



The Bare Sovereign or a new look at the Schmittian Sovereign through Homo Sacer by G. Agamben

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Abstract

The article studies the concept of sovereignty and the notion of the sovereign within the framework of Carl Schmitt's political theology through the prism of the concept of Homo Sacer (sacred man) from Roman law, which was supplemented and integrated into political-philosophical discourse by Giorgio Agamben. The main characteristics of Homo Sacer are explored, namely the exclusion of such a person from the ordinary legal and religious systems, which allows him to be killed with impunity, but does not allow him to be sacrificed. The sovereign, having the power to suspend the law, thus places himself outside it. In doing so, he also transcends the usual religious system and moves into a completely different plane – that of political theology. The article demonstrates that the sovereign is essentially an exceptional case of Homo Sacer.

Keywords. Sovereignty; Political theology; State of exception; Bare life; Homo Sacer; Carl Schmitt; Giorgio Agamben.

1. Introduction

The concept of sovereignty has been a central theme in political philosophy and legal theory for centuries[1]. However, the nature and limits of sovereign power remain contested and problematic[2]. In his seminal work «Political Theology», Carl Schmitt offers a powerful and controversial interpretation of sovereignty, linking it to the ability to decide on the state of exception. For Schmitt, the sovereign is the one who has the power to suspend the normal legal order in times of crisis or emergency[3].

Giorgio Agamben, a contemporary Italian philosopher, builds upon and expands Schmitt's ideas through his concept of Homo Sacer, a figure from Roman law who can be killed with impunity but cannot be sacrificed in a religious ritual[4]. Agamben uses Homo Sacer as a lens to examine the nature of sovereign power and its relationship to what he calls «bare life» – a form of life stripped of legal and political rights[5]. While Schmitt and Agamben's concepts have been widely discussed, the question of how they intersect and illuminate each other remains underexplored.

Specifically, the idea that the sovereign, in deciding on the state of exception, may paradoxically share key characteristics with the figure of Homo Sacer has not been fully developed. This article aims to address this gap by arguing that the

sovereign, in the act of deciding on the exception, effectively places himself in a position analogous to that of Homo Sacer – simultaneously inside and outside the legal order, wielding power yet exposed to violence.

To ground these abstract concepts in concrete examples, the article examines the cases of two contemporary leaders: Muammar Gaddafi, the former ruler of Libya, and Bashar al-Assad, the already former president of Syria. The rule and eventual downfall of the both are analyzed through the lens of Schmitt's political theology and Agamben's Homo Sacer, revealing Gaddafi and al-Assad as «bare sovereigns».

2. Discussions

2.1. Schmitt's Concept of Sovereignty

Carl Schmitt, one of the most important political theorists of the twentieth century, has made an enormous contribution to the understanding of the concept of sovereignty. In his work «Political Theology» he offers an original interpretation of sovereignty, linking it to the decision on the state of emergency.

According to Schmitt, decision is a key element in determining political order. He argues that every order is grounded in decision, and the sovereign is the one who decides on the state of emergency.

Schmitt emphasizes that the decision becomes the only possible basis for legal order because it binds order to the decision rather than to the norm. He believes that norms make sense only in normal situations, and that the assumption of actual normality is necessary to justify any norm[3].

Schmitt radically distinguishes between decision and norm. According to his thesis, the sovereign does not have to be confirmed by a norm to create law, since he has specific authority to justify a normative order. He argues that only something concretely existing, not a mere valid norm, can be sovereign.

Schmitt emphasizes the relationship between sovereignty and exclusion. He argues that it is the sovereign who decides what is the public good and the general interest. In the interest of the state, the sovereign can decide to break or remove the existing legal order.

In all cases, the decision refers to a real character, never a universalist or ideal one. Schmitt speaks of a decision that gives a measure in a particular case, not of a normative decision. Sovereignty manifests itself precisely in the decision to maintain or establish order, or in the exceptional situation where a particular order is required to remove an abnormal situation and return to the normality guaranteed by the sovereign.

The sovereign decision defines a situation of exclusive conflict, since law cannot establish a regulation of the pre-existing. The decision on the form and structure of political unity is constituted by a paradigm of exception within and outside the order, necessarily political.

The state, in Schmitt's view, is the institutionalization of this decision and therefore proper to the political, since it presupposes the inevitable sphere of politics.

The state, for Schmitt, as for Hobbes earlier, is an attempt to prevent civil war through a monopoly of decision and for several centuries a monopoly of politics. Before the monopoly of violence, the state had a monopoly of decision, through which it acquired *jus belli* and jurisdiction, external autonomy and internal sovereignty.

Schmitt argues that to the extent that a people has its political existence, it has the right to define the distinction between friend and foe. When there is no longer the ability or desire to make this distinction, it ceases to exist politically.

According to Schmitt, the sovereign has the right to decide internally to preserve the order, even if there is a need to suspend it or to create another situation of order where a new legal and political configuration is valid.

Schmitt's political theology suggests that many modern political concepts are secularized theological concepts. The sovereign in this context is comparable to a deity in that it has the power to create exceptions and define the boundaries of the legal order. The sovereign, like a god, acts outside and above ordinary laws, establishing a new order in extraordinary circumstances.

2.2. Agamben's Homo Sacer

The concept of Homo Sacer is one of the central themes in the writings of Italian philosopher Giorgio Agamben. Homo Sacer is a status derived from Roman law. It denotes a person excluded from society who can be killed with impunity but cannot be the object of human sacrifice in a religious ceremony. The term «sacred» originally denoted something «separate» from general society, with the double meaning of «sacred» and «accursed». This paradoxical figure could be killed but not sacrificed, emphasizing its exclusion from the legal order[6].

Agamben interprets Homo Sacer as a symbol of sovereign power over life and death, the ability to signify a life that deserves neither salvation nor killing. For Agamben, Homo Sacer represents the modern individual who lives in a system that exercises control over the collective «naked life» of all people. Naked life, or «bare life»; is a key concept in Agamben's work that explores the relationship between this form of life and the Western political tradition[4].

Agamben's Homo Sacer project spans nine books and seeks to reconsider the original place and structure of politics and ontology, revealing the *arcanum imperii* that forms its basis. Agamben seeks to connect the problem of pure possibility, potential and power to the problem of political and social ethics in a context in which the latter has lost its former religious, metaphysical and cultural basis.

Agamben explores the occult or implicit presence of the idea of biopolitics in the history of traditional political theory, arguing that the notion of sovereignty as power over life is implicit. He builds on Carl Schmitt's ideas about sovereign status as an exception to the rules it protects.

The Homo Sacer paradigm (the paradigm of sovereign and legal right) reaches its greatest expression in the description of Nazi concentration camp internees (*Musselmänner*) in *What Remains of Auschwitz*, which is the most vivid example of how a sovereign power reduces its vile subjects to a «bare life» stripped of all civil and human rights and subjected to sovereign violence.

2.3. The Sovereign as Homo Sacer

Theoretically, if we take Schmitt's and Agamben's concepts literally, the sovereign cannot be Homo Sacer because he possesses supreme authority and cannot be excluded from the legal order in such a way that his life can be sacrificed without legal consequences. The sovereign, by definition, is the one who establishes exceptions, not the one who obeys them.

However, if we consider the functionality and key characteristics of the Schmittian sovereign in relation to Agamben's Homo Sacer, the opposite is true.

We should start with how to define sovereign power, since Agamben writes precisely about sovereign power. Thus, in the chapter «The Paradox of Sovereign Power» he writes: «There are no norms applicable to chaos. Order must first be established: only then does the legal system make sense. A normal situation must be established, and the sovereign is the one who makes the final decision whether this state of

normality has indeed prevailed. Every right is a «right applicable to the situation»[4]. The sovereign creates and guarantees the situation as a whole in its totality. He has the monopoly of the final decision.

This is the essence of state sovereign power, which, therefore, it would be correct to define not as a monopoly of sanction or authority, but as a monopoly of decision, where the term 'decision' is used in a general sense.

That is, sovereign power is defined by Agamben not as the ability of the subject to exercise it alone, but as the ability of the subject, called the sovereign, to decide on its exercise. And here it is necessary to emphasize an extremely important aspect. Agamben does not simply emphasize the notion of «decision».

Thus, as for the exercise of abstract «power», its subject has a huge range of alternatives as to how to do it, as for sanctions - the choice to impose them or not, and as for «decision» - there can be only two alternatives - to make it or not. The nature and possibilities of each of them will be discussed later, firstly it is necessary to further elaborate the concept of sovereign power.

Gilles Deleuze argues that «sovereign power reigns only over what it is able to interiorize», which means that power can only control what it is able to incorporate inside itself, to make it part of its system. This emphasizes the idea that power always seeks to integrate and control the external, transforming it into the internal.

Maurice Blanchot, for his part, in discussing the great confinement described by Foucault, speaks of society's attempt to «enclose the external», that is, to constitute it as internal, but with the ambiguous status of expectation or exclusion. This means that the system, when confronted with something that transcends it, incorporates it inside itself through prohibition, thereby defining itself as something external to itself.

According to Schmitt, sovereign power consists in the decision to exclude. This decision is not an expression of the desire of the subject occupying the highest position in the hierarchy. The sovereign does not decide what is allowed and what is not. It implicates (implies) a situation of right with respect to a living being. Or, to use Schmitt's terminology, it determines the «normal structure of the relations of life» that is necessary for the existence of law.

That is, again, by deciding on a state of emergency, the sovereign thereby excludes itself from the ordinary legal system, extending sovereign power to itself.

Now, if we consider the sovereign who declares a state of emergency, we see that he actually excludes himself from the legal system. The paradox of sovereign power states, «The sovereign is at the same time inside and outside the legal system». By having the legal power to suspend the law, he places himself outside the law. This means that the paradox can also be formulated as follows: «The law is outside of itself».

That is, we can state that with the adoption of the decision on the state of emergency, the sovereign finds itself outside the ordinary legal field. It may seem important to specify where exactly this «outside» is located - the sovereign is located above the ordinary legal system. However, in the context of further fabrications, the specific position of the sovereign in relation to the customary legal field is not as significant as the nature of its relation to it.

When the sovereign declares a state of emergency, he puts himself outside the legal system, excluding himself from it. At the same time, he remains connected to it, because he has the right to make decisions, he has the right to determine through his decisions the norms that will constitute the legal system. What is even more important is that the state of emergency already inherently conditions the sovereign's decision-making. Consequently, the right of decision is not merely a legal right, but is literally the ontological purpose of the sovereign himself. He has no other choice but to decide, since to refuse to decide would mean the loss of his sovereignty. It is both a monopoly on decision-making and the absence of the right not to make decisions, because otherwise the sovereign loses its essence and sovereign power ceases to function.

Thus, the sovereign extends sovereign power to himself by interiorizing himself into the system, thereby becoming what can be described as «internal, but with the ambiguous status of expectation or exclusion». In other words, by deciding on a state of emergency, the sovereign takes itself outside the familiar legal system, but because of its ontological nature, it obliges itself to make decisions.

Thus, the sovereign, by declaring a state of emergency, puts himself in a powerless position, not a position overriding law, since the right to decide and determine norms is not a right at all, but an ontological obligation. This brings him closer to the state of Homo Sacer, since he is outside the social and legal order, but remains bound to it.

In the context of Homo Sacer, it is important to consider the use of violence and rituals. Homo Sacer is outside the realm of customary law, hence anyone can kill him, and outside the realm of traditional/civil religion, hence his killing cannot be ritualistic and religious in nature.

The sovereign, by declaring a state of emergency, places itself in a similar position. He is outside the ordinary legal system and thus outside the field of application of norms. Yes, the sovereign can create a norm implying legal responsibility for his assassination and thereby, at first glance, establish himself in the realm of ordinary law enforcement. However, the murder of the Schmittian sovereign also destroys the order he created.

In this context, one can speak of the use of violence. The sovereign, by declaring a state of emergency, can indeed himself become the object of violence and be killed, while being outside of and above the ordinary legal system, and outside the traditional understanding of religion.

For Schmitt, it was obvious that the historical process has a Katechonic nature, that is, it has to do with the preservation of

order. In this context, he spoke of the «Antichrist's retainer». The retaining Katechon in Schmitt's understanding presupposes a contractual relationship with power. This relationship is aimed at preserving the state order in the event of a threat of revolution. Thus, we can say that not only can the sovereign be threatened with death, but it threatens him a priori, ipso facto, in the form of the Antichrist (which Schmitt calls revolution).

Departing from ideological and metaphysical fabrications, we can say that according to Schmitt the sovereign decides on a state of emergency - dictatorship - when it is threatened by a revolution (Schmitt meant a Marxist one, but conceptually the ideological content is irrelevant, since any revolution is the death of the sovereign, whether political or physical).

That is, whereas in the Roman sense Homo Sacer is subject to assassination by the citizens, with respect to the sovereign, he is subject to destruction precisely political (which may, but need not, imply physical) on the part of the revolution.

Homo Sacer is outside both human and divine law, making it an exceptional case in the Roman social order. In the context of Schmitt's conception, the sovereign is the one who decides on the state of emergency and is thus outside the ordinary legal order.

In this sense, the sovereign and Homo Sacer occupy opposite but interrelated positions: the sovereign is the one who creates the exceptions, and Homo Sacer is the one who is the exception. However, it is quite clear that by giving itself a monopoly on the power (and even the duty) to make decisions, the sovereign itself becomes the exception. The sovereign has the power to abolish a legal norm or even to change it, without relying on either the Senate or the people, and this is where his exceptionality is manifested.

Within Carl Schmitt's political theology, the sovereign takes on the characteristics of divinity, becoming a figure capable of defining exceptional states and acting outside the ordinary legal order. He has absolute power, including the right to the life and death of his subjects, and in this sense he transcends the ordinary understanding of power and law. This precludes the possibility of his ritual assassination, for the ritual here moves to an entirely different plane - that of political theology.

In other words, the sovereign itself creates the theology in which it sacralizes itself, and in this context there can be no question of killing the sovereign for ritual purposes, because killing God in the name of God himself is nonsense.

Agamben separately examines the status of Homo Sacer in the context of a warrior who dedicated himself to a god (i.e., sacrificed himself in battle by his own decision) but survived (i.e., coincidentally, despite his decision to fall, he did not fall), using the example of the Roman Empire as an example.

The Italian writes: «if a man, who was condemned to the gods, dies, it is considered that all is well; if he does not die, his image (*signum*), seven feet high or more, is buried in the ground and the atoning sacrifice is slaughtered; Roman

magistrates are commanded to step on the place where the image is buried. If a commander wants to condemn himself to death, as Decius did, but does not die, he cannot, without committing sacrilege, sacrifice to the gods neither an animal nor anything else either on his own behalf or on behalf of the state».

That is, in the case of non-sacrifice, an atoning sacrifice, a kind of compensation, is required. And to whom might a sovereign wish to give himself before becoming a sovereign, if in this paradigm the sovereign also becomes God?

In order to answer this question, it is necessary to clarify that, within the framework of this article, the initial premise is as follows: the sovereign is seen as Homo Sacer. Based on the Roman tradition, we can conclude that the sovereign has already condemned himself to death (as it was previously indicated, death here is interpreted metaphorically and does not necessarily imply physical death) earlier, but did not perish and became a sovereign, endowing himself with the attributes of Homo Sacer.

Before becoming a sovereign, the sovereign may devote himself to any other sacralized political concept, and since this tradition from the metaphysical point of view is exclusively eschatological, this may imply a vow to achieve certain political goals and voluntarily resign – a political variant of the metaphor of laying down one's head on the altar of this or that value. However, if the presoverain does not die – does not resign, or does not achieve his goal, he becomes a political Homo Sacer – he begins to face death at the hands of the revolution. Then the state of emergency is decided, the status of Homo Sacer remains, but God is changed – he becomes the sovereign himself.

2.4. Gaddafi and al-Assad as Bare Sovereigns.

Muammar Gaddafi, the leader of Libya from 1969 to 2011, and Bashar al-Assad, the former president of Syria from 2000 to 2024, are compelling examples of sovereigns who, in the context of Agamben's Homo Sacer concept, can be seen as figures outside the normal legal and political order.

Gaddafi came to power in Libya through a military coup in 1969, overthrowing King Idris I. He established an authoritarian regime characterized by the concentration of power in his hands and the suppression of political opposition. Gaddafi proclaimed himself «Brotherly Leader and Leader of the Revolution», emphasizing his exceptional position in Libya's political system.

Similarly, al-Assad inherited power from his father Hafez al-Assad in 2000 and continued to rule Syria as an authoritarian leader. He faced significant challenges to his rule during the Syrian Civil War that began in 2011, but managed to cling to power with the support of Russia and Iran.

In the spirit of Carl Schmitt, both Gaddafi and al-Assad can be seen as sovereigns who decided on the state of exception. Their rule was often accompanied by the imposition of extraordinary measures to quell uprisings and maintain order. They used their power to suspend laws and make decisions that went beyond the normal legal order

Agamben's concept of Homo Sacer describes a figure who can be killed without legal consequences but cannot be sacrificed in a religious sense. The fates of Gaddafi and al-Assad after their respective downfalls illustrate this idea. Gaddafi was captured and killed by rebels in 2011 without a trial, emphasizing his exclusion from the legal order he himself had established.

Similarly, al-Assad was ousted from power in 2024 amidst the collapse of his regime. While he managed to flee the country, his loss of sovereign authority rendered him a kind of «bare life» stripped of political power and legal protection. However, unlike Gaddafi who faced literal physical death, al-Assad faced a metaphorical political death by being forced into exile.

These examples illustrate a complex paradox – while the sovereign order implies severe punishment for attempts to eliminate the sovereign politically or physically, the very idea of the sovereign's death transcends the established order. As the order itself ceases to exist with the sovereign's demise, even contemplating the sovereign's death becomes a transcendent act that cannot be legally codified.

In essence, from the moment they became sovereigns, both Gaddafi and al-Assad implicitly accepted the imminent revolutionary threat to their regimes, the Katechonic «Antichrist» in Schmitt's framework. Their eventual downfalls, whether through literal or metaphorical death, demonstrate how the sovereign, as the one who decides on the exception, is perpetually exposed to the possibility of having the state of exception turned against himself.

Both leaders also drew upon elements of political theology to bolster their rule. Gaddafi promoted a cult of personality around himself and put forward his «Green Book» as a quasi-sacred text that justified his exceptional position. Al-Assad too cultivated a personalistic style of rule and sought to present himself as a protector of Syria's religious minorities.

The trajectories of Gaddafi and al-Assad reveal the paradoxical position of the sovereign who, in deciding on the exception, effectively occupies the liminal space of Homo Sacer – simultaneously inside and outside the legal-political order. Their cases demonstrate how investigating the actual exception is necessary for properly understanding the general concept of sovereignty.

3. Conclusions

The analysis of the intersection between Carl Schmitt's concept of the sovereign and Giorgio Agamben's notion of Homo Sacer reveals a complex and paradoxical relationship between sovereign power, law, and bare life. By deciding on the state of exception, the sovereign effectively places himself in a position analogous to that of Homo Sacer –

simultaneously inside and outside the legal order, wielding power yet exposed to violence.

Thus, the sovereign, like Homo Sacer, is in a position where he may be the object of violence, but that violence is not governed by customary legal norms and rituals.

It follows that the life of the sovereign can be seen as an exceptional case of *nuda vita*, or 'bare life', which is outside the social and legal order, yet remains connected to them through the ontological obligation of the sovereign to make decisions. This emphasizes the idea that the exception explains the general and itself, and that for a proper investigation of the general, it is necessary to investigate the actual exception.

Contemporary examples shed light on the complex dynamics of sovereignty, law, and power in the modern era. They suggest that the sovereign and Homo Sacer are not opposites, but rather two sides of the same coin – figures defined by their ambiguous relationship to the legal-political order.

Moreover, the article has highlighted a profound paradox at the heart of sovereign power: while the sovereign order implies severe consequences for attempts to eliminate the sovereign, the very idea of the sovereign's death transcends the established order, as the order itself ceases to exist with the sovereign's demise. This means that even contemplating the death of the sovereign becomes a transgressive act that cannot be fully codified in law.

In conclusion, by bringing together Schmitt's political theology and Agamben's reflections on bare life, this article has sought to illuminate the hidden bond between sovereign power and the figure of Homo Sacer. It suggests that investigating the exception is crucial for properly understanding the general concept of sovereignty. The fates of Gaddafi and al-Assad, as «bare sovereigns» stripped of their power, reveal the precarious and paradoxical nature of sovereign authority in an age of revolution and upheaval.

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