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## **The disappearance of race: a critique of the use of Agamben in border and migration scholarship**

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*This essay critically assesses the use of Agamben's theory within border and migration studies. What I am interested in tracing is the ways that, through reference to Agamben, particular dynamics of bordering are foregrounded, while others recede.*

*In particular, I argue that because Agamben foregrounds legal structures in his scholarship, and does not articulate a theory of racism or work from a history of racism, that reliance on his scholarship has the effect of displacing discussions of race/racism in the field. This displacement repeats the erasure or disappearance of race/racism in the world.*

### **Introduction**

Over the last decade scholars have increasingly drawn on the work of Giorgio Agamben to understand contemporary bordering practices and the politics of illegalized migration (cf De Genova 2010; Dines et al. 2015; Rajaram & Grundy-Warr 2004; Schinkel 2009; Squire 2015; Vaughan-Williams 2012). This is perhaps especially true in border and migration scholarship that associates itself with critical border studies (Parker & Vaughan-Williams 2009; 2012) and with the autonomy of migration (De Genova 2010, Rygiel 2010, Squire 2015, Walters 2008). In order to offer some locating details about the usage of Agamben, I will take Critical Border Studies (CBS) as an example here. CBS is a predominantly European branch of border studies that looks to political philosophy and critical theory as a way to think of borders not as lines, but as enacted practices. One of the central features of CBS is that it

applies, in the words of its practitioners, 'theoretical and conceptual work' to the 'diversity and complexity of contemporary bordering practices' (Parker & Vaughan-Williams 2012, p. 727). Overwhelmingly, what is understood by Parker and Vaughan-Williams as 'theoretical and conceptual work' is political theory and continental philosophy, and even more specifically, work produced in this field predominantly by white, male Europeans.

Amongst the theorists from which CBS works in developing its understanding of bordering practices, Agamben is perhaps the most privileged. One contributor to CBS, Mark Salter, describes Agamben as 'one of the most important contemporary social theorists of border[s]' (sic) (Salter 2012, p. 741). He describes Agamben's work as playing a 'signal role' in current writings on borders, and goes on to discuss the ways in which Agamben's concepts have been taken up in the field. Indeed, the sheer number of times in which Agamben's work reappears across the field is impressive. The reception of this work is also notable, as engagement with Agamben's theory across the field has become field-defining: these pieces of work are received as keynote addresses at prominent conferences, and as recipients of major awards within borderland studies (Vaughan-Williams 2009). To perhaps under describe the disciplinary state of things, I think it might be useful therefore to begin from the observation that, as Vicki Squire writes, Giorgio Agamben's 'work has been highly influential in the fields of border and migration studies over recent years' (2015, p. 502). In this description, we have again moved beyond merely CBS, and toward the field more broadly.

In this article I want to ask questions about the disciplinary and epistemological effects of the privileged positioning of Agamben's work within border and migration studies. This is a question of citational structure and practice. I am interested in citation as a practice because of the ways it is, in the words of Sara Ahmed, a 'rather successful reproductive technology, a way of reproducing the world around certain bodies' (2013). To ask questions about the reproduction of citation is to ask questions about the ways in which scholarly descriptions and analysis of the world participate in what Ahmed calls 'techniques of selection' (2013), which in turn foreground particular themes over others, and particular perspectives over others. Attending to who is cited, and the effects of this, is therefore a means to raise questions about who appears within scholarship, and who is screened out. In the context of a discussion of Agamben, I want to trace the ways that the privileging of Agamben, located within the European philosophical tradition, in turn makes possible particular discussions of bordering and migration, while displacing others. In particular, I will attend in this essay to the ways in which discussions of race and racism are displaced from the core of the theoretical discussion of bordering through a privileging of Agamben, with the resulting effect that the field comes to repeat the erasure of race/racism in the world. My investment is, therefore, not only in challenging the use of Agamben, but in opening up an alternative kind of account in which the appearance of different citations, accounts, and bodies would be possible.

I will begin by giving a brief overview of the ways Agamben's work has been used within the field of migration and border studies. This will give an idea of both how predominant his theory has become, and begin to construct a description of what this work has focused on within the context of migration. Next, I turn to a close reading of Agamben's theory. This is a means to investigate the structure of his thought, and what is inherited from Agamben when his ideas are deployed to describe processes of bordering and experiences of illegalized migrants. Finally, I turn to critiques of Agamben's work as articulated by feminist and critical race philosophers. I argue for the significance of these critiques to any use of Agamben's theory in the field of border and migration studies. My hope is to use these critiques to insist upon the necessity of turning toward alternative accounts of migration and bordering, and of the world.

### **Agamben in border and migration studies**

Within border and migration studies, Agamben's work has been taken up predominantly in relation to his description of two overlapping sets of concepts: (1) the homo sacer, and its attendant 'bare life,' and (2) 'the camp'. In this section I look at how these two concepts have been utilized to theorize contemporary migration, and particularly which sites are described, which groups of people are addressed, and what the theoretical accounts take into account. I am particularly interested in the emphasis on legal status, which follows from Agamben's theory, and how this focus means that other dynamics of difference do not necessarily come into view, and are sometimes explicitly denied.

Agamben's first influential theoretical contribution, the figure of the homo sacer, describes the person confined to bare life, or life that is exposed to violence by the state's refusal to extend legal protection. Work that draws on Agamben's first set of concepts, the homo sacer and bare life, tends to apply this theory to the social condition of so-called irregular migrant and to focus on the relationship between undocumented migrants and the law—particularly, the status of being legally dispossessed from the country in which one resides (Darling, 2009; Rajaram & Grundy-Warr 2004, Schinkel 2009; Willen 2010). This work is specifically interested in what it sometimes terms 'irregular migrants'. For instance, an early and often-cited use of Agamben's theory to study the detention of irregular migrants is Prem Kumar Rajaram and Carl Grundy-Warr's article 'The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia and Thailand' (2004). Rajaram and Grundy-Warr argue specifically that refugees are constructed as Agamben's homo sacer when the refugee is placed outside of the law. In Rajaram and Grundy-Warr's usage, they write that being positioned outside of the law can lead to the refugee being subjected to treatment on the part of the state that would be unacceptable for citizens, and to there being little to no access to legal protection or recourse. What they emphasize in their application of the theory of the homo sacer, then, is the exclusion of the migrant from the

protections afforded by citizenship through a legal exclusion and the exposure to violence that follows from this exclusion.

John Darling's work provides a more specific application of the theory of bare life to the precise legal positioning of some migrants. Darling considers the effects of legal dispossession in his discussion of asylum seekers in the UK (2009), arguing that specifically asylum seekers who have been denied asylum can be usefully thought of as *homo sacer*. Once asylum is denied, the person who has sought it is no longer recognized as having a right to reside in the UK. Darling argues that this rejection of permission to live in the UK, along with the withdrawal of housing and the social and financial support (granted to asylum seekers in the UK before a denial) that accompanies it, amounts to an 'Agambenian sovereign act of abandonment' (2009, p. 652). Placed outside of the law in this way, the refused asylum seeker must struggle to survive at the level of securing shelter and food. What is distinct about the refused asylum seeker in the UK is that throughout the process of applying for asylum, the person has been eligible for state support in the form of accommodation and some minimal cash support. Once an application has been denied, this support is withdrawn (Darling 2009, p. 650), as is any legal right to work or remain in the UK. In Darling's argument, it is this denial, and the attendant withdrawal of permissions and support, that positions the refused asylum seeker as bare life.

Other scholars have followed a similar line of thinking, applying Agamben's theory of the *homo sacer* more widely to what they tend to call 'illegal immigrants', encompassing all migrants who are denied legal status by the country in which they live. For example, Sarah Willen (2010) writes particularly about Israel and its treatment of undocumented migrants. She says that the patterns of othering and systematic neglect that characterize the way illegalized migrants are treated can be thought of through Agamben's conceptions of bare life and *homo sacer*, noting however that she sees a need to ground this claim in an understanding of specific conditions, patterns and experiences of particular migrants. Willem Schinkel also argues for conceiving of the 'illegal immigrant' as a modern day *homo sacer* (2009, p. 779, quotation marks in original). Schinkel likens the condition of those denied legal status in a country to that of Agamben's *homo sacer* in that regular laws do not apply to the migrant determined to be illegal, thereby allowing potential indefinite detention of the 'illegal immigrant'. This potential indefinite detention represents an interruption to the protections normally extended to citizens and residents of a nation. For Schinkel, it is this exceptional treatment that renders the illegalized migrant a *homo sacer*.

The concept of 'bare life' has also been used specifically to describe the labour of those who are denied legal status in the countries in which they reside (Lee 2010; De Genova 2010). For example, Charles Lee finds a 'compelling framework for migration studies' in Agamben's theory (2010, p. 62), saying that understanding undocumented

migrants as homo sacer is a useful way to understand exclusion from the juridical protections of citizenship. For Lee, the theory of bare life can be used to understand the way female foreign workers are positioned as undocumented domestic workers. 'Bare life' is experienced as the suspension of labour laws, low wages and hostile working conditions. Working in a similar direction, Nicholas de Genova (2010) applies Agamben's theory of bare life to the regime of deportation to think about the way that deportation works as a tool of exclusion and about its production of a specific political relation. He takes the story of Elvira Arellano as an example. Arellano is a woman from Mexico who was undocumented in the United States and who worked at Chicago O'Hare International Airport as a cleaner. She was arrested during an immigration raid in 2002 and defied her final deportation order, publicly taking refuge at a church in Chicago to avoid deportation. In this act, De Genova says that Arellano exchanged deportation for a life of captivity and heightened exposure. She was deported one year later when she left the church to attend an immigration rally in Los Angeles. De Genova locates bare life in Arellano's condition in the form of her labour. He points out that labour is the most basic level through which human life sustains itself, and in the deportability of the illegalized migrant he identifies the politicization of this bare life (2010, p. 38).

These applications of Agamben's theory as a means to think through the conditions faced by undocumented migrants and denied asylum seekers are all studies of the effects of legal exclusion from the nation-state. Both Lee and De Genova also very usefully point at the ways in which neoliberal states make use of migration legislation in order to sort populations, and use techniques of capitalism, such as labour exploitation, to target populations not granted access to legal status or to citizenship. In this vein, distributions of status across migrants (illegalization, legalization for specific tasks, as is the case with many work or study permits; or full legalization via permanent residency; and citizenship) can be seen as mechanisms of sorting migrants, and creating distributions of legality on the basis of state-centric and capitalist rubrics of desirability.<sup>1</sup> However, while these accounts provide evocative descriptions of the violence to which illegalized migrants are exposed—be it through the possibility of deportation, the exploitation of labour, state neglect or indefinite detention—it is striking that they do not describe the ways that particular groups of people are disproportionately illegalized or made vulnerable to illegalization. In other words, even as these studies reveal illegalization as a process enacted by the state, even potentially used to distinguish between groups of migrants, they do not ask the question of why or how a certain person, or group of persons, is illegalized. It is noticeable, for instance, that in reciting these theories I do not need to mention race or racism to give an accurate summary of the major arguments. It is as though racism has been excised from the conversation around illegalization and the relationship of state power and state violence. It is not that race and the function of racism cannot be read back into these theories, but instead that it is not there as part of the theoretical foundation of the descriptions. This is a remarkable exclusion from a theoretical

framework used to understand bordering in Europe and in other powerful countries which imagine themselves as European descendants through the legacy of colonialism.

In the two discussions of bare life and labour I have cited, it is also particularly noticeable that while those whose conditions are described are women, gender does not come up as part of the theoretical explanation. By this I mean that while both authors recognise that they are working from the experiences of female migrants, neither allows gender to enter as part of the explanation of the structure of power that addresses these particular women. In the case of De Genova specifically, for example, Agamben's theory provides a way to explain how one woman and mother, Arellano, is excluded, and that explanation is then generalised to *all* illegalized migrants, regardless of gender (2009, p. 247). While Arellano's gender figures in the description, it does not fundamentally alter or relate to the ways that De Genova sees illegalized migrants as addressed by legal vulnerability. The analysis does not consider the particular ways that gender relates to distributions of power, but instead borrows the experience of a female illegalized migrant to make the claim that structures of state power will address all migrants in the same way. In this way the gendered dimension of violence and power is lost.

The problem of reducing structures of violence to legal acts without attending in a substantive way to how power is differentially distributed in racialized or gendered ways is also present within work that has drawn on Agamben's theory of the camp. The concept of the camp, which describes the spatial order that produces bare life, has been used to theorise migrant detention centres as 'camps' where the exclusion of migrants from civic life and divestment of rights is carried out (Andrijasevic 2010; Diken & Laustsen 2005; Papastergiadis 2006; Perera 2002; Walters 2010). Earlier work looked specifically at Australia's now closed Woomera detention centre, which is said to have functioned as a camp because it was a zone of indistinction. Its existence was possible only when exception became rule (Diken and Laustsen 2005), and within it refugees were excluded from civic life, held indefinitely without cause in detention and divested of rights (Papastergiadis 2006). More recently, arguments have been made for understanding Italy's Lampedusa detention centre as a space where the state of exception is enacted and therefore as a camp (Andrijasevic 2010, p. 150). In this space, the normal rule of law is suspended and rights no longer apply. Migrants held in the centre are treated in degrading ways that violate what would be their rights, if these rights could in fact be claimed or protected. Speaking more widely, William Walters (2010) goes a step further, pointing to all migration detention centres used in Western states as camps. They are all spaces, he explains, 'where the exception becomes the norm, where those without the "right to have rights" are exposed to indeterminate waiting times, the risk of arbitrary treatment, and the threat of physical and psychological abuse' (2010, p. 94). This exposure to violence, and the lack of legal protections that are normally provided to those recognized

as citizens, materializes the camp in the space where migrants are indefinitely incarcerated.

In these accounts, migration detention centres are understood as camps because they are spaces where the 'right to have rights' is suspended for migrants who are detained, and because migrants can be treated in an arbitrary and cruel way, exposed to both physical and psychological abuse. Inside of this space, legal protection is revoked by the law, exposing migrants to violence. This is a particular mechanism of power that is enacted inside the migration detention centre. Therefore, what an analysis of migration detention centres as camps points at is a particular mechanism of power enacted within these spaces. It is the operation of power that illegalized migrants experience in detention centres that indefinitely suspends the normal rule of law. Again, this analysis points in a powerful way to the severity of the violence that takes place in these spaces. It highlights these violations and takes them seriously, looking at how legal structures enable the suspension of legal protections for some. The problem is again, however, that this analysis does not account for how power is meted out. It does not answer the question of who is detained in camps, nor why. Instead, while the theory describes the violence made possible by a particular legal experience, it does not address the distribution of this violence. Again, race and racism do not come up.<sup>ii</sup> It is as though race and racism were something that could hover over and beyond the analysis—a hanging question that all might know is there, but which does not need specific mentioning or specific theory in order to be addressed. This might be because racism is understood as the 'obvious' foundation of these practices, and therefore as not in need of theorization. The effect of this, however, is to degrade the complexity of racism by treating it as pre-theory, while elevating the legal systems of European and European-derived states as sophisticated systems in need of analysis. It also has the effect of displacing the ways in which race and racism are structuring in the functioning of nation-states and bordering and detainment practices.

The bracketing of racialisation as something that it is possible to remove from the centre of the analysis of power has particular, important implications when Agamben's theory is used to theorize the border as a generalised condition, as there has been a move toward in contemporary theory. In order to evaluate this tendency, I want to focus in particular on one book: *Border Politics: The Limits of Sovereign Power*, winner of the Gold Award, 2011 Past Presidents' Book Competition, Association of Borderlands Studies. The book is of interest both because of the argument it makes, and because of its celebrated reception in the field. In it, Vaughan-Williams (2009) develops an account of borders in relation to their mobilization inside of national space. He draws on Agamben's description of the camp to develop this account, writing that if the space of the camp was once marginal, it has increasingly become more generalised. By this he means that he sees it as necessary to pay attention to how power operates within and throughout national space, and not only at its edges or in discrete spaces. Instead of conceiving of sovereign power as

limited in a way that is spatially fixed, he presses on Agamben's argument that camps have come to be the *nomos* of the modern to claim that what is important in the operation of power is the way it 'performatively produces and secures the borders of political community as the politically qualified life of the citizen is defined against the bare life of the *homo sacer*' (2009, p. 116, emphasis in original). In other words, Vaughan-Williams argues for directing attention in a theory of bordering to the way that populations are produced in relation to power and differentiated against one another, and particularly to how the citizen comes into being in contrast to and against the figure of bare life.

Vaughan-Williams develops his ideas of generalised biopolitical bordering through the example of the murder of Jean Charles de Menezes in London. Jean Charles de Menezes, a Brazilian man who was in his twenties, was shot eleven times at close range on 22 July 2005 by UK anti-terrorism officers. When shot and killed, he was sitting on a stationary train at Stockwell tube station in south London. He had been followed by officers from his nearby flat in Tulse Hill to the tube station and was executed on the basis of unfounded suspicion of terrorism. In Vaughan-Williams' reading the murder is an example of the attempts 'made by sovereign power to reproduce and secure the politically qualified-life of the polis' (2009, p. 120, original emphasis). He says that de Menezes was subject to exceptional practices, banned from conventional law, and produced as bare life, and, therefore, his execution in the name of anti-terrorism measures speaks to new bordering practices and to the diffusion of border sites throughout society: de Menezes was killed not in a marginalized space, but in an urban and densely populated part of London. It is because it was possible for de Menezes to be followed around the city in which he lives, and to be shot and killed while sitting in a tube carriage on the basis of a police decision taken in a moment, that Vaughan-Williams argues there is evidence that exposure to power is generalized throughout national space.

Based on this exposure to power throughout the space of daily life, Vaughan-Williams reinterprets Agamben's theory to point toward its generalized deployment—a biopolitical border enacted not in a limited space of the camp, but in a generalized space of the camp, operating or potentially operating, throughout daily life. He claims the shooting is evidence that lightning decisions about life and death are no longer localised at 'border sites', but are potentially anywhere. He then writes that we are all potentially bare life in the space of daily life and that de Menezes' murder proves this, hanging what might happen to us all on what did, in fact, happen to de Menezes.

Strikingly, instead of working from the particular ways that a particular man, with a particular body, was positioned in relation to deadly power, Vaughan-Williams claim is that 'we all' are vulnerable to this state violence, and all are potentially bare life. The life, body and murder of de Menezes are appropriated for the theoretical work, but once an

argument about a generalized border is made, that argument too becomes generalized: we are all subject to it. Charles de Menezes and the violence to which he was subject are held up as violence to which we might all be exposed. There is no discussion of what, precisely, might expose some to this violence more than others, or what, in fact, did expose de Menezes in this way. The idea that certain people, and certain bodies are more vulnerable to state and police violence because of the way they are inscribed in relations of power is not only absent, but in fact discounted. Notably, within the theory of a biopolitical border advanced by Vaughan-Williams race remains entirely unmentioned. There is a single usage of 'race' that appears in the entire book, and it is in the context of a summary given by Vaughan-Williams of Judith Butler's critique of Agamben, which he subsequently dismisses (2009, p. 106). The word 'racism' does not appear at all.

### Agamben's Nomos

I want to turn now to Agamben's theory itself. My interest here is in clarifying exactly what he writes in order to evaluate the structure of this thought, and what it means to use this theory as a privileged descriptor for the situation of undocumented migrants. The question I want to keep in mind while moving through Agamben's theory is: what does his theory foreground, and what does it screen from view? And with what effects?

Bare life is a concept that Agamben borrows from the work of Walter Benjamin. Benjamin writes of *bloßes Leben*, which can be translated from German as either 'mere life' or 'bare life' (1921). For Agamben, this figure of *bloßes Leben* constitutes the link between violence and law in Benjamin's work and has an essential connection to juridical violence (1998, p. 65). Beginning from Benjamin, Agamben sets out to think further about the relation between bare life and sovereign power. Agamben begins his discussion of bare life by offering two terms for life taken from Greek: *zoē* and *bios*. He describes the first, *zoē*, as referring to 'the simple fact of living common to all living beings', while the second, *bios*, refers to 'the form or way of living proper to an individual or a group' (1998, p. 1). He likens the distinction between *zoē* and *bios* to a division between natural life and political life, respectively. Following Foucault, Agamben writes that we arrive at biopolitics when this natural life is 'included in the mechanisms and calculations of State power' (1998, p. 3).<sup>iii</sup>

Bare life is the zone of indistinction between *zoē* and *bios*. It is produced through what Agamben describes as 'an inclusive exclusion (an *exception*) of *zoē* in the *polis*' (1998, p. 7, original emphasis). This means that bare life is life that is socially included through an act of exclusion. This exclusion is a politically enacted condition and is therefore a form of *bios*, even as it casts the person against whom it is applied out from *bios*, or the social group. Bare life therefore occupies the impossible zone of being both *zoē* and *bios*, yet neither; of being excluded from *bios*, and yet included in *bios* precisely through this act

of exclusion. Importantly, the concept of bare life does not refer to natural life. Instead, as Ziarek writes in her work on Agamben, 'bare life—wounded, expendable, and endangered—is not the same as biological *zoē*, but rather it is the remainder of the destroyed political *bios*' (2012, p. 90). This is a point I stress because readings sometimes differ on this topic, and to differing ends.

Instead of reading bare life as equivalent to natural life, or as a base condition from which we might imagine ourselves to have grown into social and political beings, it is useful to read the concept as one that 'wishes to put in view the disposable status of such life when it is utterly exposed to political calculation' (Ross 2008, p. 2). The disposable status of bare life comes more sharply into focus with the figure of the *homo sacer*, a figure to which it is closely tied. In Agamben's work, bare life is specifically the life of the *homo sacer*. Agamben derives the figure of the *homo sacer* from Roman law and traces this figure to present times. In his description of the figure of the *homo sacer* Agamben uses the pronoun 'he'. I will reproduce this pronoun choice in my description, as I think the gendering of the figure is significant when considering the way Agamben has constructed his theory, and the ways this theory has been put to use.

The *homo sacer* existed in Roman law as a paradoxical figure. The specificity of the figure lies in his conflicted relation to death: to kill *homo sacer* is not punishable, and to sacrifice him is banned. As Agamben writes, the *homo sacer* (sacred man) is the man 'who *may be killed and yet not sacrificed*' (1998, p. 8, emphasis in original), and it is this, '*the unpunishability of his killing and the ban on his sacrifice*' (1998, p. 73, emphasis in original), that makes him a unique figure. The *homo sacer*'s relation to death is not only realized through immediate threat to life. Killing the *homo sacer* is merely the actualization of the capacity of the *homo sacer* to be killed. It is proximity to death that defines the *homo sacer*, not death itself. This means that the *homo sacer*'s life, a bare life, is life that is unprotected, exposed to violence and close to death, in that death is always threatened and within immediate reach. It is sovereign power which makes this death threat and which wields death as an instrument of politics, and yet by exposing the *homo sacer* in this way, sovereign power also opens the way for the *homo sacer* to be exposed to death more widely. Once condemned to the status of the 'to be killed', the life of the *homo sacer* is no longer protected from anyone or anything.

The central example of the role of the threat of death in the life condition of the *homo sacer* that Agamben offers is taken from the Holocaust. Agamben sees it as a short-coming of Foucault's work on biopolitics that he never considered the biopolitics of the concentration camp, and Agamben sets out to fill what he thinks is this gap in the work.<sup>iv</sup> For Agamben, it is particularly the euthanasia and eugenics programmes that were carried out in the camps of the Holocaust that produce bare life. In explaining this operation of power, Agamben focuses on how the 'exercise of sovereign power to decide on bare life' became evident in

the treatment of the mentally ill in particular (1998, p. 142). By first identifying *lebensunwerten Leben* (life unworthy of being lived), then by applying the category to those suffering mental illness, and finally by using this as justification for euthanization, Agamben shows that decisions were made about the relationship to life and death. Agamben sees *lebensunwerten Leben* as a political concept that, enacted through euthanasia, tried to separate out something like the bare life of the person and to kill this.

Important for Agamben in considering the biopolitics of the camps is also the use of human beings as *Versuchspersonen*, or human guinea pigs, and it is here that the liminal condition produced by the possibility of death becomes most apparent. Of the treatment to which *Versuchspersonen* were exposed, and its production in the space of the camp, Agamben writes that 'the interval between death sentence and execution delimits an extra temporal and extraterritorial threshold in which the human body is separated from its normal political status and abandoned, in a state of exception, to the most extreme misfortunes' (1998, p. 159). The liminal status between life and death, in which the person is abandoned to atrocity and without recourse to any form of protection, and in which death is allowed as a casual outcome because the person has already been condemned to death and is yet still living, is an important part of bare life. The atrocity of the experiments carried out on human beings in the camps was only possible because the prisoners had already been condemned to die and were therefore bare life. While still living, these prisoners were vulnerable to extreme forms of mistreatment and even murder, though it was no longer recognizable as murder.

Agamben suggests in his work that there is a link between bare life and refugees in particular. The link to the refugee that he identifies does not, however, rest on an argument that the refugee is excluded from the nation. Instead, while he writes that the refugee is a contemporary example of a position that 'is exclusively considered as sacred life', his thinking in this instance draws on Arendt (Agamben 1998, p. 133). Arendt locates refugees as those who were excluded from the nation-state system, and so rendered stateless in a world of nation-states, in the moment when the state was perverted to an instrument of nationalism (Arendt 1973, p. 231). This perversion transformed the state from a guarantor of the rights of all into the protector of only 'nationals'. Arendt recognizes this as a tragedy, and for her the conquest of state by nation means that the condition of statelessness was inevitably produced alongside the nation-state (1973, p. 230).

The refugee is important for Agamben due to his biopolitical understanding of democracy and modern politics. Since for Agamben the decisive moment of modernity is the moment when *zoē* enters into the sphere of the *polis*, it is the biological body bound to the external control of state order that is the foundation of modern democracy. According to Agamben, this biopolitics is evident in the founding documents of modern democracy, including the writ of *habeas corpus*,

which importantly does not require a subject or a citizen to appear in court, but only the physical presence of a body. The body's centrality to politics is further enshrined in the 1789 Declaration of the rights of men and of citizens, in which it is the fact of life, or natural birth, which entitles man to rights. According to Agamben, in this move natural life becomes the bearer of sovereignty, and the equality declared to exist between all men is in fact the equality of death. In Agamben's own words, it is 'precisely the body's capacity to be killed' which makes equality possible (1998, p. 125). As an effect of this, birth becomes the immediate bearer of sovereignty. In this way, nativity and sovereignty are bound together in democracy. Their welding forms the basis of the nation-state. Agamben insists that it is impossible to understand the modern state without attending to the ways that it is natural life, and specifically the fact of birth, that is invested with sovereignty as the governing structure moves from subjects to citizens (monarchy to democracy).

Refugees break the continuity assumed by the nation-state to exist between the human and the citizen—between nativity and nationality. In breaking this continuity, refugees, in Agamben's words, 'put the originary fiction of modern sovereignty in crisis. Bringing to light the difference between birth and nation, the refugee causes the secret presumption of the political domain—bare life—to appear for an instant within that domain' (1998, p. 131). The originary fiction to which Agamben refers is the assumption that the human and the citizen are one and the same, and that nativity and nationality are similarly unitary. As he puts it, the fiction is that '*birth* immediately becomes *nation*' (1998, p. 128, emphasis in original). In this way, the refugee makes visible a critical juncture of modern politics for Agamben: namely the link between birth and belonging in the nation-state (whether it be in the form of *jus soli* or *jus sanguinis*) precisely because the refugee embodies the space that is not recognized by this formula. They are, therefore, understood in Agamben's theory as a device for understanding a wider political situation.

While Agamben gives an account of refugees as making visible the biopolitical basis of the modern state, and of making bare life appear for an instant within the domain of the political, he does not say that the refugee is an example of bare life. In other words, the refugee is not identified by Agamben, *per se*, as a figure of homo sacer, but instead as a figure who, for only an instant, makes the bare life that is produced by the political system appear within that system. In fact, according to Agamben, there is no clear figure of the homo sacer today. Instead, he says that 'we are all virtually *homines sacri*' (1998, p. 115, original emphasis) and that 'bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being' (1998, p. 140). In another rendering of this same point, Agamben points to the refugee as the figure who signals the political community to come (1995).

What Agamben seems to mean when he claims that we are all virtually (in the space to come) *homines sacri*, is not that all citizens are automatically bare life, but instead that each citizen has a latent potential to be fixed as bare life at the moment the ban is deployed. Only on the grounds of this possibility of exclusion can the citizen be included in the juridical order, and it is through this potential that the modern state exacts its power. In other words, the citizen must be exposed to the potential of being banned in order to be included. The potential to be fixed as bare life is, for Agamben, the basis of the modern political order. In Agamben's account all citizens are thus vulnerable to the machinations of power within the nation-state.

### **Critique of Agamben**

There is much about Agamben's theory that I would hope would be immediately startling to a reader, especially when read in light of contemporary questions of illegalized migration in Europe and other globally dominant countries. In this section I want to look at what critiques have been taken up, and what other critiques of the theory may be necessary.

In border and migration studies, only one critique of Agamben's theory seems to have been given substantial ground. This is the criticism that Agamben's theory is necessarily disempowering and depoliticizing because it represents power as total and inescapable (Lee 2010; Squire 2009, 2015; Walters 2008). The objection to Agamben's theory of power is, as Walters (2008, p. 188) puts it, that when writing of illegalized migrants through this theoretical model 'Things are always done to them, not by them'. Those who engage with this critique work to speak back to the totalization of power by showing the ways that illegalized migrants are 'politically active people' (McNevin 2013, p. 184).

The other critique of Agamben's work—which I have found evidence of in only two articles in the field of border and migration studies (Pratt 2005, Rygiel 2011)—is a critique that has been strongly developed in feminist readings of Agamben. This is the criticism that Agamben's theorization of the *homo sacer* is disembodied, and that he fails to attend to the processes of gendering and racialization that inflect distributions and experiences of power. Kim Rygiel (2011) develops her critique of the missing body in Agamben's theory of the corpus in relation to e-borders. She notes that in border and migration studies, while the body is under discussion extensively in relation to Agamben, this is a body that appears as undifferentiated: ungendered, unraced, unclassed, and by default heteronormative. Pratt makes the point that Agamben's theory of bare life and the *homo sacer* generalizes across experiences that are different in relation to racialization and gendering (2005). I would like to centre this critique here and argue that it must be taken seriously.

In feminist scholarship beyond the field of border and migration studies within which Agamben has come to be so widely used, the point has been strongly made that Agamben's theory notably lacks any conception of the distribution of power. Agamben does not address, nor seem to acknowledge, that some are more vulnerable to the mechanisations of state power than others. Instead, in Agamben's account, without differentiation, he claims that 'we' are all exposed to the possibility of becoming bare life. Surely, even if it might be possible in an abstracted way to say that we are all potentially *homines sacri* (and I am not convinced of the political merits of this argument), it is decidedly not the case that we are all *actually* constituted as *homines sacri*. Our risks are not the same because our exposure to power is not the same.

One prominent thinker who takes issue with the universality that Agamben assumes exists between all subjects in an undifferentiated way is Judith Butler. Her criticism is essential to any use of Agamben's theory to describe conditions that are both racialized and gendered, and so it is worth quoting her analysis at length:

Such general claims [that we are all potentially bare life] do not yet tell us how this power functions differentially, to target and manage certain populations, to derealize the humanity of subjects who might potentially belong to a community bound by commonly recognized laws, and they do not tell us how sovereignty, understood as state sovereignty in this instance, works by differentiating populations on the basis of ethnicity and race. (2004, p. 68)

What Butler insists upon here is that any account of power must be a historically grounded, specific account of power. Without this attention to specificity, not only does power appear as monolithic, but the distributions of power are obscured. Here, therefore, is one of the moments in which Agamben's theory screens out the particularities, and the differential distributions of power which would mean that race and racism are not experiences which come later, but are essential modes through which power functions.

Others echo this analysis. Coleman and Grove, for instance, take issue with Agamben's particular formulation of biopolitics, as opposed to Foucault's, because of Agamben's claim that all are subject to the sovereign ban in an undifferentiated way. They argue that this claim obscures the ways that power addresses things like race, gender, class and sexuality (Coleman & Grove 2009, p. 498). Similarly, in her analysis of Agamben's work, Ewa Ziarek states that Agamben ignores, 'the way bare life is implicated in the gendered, sexist, colonial and racist configurations of biopolitics' (2008, p. 93). Astrid Deuber-Mankowsky (2015) also states strongly that, for her, Agamben's theory is an empty abstraction. She writes that this abstraction:

... is not only an affront to the concrete sufferings of the victims [of the Holocaust] and of their relatives. It does not only level out the differences between victims and perpetrators, between witnesses

and those born afterwards. It also effaces existent and—through the implementation of globalization—increasing class differences between rich and poor, north and south, between people who fulfill and those who deviate from the norm. (Deuber-Mankowsky 2015, p. 61)

The failure to attend to the ways that power functions differentially is a substantial oversight, and only becomes more so when this description is used to discuss illegalized migrants. This is because systems that illegalize migration directly draw upon structures of racialization, gendering, heteronormativity and colonial legacies. To read migration without a theory of differential exposure and vulnerability to power is to obscure how racism, coloniality and sexism structure the systems that produce some as illegal migrants, while facilitating the mobility of others, and leave some exposed to violence and at risk of death, while others pass safely between national systems. The logical effect of Agamben's failure to consider sexism, racism and coloniality for border and migration theory shows up when this theory then elides these differential distributions of power, relegating them to an afterthought, if a thought at all. Through Agamben's work, the ways that race and racism are articulated, manifested and produced through migration systems is no longer central: instead, the mechanisms of the enactment of these legal systems of violence is what becomes important, without regard to race.

The undifferentiated paranoid vision that Agamben advances—that we all, and he too by implication, may be fixed as bare life— may in part follow from the historical example he privileges in his theory. It is certainly the case that the historical grounding of his theory emphasises particular aspects of power, while entirely ignoring others. This is another basis of major critiques of Agamben's work, particularly as articulated in critical race and postcolonial studies. While Agamben generalizes outward from his chosen historical example, he writes and thinks with the Holocaust. He grants this genocide exceptional status in his work and describes the Nazi regime as responsible for 'the most extreme *conditio inhumana* that has ever existed on earth' (1995, p. 166). This is a genocide that took place in the centre of Western Europe and is one that saw the rights of citizens stripped, and the systematic killing of these former citizens. As Deuber-Mankowsky points out, the generalization of the experiences of those who faced the concentration camps to everyone is an affront to those who were faced with atrocity. It is also a problem in terms of the imposition of one historically specific instance upon other experiences of state atrocity. It is not a universal history, and building theoretical universalisms from this history has implications.

### **Decolonizing border and migration studies**

There are, of course, other historical examples of atrocity to draw on in thinking about biopolitics and the state of exception that would make different dynamics—and particularly histories of race and coloniality—more visible. As only one example of the work that has pointed to the

alternative possible histories of the treatment of life as disposable, Achille Mbembe writes that it is (or should be) impossible to talk about modern terror without discussing slavery. He points to slavery as one of the first important historical instances of biopolitical experimentation. He explains that in slavery, the enslaved person is fully dominated, alienated from his or her natal land, and confronted with social death. Social death is in Mbembe's words, 'expulsion from humanity altogether' (2008, p. 160). Those who are enslaved exist in a state of injury: kept alive, but only as an instrument of labour and with a price. The master, who owns a person as an object is owned, can inflict violence upon the enslaved 'in a cruel and intemperate manner' (2008, p. 160).

Race is crucial to these intersections and experiences of power (Mbembe 2008, p. 161). Mbembe traces the technologies of racism, including the selection of 'races', forced sterilization and prohibitions against mixed race marriages, and genocides—all aspects of engineering race in the population—to the colonies and to imperialism. For Mbembe, 'what one witnesses in the Second World War is the extension to the 'civilized' peoples of Europe of the methods previously reserved for the 'savages'' (2008, p. 161). Therefore, what is most important is not only to pay attention to what happened in Europe, but to connect the Holocaust to slavery, to colonial imperialism, to the technologies of mechanized death, and to late modern forms of colonialism. In particular, Mbembe argues that it is necessary to look at the colony and colonialism to understand the suspension of juridical order, the implementation of the state of exception, and the violent operations of power.

The lawlessness with which colonies can be ruled is due, Mbembe argues, to the racial denial of a bond between those in the role of conqueror, and those positioned as native. In understanding the native inhabitants of the colonized land as 'savages', the colonizers position the conquered populations as a sort of animal life and see them as behaving like a part of nature. Drawing on Arendt's work, he explains that the positioning of native populations as natural deprives them of their status as full human beings and allows Europeans to massacre without realizing they are murdering people (2008, p. 163). It is because of this racial denial of humanity that it becomes possible in the colonies for the sovereign right to kill to be enacted without being subjected to any rule and why it is possible to kill at any time and for any reason.

In foregrounding a different historical genealogy of state violence, Mbembe shows how placing slavery and colonialism at the foundation of how we understand this violence would reveal race as absolutely essential to these structures. That these historical practices are not treated as the grounds for the most widely cited and reproduced theoretical accounts, even in fields which one would think would necessarily be engaged with racism in particular, points to the ways that scholarship specifically concerned with race continues to be marginalized. What's more, not only does it continue to be

marginalized, but theory written in Europe, by and about particular European experiences, continues to be elevated as though it speaks to a theoretical universal.

Alexander Weheliye's critique of the use of biopolitical theory as presented in his book, *Habeas Viscus: Racializing Assemblages, Biopolitics and Black Feminist Theories of the Human* (2014) helpfully articulates a forceful critique of the ways in which biopolitical theories in particular are consistently elevated above the long tradition of work in black studies, critical ethnic studies, and black feminism. In part, Weheliye's critique calls attention to the ways in which a set of ideas articulated in European space, and articulated in response to a particularly situated set of historical events and intellectual trends, are picked up as though ahistorical. He writes that the work of both Agamben and Foucault is often invoked without attention to the historical or political foundations and specificities of the theories. He points to the ways that this is particularly a problem when a set of theories not written from an explicitly racialized perspective are appropriated to describe topics that necessarily require a discussion of racialisation, and of genocide. When this happens, instead of drawing on the long histories of theorization of racism, genocide and legal exclusion available in critical ethnic studies scholarship, the work of European thinkers is given 'conceptual carte blanche' (2014, p. 6). This not only excludes so-called minority discourses from the position of theoretical discourse themselves, but displaces them, while also elevating biopolitical theories as theoretical universals. Therefore, in addition to not being fit to the specific relationships being described, a set of continental European theory is treated as high theory, while the work of those who in fact do work on questions of racism, genocide, coloniality and gender is sidelined. Alexander Weheliye concludes, 'If I didn't know any better, I would suppose that scholars not working in minority discourse seem thrilled that they no longer have to consult the scholarship of nonwhite thinkers now that European master subjects have deigned to weigh in on these topics' (2014, p. 6).

Weheliye's critique points to why it is not enough, as some have advocated, to merely attempt to repair Agamben's oversights in the context of border and migration studies by integrating scholarship that more explicitly addresses discussions of race and/or gender (cf Basham & Vaughan Williams 2013). While this may be a marginally reparative gesture, it also necessarily again locates scholarship produced within critical ethnic studies or other disciplines concerned with the particularities of race and gender as mere correctives. These works stand on their own. They do not need to be read in as correctives. It is for this reason that instead of supplementing biopolitical theories with work that explicitly discusses race, I am instead in favour of decentring this work. In part, this position is based on what I see as the short-comings of Agamben's work in particular in relation to questions of bordering and migration, as I have articulated specifically in the space of this article (as opposed to all biopolitical work more broadly). In another sense, however, this position is due to the vast world of scholarship beyond Agamben and biopolitical theories which do not

need to be repaired, but which instead start from nuanced discussions and treatments of race and gender. Reducing the reliance on biopolitical theories generally within the world of border and migration scholarship, and instead advocating for a turn toward critical ethnic, critical race, and feminist accounts of state violence, would create room for centering a different kind of scholarship entirely. That scholarship would necessarily have different points of focus, and bring different dynamics and understandings into view within the field of critical migration studies, broadly understood.

In part, what this work could bring to the field is a more explicit discussion and theorization of what in fact racism is, and how it functions. Here again, the work of Alexander Weheliye is useful in describing the ways in which Agamben's work not only falls short of this task, but is difficult to recuperate for this purpose. He shows that Agamben's work through the theoretical concept of bare life manages what he terms a 'conceptual feat'. Namely, 'it founds a biological sphere above and beyond reach of racial hierarchies' (2014, p. 53). It does this by claiming that there is 'something like an absolute biological substance' which is anterior to race (Agamben 1999, p. 85). The effect of this odd claim is that racism, for Agamben, seems to become uncoupled from social processes of racialization. As Weheliye points out, this is more or less explicitly claimed by Agamben in his book *Remnants of Auschwitz*, where he writes that 'the biopolitics of racism so to speak transcends race' (1999, p. 85). It is statements such as these that make it complicated to attempt to recuperate Agamben's work in relation to discussions of racism. This is the case, even when these attempts are made via other biopolitical theorists, such as Foucault. Foucault, of course, does write of state racism, particularly in his lectures contained in *Society Must Be Defended*. While this article does not offer a specific engagement with the work of Foucault, it is worth noting that in these essays Foucault writes that 'racism is inscribed as the basic mechanism of power, as it is exercised in modern states' (2003, p. 254). He explains racism as a way of regulating exposure to death, and describes the first function of racism as the fragmentation of the population, creating and separating groups from one another (2003, p. 255). This is a means of exercising control over the population. After the fragmentation of the population, he describes the second function of racism as brokering the relationship of war: in order for one to live, the other must die. Racism is therefore enacted as this differential exposure to death. It is the difference between 'what must live and what must die' (2003, p. 254). This discussion of racism, therefore, grounds his discussion of biopolitics, at least as presented in the context of these lectures.

Rather than seeing the discussion offered by Foucault in these texts as an opportunity to read a treatment of differentialised exposure to power and experiences of racism back into the functioning of a theoretical concept such as that of bare life, I instead see this work as pointing away from Agamben. Foucault's work, in taking up an explicit engagement with racism, points to what is absent in Agamben's work. Agamben's work provides a description of state power that is

undifferentiated, unsegmented, and that does not attend to the histories or descriptions of experience of racism, nor to those of sexism, homophobia, or classism, etc. It takes experiences belonging to some of the most exploited within society, and violently treated within the specific context of the Holocaust, and uses these to advance a vision of state power that does not attend to these particular constellations of power. Not all theories of the production of exclusion necessarily amount to a careful and nuanced treatment of the functioning of racism and modes of social difference, exclusion and discrimination in society. These particular accounts are necessary.

The continued celebration of Agamben's work in border and migration studies, when he does not write of racism, when he does not write of coloniality, when he works from a particular European historical example, seems to more than prove Weheliye's critique of the ways in which theoretical accounts with European provenance continue to be held up over others, even when they do not speak to the specificities of the situation described. I cannot think of a field in which it is more the case—though I can think of many in which it is equally the case—that it is well past time to place scholarship on racism, gender and embodiment, genocide and coloniality at the theoretical centre.

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#### Notes

<sup>i</sup> See for example Bridget Anderson's discussion of labour migration policy in her book *Us & Them?: The Dangerous Politics of Immigration Control*, particularly chapter 3: Migrant Management: Ending in Tiers (2013).

<sup>ii</sup> In one case, race does come up, but it is because Agamben's work is supplemented with the work of Angela Davis. Through Davis, a discussion of racialisation and camps is developed (Perera 2002).

<sup>iii</sup> Foucault describes biopolitics as 'the attempt, starting from the eighteenth century, to rationalize the problems posed to governmental practice by phenomena characteristic of a set of living beings forming a population: health, hygiene, birth-rate, life expectancy, race ...' (Foucault 2008, p. 317). Foucault's description of biopolitics differs from Agamben's in a number of important ways.

<sup>iv</sup> Agamben writes that for him it is striking that Foucault, 'never dwelt on the exemplary places of modern biopolitics: the concentration camp and the structure of the great totalitarian states of the twentieth century' (1998, p. 4). What Agamben means by this is unclear, however, as Foucault did include in his work an analysis of the Nazi state and Nazi society (Foucault 2003).

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