; it, rather, means to seize its memory of past struggles, of failed revolutions. Their re-enactment represents the sense of the redemptive act. Benjamin, translator of Proust's work, gives the memory a redemptive power through which, as Whyte writes, it is not a list of historical facts, but rather a form of historical consciousness whose transformation alters the way which the past exists in the present (Whyte 2013, 113-114).

A number of these Benjaminian elements can be found in Foucault. He aims to the construction and the legitimization of a historical-political discourse alternative to the legal-philosophical one. To this end, Foucault proposes a partisan discourse where the teller takes side, and does not seek philosophical neutrality or scientific truth. A genealogical discourse that, trying to decipher the war behind the peace, never offers an objective and unifying discourse, but always a perspectival one, subject to changes; a discourse that redeems the past offering uninterruptedly new, even if partisan, readings of it. Although partisan, this discourse allows us to grasp the only glimmer of truth (Foucault 2001a, 38). What makes possible the historical redemption is precisely the genealogical changeability of historical discourse. So, the positivistic empty and linear time could be seen as the equivalent of the unitary conception of history, and genealogies as the equivalent of history opened to rediscovery and reactivation.

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[2] 'Oppressed past' translates 'unterdrückte Vergangenheit' which also suggests 'suppressed past'. Endnote 27 in Benjamin 2006, 400.

This genealogical history establishes, since the beginning, a necessary link between truth and balance of power (Foucault 2001a, 38), namely a connection between truth and hegemonic power. If at the beginning of history there are physico-biological facts, accidents or contingencies, and moral and psychological factors (Foucault 2001a, 40), hegemonic power builds a unitary discourse out of this. A rationality is, so, built according to an ascending process, namely through an operation of abstraction and distancing from the place of the truth which is -as genealogies have shown- a complex plot of bodies and feelings, irrationality and chaos. This historical re-appropriation and the partisan vision concern events and knowledges long gone and hidden, and that makes Foucault close to Benjamin, despite Foucault interprets history in concrete and not in metaphysical terms, as Benjamin does.

According to Foucault the discourse about history and genealogies, along with the refusal of linear history, is closely linked to the discourse about power. Power, that one based on the apparent linearity of codes and on the unifying factor of the historical interpretation has to be brought back to the real struggles and the disguised defeats, to the infinity of the story that lies beneath the stability of law (Foucault 2001a, 41). What matters is not to find the balance of power defined and narrated starting from the relations of domination of the sovereign and hegemonic power, but starting from the horizontal relationship of the agents acting at the lowest level of the pyramid of the relations. Therefore, for Foucault that will not be a history of continuity but, rather, of deciphering, detecting secrets, of the outwitting of the ruse, and of the re-appropriation of a knowledge that has been distorted or buried (Foucault 2001a, 51). And for Foucault, too, language is a key. Let see, then, how the concept of re-appropriation works through the reactivation.

4. Reactivation

Another important concept proposed by Benjamin, *reactivation*, seems present in Foucault. This idea is exemplified all along *Society must be defended* through real historical facts which make the argument more concrete in comparison to Benjamin's messianism. In the lecture of January the 28th 1976, for instance, Foucault narrates some episodes of English history, aiming to demonstrate that, starting from a given period, the historical discourse has to be understood not as a discourse about the sovereignty, but about races. In particular, Foucault refers to the Battle of Hastings. A reconsideration of this key event in history of England is useful to highlight the history of the vanquished too, just as proposed by Benjamin. Foucault uses the history of races seen from both the perspective of winners and of losers; and he shows

how the history of the vanquished continue to secretly act in history so that, centuries later, it surfaces again and becomes the basis for a new claim of power.

Foucault notices how still at time of Henry VII, namely more than four hundred years after the Battle of Hastings (1066), the presence of the Norman Conquest is manifested in many ways in the institutions and in English historical experience. The echoes of the battle could be found in the rituals of power of the ruling dynasty, the Tudors, given that not only their royal acts referred to the Norman law, but even in the juridical practice the legal acts were redacted in French. These elements of connection with the Norman Conquest coexisted with some other veins that kept alive the Anglo-Saxon tradition of the defeated, and that ended up feeding popular uprisings aimed at limiting the royal power seen as external and alien to the Anglo-Saxon historical tradition[3]. Leaving aside the fact that for Benjamin the subject of the historical knowledge is the struggling oppressed class itself (Benjamin 2006, thesis 12), while for Foucault the question is limited to what he calls the *races*, it remains that in England one of the main issues of the juridico-political discussion was about a conquest happened centuries before. On one hand, there was the hegemonic tradition instantiated in the power in force; on the other there is a tradition of *oppressed* which remained alive through centuries in the popular class, and which will be the basis for socio-political struggles and claims. So the popular class tried reactivating a crystallised historical tradition that, according to Benjaminian lexicon, became a *monad*, and tried redeeming a past only apparently closed. So, we can read in Foucault the Benjaminian idea of oppressed, in this case the defeated Anglo-Saxons, which have a history to refer to; and then, starting from the defeats and from the stasis of their history (stopped in Hastings), they can reactivate struggles and claims to re-write the present.

The continuity of history of the oppressed is guaranteed by war. Acknowledging, in the case of Hastings' Battle, that this episode was the beginning of a war that, as time went by, shifted to political level, Foucault says that the historical event has not ended and has not been reconciled. On the contrary, it continued to operate within political realm, and it is ready to be used as the basis for new claims or re-appropriations, in the present, of historical threads interrupted in the past. If politics is the continuation of war by other means, such kind of politics keeps the little flame of all the

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[3] Foucault 2001a, 68 provides an example taken from the cultural domain. He notices that in the popular cultural tradition coexist a mythological Arthurian cycle, linked to the Norman culture; and a cycle linked to works belonging to Anglo-Saxon culture (*Ivanohe* or *Robin Hood*).

struggles through which the losers are pushing to resurface. The revolt is, therefore, nothing but a recovery of broken threads; it is not the rupture of a peaceful thread that the law had created, but the reactivation of a hidden but still active process. As a reactivation of history, the revolt is a denial of any inherent right of the current sovereignty, and it is the affirmation that there is not a sovereign but a domination, a result of concrete facts, of their indefinite movements, that in every present (*Jetztzeit*) can be reconsidered and questioned.

Even though we could go back from Norman to Anglo-Saxon power, this last one too can be reinterpreted in terms of domination over other local traditions, with a discourse which could go indefinitely back in time. Consequently, there are no historical forms of a natural sovereign power, but only historical and transient forms of the domination. Sovereignty gets thus transformed into an unstable and precarious discourse of domination.

This vision of history based on genealogies results more articulated and nuanced. It does not recognise a stable essence to events; it admits the reactivation of historical traditions apparently closed; it does not describe any more the unified and teleological history thought and written for the sovereign and for the sovereign power with the aim of creating continuity, legitimisation, authority. This is not any longer history of the juridico-philosophical tradition which has to justify the state of play in terms of power. It is a history made with the idea of giving legitimacy back even to whom, in previous temporalities, has been defeated and relegated to a supporting role; or to whom has completely disappeared from the historical narrative of power. To give memory, role and knowledge back to these defeated protagonists means to modify the present through the past. And this also happens with the recognition that power is not the sovereign one, but the relationships between classes.

5. Foucault and Agamben on War and Sovereignty in Hobbes

To provide a clearer context to the differences between sovereign power and domination it is worth to shortly compare the readings of Hobbes provided by Foucault in *Society must be defended* (Foucault 2001a, in particular lecture of February 4 1976), and by Agamben in *Homo sacer* (Agamben 2005, in particular 41-42 and 118-121). Hobbes, describing the life in the state of nature as nasty, brutish and short makes one of the most important attempts to derive the foundations of the sovereign authority from the fear of a lawless state (Whyte 2013, 63). The way Hobbes is interpreted becomes crucial to establish an alternative model to sovereign biopolitical power, and to imagine a new possibility for human rights.

The reading Foucault makes of Hobbes is articulated on two main points. The first one tries to define what actually is the war which characterizes the state of nature, and which reappears even after the establishment of the state. This war, according to Foucault, must be contextualized in a situation of equality between individuals, where the weakest does not give up to war because he does not feel inferior to the strongest; and the strongest tries to avoid the conflict, not being sure of a certain victory. War is then manifested not as bloody event and physical confrontation, but on a symbolic and relational level, in the structuring of mutual relations, in intimidation techniques, demonstrations and signs (Foucault 2001a, lecture of February 4 1976). If this is the Hobbesian primitive war, according to Foucault there are no battles, blood and corpses, but only representations, signs, emphatic expressions, wiles, and deceitful expressions (Foucault 2001a, 62). Instead of struggles, a continuous and inexhaustible diplomacy is at work: the state of war is not a real one, and it does not end when power and rights are transferred to a sovereign. It continues, instead, latent and low intensity, even after the contract and the birth of the state. Not admitting the existence of a real state of war, Foucault seems to depreciate the role of the contract and of the creation of the sovereign political space in ensuring the life of the individual; and at a same time, he sets the stage for undermining the liberal system which bases the sovereign power on the protection and safety of the individual.

The next point deals with the ways in which this state of affairs can lead to birth of the state. In this case, through a series of distinctions, Foucault comes to define a relationship between sovereign and subjects where the sovereign represents individuals because of an act of will expressed by the subjects themselves. This one will always be a relationship of representativeness, irrespective of the manner by which this desire to be represented by the sovereign is obtained. Even in case of a war with a winner and a loser, explains Foucault, we are facing a representative sovereign relationship since the losers choosing obedience, whatever the reasons, transform the winners in their representatives. The will to choose life rather than war to the bitter end and the death, makes sovereignty as legitimate as an agreement would make. Sovereignty, thus, is always formed by a consent from the bottom. All this leads to the conclusion that war is completely excluded from the constitution of sovereignty, and this turns out to be, according to Foucault, the real Hobbesian goal: to prevent the political use of war to justify the relations of sovereignty and legitimacy of power; and to neutralize the political use of historical knowledge concerning wars for restoring any previous balance of power. The contractual Hobbesian vision allows tracing sovereign authority and relative assignment of rights and powers, back to

the simple will of subscribers taking out the role of war, thus saving the theory of the state.

One implication of this is the absence of a state of nature where pre-political man is in a feral condition, and where he is redeemed from through the contract and the creation of the sovereign. As we have seen, in fact, war is only symbolic, and this presupposes a certain degree of evolution of individuals who are already in relationship with each other, and are able to use in their mutual relations symbolic and figurative languages. So is not the sovereign, nor the contract which elevates individuals from a feral state to the condition of citizen; and there is no substantial change in human interactions between the supposed pre-contractual state and the post-contractual political society.

Foucault adds a further element to this interpretation introducing the figure of barbarian, meant to contrast the savage living in the Hobbesian state of nature. The differences between the two figures can be traced back to the fact that the savage is a philosophical figment created to describe an imaginary state that justifies the birth of historical political institutions. The barbarian, instead, is represented and described as a historical figure, identifiable in every historical age in specific populations. It is, as a matter of fact, a conflict between a philosophical and legal position postulating pre-social individuals, and a historical-political one using real-life historical figures; between two conceptual levels with unavoidable consequences clearly stressed by Foucault himself.

Even if we admit the real and historical existence of savage, she is a particular figure which ceases of being savage just when she enters into society establishing a social contract with other savages. The social contract creates, in conclusion, the beginning of history, and it becomes the threshold between nature and civilization allowing human being to assert its difference from animals; and it is, further, the event that creates the philosophical and political subject, and the possibility of the *good life* that Aristotle identified as a characteristic of human being. The savage is at the beginning a part of the nature from which, at some point, he frees himself through the creation of society. Doing so, he disappears as a savage and establishes itself as a citizen, political subject, social agent. This is a process that occurs only once: after its happening we enter the history, and begins the progress in a linear vision of history and in homogeneous empty time.

None of that fits to barbarian whose foundation does not lie in nature but in the relationship with a civilization already defined, and toward which she is characterized as a regressive and destructive agent. If savage after signing the contract changes, finally becomes a citizen, an individual, a social and historical subject, the opposite happens to barbarian. In hers

contentious relationship with civilization she remains unchanged from her contact with civilization, towards which she is vector of domination because he takes possession, seizes, steals, enslaves the defeated populations. And, very important, in her relationship with power she never gives up her own individual freedom. Even when barbarians give themselves a commander, that happens for a military purpose: the commander is accepted only because, acting as a coordinator and a temporary unifying figure during military campaigns, it is a real force multiplier which makes more effective the impact against the enemies. The barbarian is therefore wicked and evil, and person of history and domination.

The model of the Leviathan is deconstructed through a historicization of the constitution of power, built and legitimised through real wars. If the reference is a war model where there is no an ideal perfect savage on the threshold of history, but there is a history of barbaric hordes threatening pre-existing political structures, what remains are only precarious relations of domination.

There is not a sovereign figure acting as metaphysical entity in control of a political space created through the contract, and deciding about membership or exclusion of individuals from the social context transforming a savage into a political subject. And there is not a sovereign decision at the origin of a biopolitical vision based on a distinction between *zoe* and *bios*. A different biopolitical discourse will see the light when Foucault will move from a power which can kill or let live, to a power which makes to live or rejects in death, and when this power will become administration of bodies (Foucault 1976, section V).

Agamben re-read Hobbes in *Homo sacer*, in the section where he analyses the juxtaposition of nature and law. He operates in two directions: on one hand, he traces back to classical Greece, in this case the Sophists, the origin of the distinction between state of nature and the commonwealth, that is, between nature and law. The state of nature is a state of war and the absolute power of the sovereign is justified precisely because of this identification. Although for reasons different from Foucault's ones, even according to Agamben the coming to be of the sovereign does not put an end to the state of nature. As in Foucault war is symbolic and remains active in the post-contractual state, in Agamben as well the state of nature, namely war, remains active in the state. The difference is that in Foucault war remains under the form of politics, whilst in Agamben it survives in the person of the sovereign which, participating of law and nature is the manifestation of the threshold between them, between anomic violence and legal violence. Sovereignty is therefore characterized as the element bringing the state of nature within society; and the state of nature, through the sovereignty, enters into a relationship with

the law, of which it contains the virtuality (Agamben 2005, 42). Not even for Agamben the state of nature is a real time; however, it realizes itself when, through the sovereign, it becomes an internal principle of the state. The state and the political order do not represent, then, the liberation from the state of nature, but only its veiling.

The Hobbesian state of nature is interpreted by Agamben through the Nordic myth of the werewolf representing the figure of the outlaw, the man banished from the community. The werewolf maintains a dual identity, animal and human, the same duplicity we can find in the outlaw which is not completely expelled from the social community and which has not lost all the human characteristics. The outlaw stands on the threshold between society and nature: he participates both in the life of society, being excluded, and in the feral life –because of the sentence of ban- but he does not fully lives none of them. The state of nature, to be wolf to another individual, is then the state of exception under which each individual is bare life to anyone other. And given that the state of exception still exists in the state through the figure of the sovereign, the state too ceases to be what puts an end to war and violence to become in turn the place of the exception. 'The state of nature and the state of exception are nothing but two sides of a single topological process … and the sovereign power is this very impossibility of distinguishing between outside and inside, nature and exception, physis and nomos' (Agamben 2005, 44; Eng. ed. 28).

What Agamben's interpretation stresses is that sovereign power exists not because of a transfer of power from the subjects to Leviathan, but because there is no transfer at all. The sovereign maintains over all individuals a power he already had, and that is left him. (Agamben 2005, 118). This is the power to do with impunity whatsoever to anyone; and nevertheless, is a power that, after the creation of the political society, shows itself under the form of the right to punish. The legal order shows unable to get rid of the violence of the state of nature because of the sovereign which -as we have seen- drives into society this violence. Therefore, law does not save us from brutal and meta-historical violence preceding the contract, but only hides this violence through the figure of the sovereign, which summons back the violence whenever declares a state of exception.

Agamben drafts a kind of politics based upon the vulnerability of life which relentlessly drives to the sovereign power and to the state of exception (Whyte 2013, 65) and tries to criticise the conflation of the political and sovereignty in order to make possible a politics whose terms are not those of the state (Whyte 2013, 67). The Hobbesian state of nature is so interpreted as a state of exception, the same exception that, through the figure of the sovereign, dominates the political space. And so even the foundation of the city, namely

of the political space, does not take place on the threshold of history once and for all, is not an event that marks the transition from animal to human being. The foundation of the city takes place continuously because the sovereign, which through himself keeps the state of emergency in the political creation, works out a kind of perpetual creation, and refers directly to the bare life of its citizens through the exception which he embodies (Agamben 2005, 121). To interpret Hobbes only in terms of contract weakens, therefore, since the beginning every effort to give the democracy effective tools to address the problem of sovereign power in consistent terms. In fact, the relation of ban and the violence of war among individuals, which are caught in the mesh of the sovereign, remain in a relation to something presupposed as nonrelational (*irrelato presupposto*), namely an absolute term, an original sovereign power keeping the right to include life in the political space (Agamben 2005, 122).

Both Foucault and Agamben built their philosophical proposal on a critical reading of Hobbes. None of them thinks that the contract is the crucial element which makes the individual a political subject, and which takes the conflict out of the interpersonal relations. But while according to Agamben the post-contractual society maintains the same violence of the state of nature, and therefore the camp ends up becoming the only possible political space, Foucault's perspective creates some space for different outcomes. Power is not a central element represented by the sovereign; nor it has to be thought as something subjugating and breaking the individuals. Power is, rather, made capillary and deserving to be analysed as something circular and functioning only as part of a chain (Foucault 2001, 24). That way individual is not only subject to power but, involved in the weaves and in the relations of subjugation, she is at the same time subject to, and instrument of, power. And this is so true that subjects are created by these same relations of subjugation, and that the individual is an individual just because of the thick weave of relations through which he is at the same time subject to power and agent of domination.

The different interpretations of Hobbes can be synthesised having a look to the pages of their respective work where they describe, giving an interpretation, the famous frontispiece of the *Leviathan*. The Leviathan is represented by a set of individuals forming a body whose head is the sovereign. It is therefore the sovereignty, for Hobbes, the soul of the Leviathan. But Foucault suggests studying, instead of the soul, the multiple and peripheral bodies, those bodies that are constituted as subjects by power-effects (Foucault 2001, 24). Agamben stresses that the body has inscribed in itself both the subjection to sovereign power and the individual freedoms. The body always maintains, so, a close link with the bare life and the possibility to be killed. Leviathan's body formed out the bodies of individuals, means

that the absolute capacity of the subjects' bodies to be killed forms the new political body of the West (Agamben 2005, 138); and it means that sovereign power, anomic violence and state of nature still remain in the contract.

Conclusions: Genealogy and Domination for a Non-sovereign Reading of Human Rights

What we tried to show is how the Foucauldian proposal to replace sovereignty with domination is connected to genealogies, history, reactivation, and the critical reading of Hobbes. The historico-political perspective seems to make sovereignty not any more a 'natural', and therefore necessary, political element. The only remaining 'naturalness' is apparent, it comes as a result of power relations, and especially of hegemonic modalities of telling history - based on metaphysical or teleological assumptions- which hide the historical contingency of power.

This Foucauldian perspective can be used as an alternative to the Agambenian vision of biopolitics as the original mode of political relationships, and inextricably linked to the concept of sovereignty. Agambenian idea of biopolitics tends to be static and not evolutionary: distinction between mere life and citizenship, anomic violence, state of emergency, ban, are metaphysical and unchangeable elements of a sovereign power from which we can only be freed through the separation of politics and law, and only after Messianic redemption through the catastrophe[4]. Until then, the camp will be the only political space granted by the sovereign. Biopolitics is, in this perspective, the key of this power, the perspective through which the violence of sovereign power comes to light.

Foucault aims to show how the vision of power based on the concept of sovereignty; the concept of history where this vision stems from and to which is indissolubly linked; the usage of the law and of the juridical apparatus as tools to justify and strengthen the relations of power linked to the concept of sovereignty; how all of these things are not any more enough, starting from the end of the Middle Age, to explain and give a sense to power relations. Starting from Middle Age, in fact, a new historical form raises, which questions the entire historical-juridical-political structure articulated around the rituals and the myths of the sovereignty, and around the problems linked to its foundation. This new form is more focused on the revolution, its promises, and its prophecies of future liberation (Foucault 2001a, 56). Foucault's biopower originates out of these same elements. The

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[4] For all these issues concerning redemption and the possibility of a pure politics severed from law we refer to Whyte 2013 where they are discussed in detail.

'old' sovereign power is gradually replaced by the administration of bodies and by the calculated management of life, because there is not any more the savage transferring its rights to sovereign, but there is a barbarian who does not subjugate himself, and which therefore requires new modalities of control. The characteristic privilege of sovereign power, namely the one of the life and the death, is turned, according to the famous phrase, from the right to take life or let live, into the right to foster life or disallow it to the point of death (Foucault 1976, 181). The simple fact of living is not any longer the bare life, the inaccessible and dark ground over which a primal and absolute power is exerted. It, rather, becomes a field where the knowledge can exert its control through the disciplines and the sciences; and where a new power can intervene. This new power is no longer sovereign, but technical and governmental, and works in a widespread and bureaucratic way, so that each individual is always in the position of being subject to it and exercise it.

Starting from genealogies, from the Benjaminian reading of the use of the history, and from the application of this reading to re-interpret Hobbes, Foucault deconstructs the metaphysical structure of sovereign power, which he turns in domination. Genealogies propose themselves as possible basis for emancipatory policies and for a vision of history where individuals are not subject to the sovereign, and where the camp is not the only possible political space. The possibility to re-organise the world around us through a new historical, genealogical, interpretation could allow re-shaping the relation with power too, which is now fortuitous, accidental, historical and therefore subject to reinterpretation and rewriting. Re-shaping this relation and building an alternative vision of subject can help to give human rights a new perspective, and to bypass the contradictions where the link to sovereign power and to liberal vision of subject seems to force them in.

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