The Refugee as Homo Sacer
A Short Introduction to Agamben's 'Beyond Human Rights'

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In discussions about 'makeability' or social engineering, specifically when they concern manageability and biopolitics, references are often made to the ideas of philosopher Giorgio Agamben. *Open* is republish ing his key 1993 text 'Beyond Human Rights', with an introduction by philosopher and jurist Marc Schuilenburg. According to Schuilenburg the figure of the homo sacer that Agamben presents in this and other writings leads to many misunderstandings. He also addresses the differences in Agamben's ideas about biopolitics and those of Foucault.

In 1993, Giorgio Agamben (b. 1942), an Italian political philosopher at the University of Verona, published a text about the status of the refugee, 'Beyond Human Rights', in which he links the issue of refugees with human rights. The first article of the Universal Declaration of Human Rights incorporates the motto of the French Revolution (*liberté, égalité, fraternité*): 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. ' Yet while the article speaks of 'human beings', Agamben argues that human rights are not compatible with 'the human', the merely alive, as such. In the case of the refugee, his or her political and legal status is considered a temporary state, Agamben writes in 'Beyond Human Rights'. Having arrived in another country, he or she, following a positive assessment by the Immigration and Naturalization Service, is subjected to all sorts of control mechanisms (citizenship exams, shaking hands, language tests, etcetera) intended to turn him or her into a 'full-fledged citizen'. Goodbye refugee, welcome citizen.

To Agamben, the treatment of refugees demonstrates how modern politics work. According to Agamben, who is significantly influenced in this by Michel Foucault, life is dominated by biopolitics, which he defines in his book *Homo Sacer* as 'the assimilation of natural life in the mechanisms and calculations of state power and politics'.[1] Power over life is not exercised in this by a sovereign ruler; statistics are used as input for the actions of the government. To Agamben this biopolitics did not originate around the mid-eighteenth century, as Foucault writes in *The Will to Knowledge* (1976) ; it is at least as old as Western political history. As far back as the Ancient Greeks a distinction was made between 'the human', which was called simple or natural life (*zoè*), and a 'qualified life' by which the specific form of life or lifestyle of an individual or group (*bios*) was meant. Neither is biopolitics based on an optimization of the conditions of life in order, as Foucault asserts, to control the 'body as a type' through all manner of measures in the area of public health, dietary customs, housing, immigration, but rather, Agamben writes, on 'life that is has been excommunicated', in order to 'indicate the boundary that connects and separates

what is inside and what is outside. [2] Ultimately Agamben's view of biopolitics remains strongly focused on a general legal argument (which, with his notion of a 'state of exception' furthermore plays out largely on the politico-constitutional level of the nation-state). Foucault, on the other hand, breaks with a legal consideration of power and mixes biopolitics with disciplinary exercises of power actualized in local practices in a 'particular period, in a particular country, as a response to particular needs'. [3]

According to Agamben, the position of the refugee coincides with that of the *homo sacer*, a figure in Ancient Roman law whom anyone could kill without committing a murder (in the legal sense). Agamben sees the ambiguity contained in this definition in the status of the refugee. Although he or she is a living being, he or she has far fewer rights than the citizens of nation-states. This cancels out the principle of the equality of all human beings as sentient beings. Human rights, Agamben writes, are not capable of bridging the gap between the two 'forms of life'. According to Agamben, and in this he follows Hannah Arendt, the expression 'birth' in the first article of the human rights declaration coincides with 'citizenship'. The consequence of this analysis is that there is no longer any room for merely being alive, the most elementary characteristic of any living being. Life is consequently absorbed in abstract variables called 'nation-state' or 'society' or 'law' or 'citizen' (and so forth). From this perspective, human rights turn out not to be genuinely universal, but in fact the property of citizens.

This does not mean that the refugee is *outside* society. He is assimilated as an element within society (just as the outlaw is always 'in the law'). The set 'outside-inside' (inclusion and exclusion) cannot be reduced to a binary dichotomy. Both forms make people part of a homogeneous and unifying whole that explains nothing in itself, but rather is constantly being redefined. Agamben calls this the 'inclusive exclusion' of bare life with the social form of life (*bios*). In the terms used by French philosopher Alain Badiou: 'being human' has become here an intensional collection characterized by the unifying and reducible principle of citizenship. In the process human rights conceal from us those individuals and groups who are not represented by these rights, that is to say people whose legal status has not fully been resolved. In Roman times, the *homo sacer* could not, under any circumstances, live in the city of the citizens. He was driven out (like the illegal refugee today) to the margins or the 'black holes' of society, situated far from the sight of the average city dweller. Today the refugee also appears as a *margizen*, whose life is qualitatively distinct from that of the *citizen* and of a temporary resident (*denizen*). [4] He or she is a person who has no access to the collective goods and services of our society (security, insurance, work, etcetera). [5]

The figure of *homo sacer* leads to many misunderstandings. Isn't everyone a *homosacer*: criminals, gays, squatters, the mentally handicapped, feminists, the unemployed, beggars, the homeless, addicts, artists? Even American neo-Republicans, Slavoj Žižek once told his audience, refer, to Agamben's great chagrin, to the fact that they lead a life that is steadily being marginalized. Although Agamben writes that 'today a clear figure of the *homo sacer* no longer exists', he names several concrete examples of what he means by 'bare life' in his unfinished series of works devoted to the figure of the *homo sacer*. In addition to the refugee, he talks about the issue of euthanasia and the fate of coma patients. And in *State of Exception* he addresses the position of captured Taliban fighters at Guantánamo Bay. [6]

With powerful words he equates the legal position of the Jews in the concentration camps with those of the 'detainees' of Guantánamo, who are being held without any form of trial and without charge. The prisoners have the status of 'enemy combatants', a category that does not exist in international law, so that they are not covered by the Geneva Convention on the protection and treatment of prisoners of war.

What now? In 'Beyond Human Rights' the phrase 'a coming political community' is formulated, a notion that Agamben had already cautiously addressed in his article about the student uprising at Tiananmen Square in Beijing in 1989.[7] What this community looks like remains very vague. It is clear, however, that Agamben, in the parts of the *homo sacer* cycle that have yet to be published, intends to make it a field of study, a potentiality that breaks through the prevailing order and coherence and makes a connection to other elements, 'beyond' the point at which every living being is turned into a controlled and manageable object.

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Footnotes

1. Giorgio Agamben, *De soevereine macht en het naakte leven* (Amsterdam: Boom/Parrèsia, 2002), 9, 129.
2. Ibid., 142.
3. Michel Foucault, *Ervaring en waarheid* (Nijmegen: Te Elfder Ure, 1985), 85.
4. A *denizen* is a person who maintains close links with a country without being a citizen of it. Not only does he or she live there, he or she also speaks its language, has had children there, has a job or goes to school there. Until the nineteenth century the term was used for a foreigner who was assigned the status of a subject by the king through 'letters of charter'. The longer they remained legally in the country the more rights these persons obtained, becoming *semi-citizens* or *denizens*. Ultimately *denizens* had fewer rights than citizens but more rights than foreigners.
5. Marc Schuilenburg, 'Citizenship Revisited: Denizens and Margizens', *Peace Review – A Journal of Social Justice*, 20, 3, 2008, forthcoming.
6. Giorgio Agamben, *State of Exception* (Chicago: The University of Chicago Press, 2005), 3-4.
7. Giorgio Agamben, *The Coming Community* (Minneapolis: The University of Minnesota Press, 2003), 85-87.

Tags

Biopolitics, Philosophy, Control

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