

BOOK REVIEW

Giorgio Agamben Thrown Down to Earth

The Case of the Ethics of Dutch Epidemic Politics*

Bart Jansen & Johanna Rietveld

Giorgio Agamben, *Where Are We Now? The Epidemic as Politics*, tr. Valeria Dani (London: ERIS, 2021), ISBN 978-1912475-35-3, 112 pp.

Wetenschappelijke Raad voor het Regeringsbeleid (Netherlands Scientific Council for Government Policy) (WRR) and Koninklijke Nederlandse Akademie van Wetenschappen (Royal Netherlands Academy of Arts and Sciences) (KNAW), *COVID-19: Expertvisies op de gevolgen voor samenleving en beleid (COVID-19: Expert views on the implications for society and policy)* (The Hague: WRR/KNAW, 2021), 145 pp.

1 Introduction

Now that the COVID-19 pandemic lies behind us, it is time for an ethical reflection on the politics entangled with it. Various thinkers have already engaged in this discourse during the epidemic. One who perhaps captured the imagination most significantly happens to be someone who has made a profound mark on legal philosophy: Giorgio Agamben. Agamben's *Where Are We Now? The Epidemic as Politics* (2021) is a collection of 21 essays and interviews that put into words the state of exception resulting from the public health crisis in which we find ourselves. He calls these texts 'interventions'.¹

The main theme is the way in which the 'great transformation' in liberal democracies allows for the state of exception to become the new administrative paradigm, the new rule. This process illustrates how crises and emergencies can be used to normalise exceptional measures and undermine democratic principles. The state of exception, then, no longer coincides with a temporary situation of external danger but with the rule itself. Once the state of exception becomes the permanent rule, the 'camp' is the space created.² A characteristic of this camp is that anything is

* We would like to extend our gratitude to the anonymous reviewers whose glosses have greatly contributed to the refinement of this article.

1 Three of Agamben's interventions have already been discussed once pointedly in this journal by Lukas van den Berge, 'Biopolitics and the Coronavirus: Foucault, Agamben, Žižek', *Netherlands Journal of Legal Philosophy* 49, no. 1 (2020): 3-6.

2 Giorgio Agamben, 'What Is a Camp?', in *Means without End: Notes on Politics*, eds. and tr. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), 38.

possible because the camp itself is a state of exception to law, fact, and justice.³ According to Agamben, the camp is our collective political future and the epidemic provides us clues to this future. The epidemic called for an unprecedented curtailment of fundamental rights, all except the right to health care and the right to life. A state can do this independently either by declaring a state of emergency or by invoking regular states of exception in fundamental rights. Agamben describes the camp as the *nomos* and the 'hidden matrix' in our modern society, and the possible terrorist, refugee, and coma patient as our contemporary *homo sacer* – a figure of Roman law who could be killed without legal consequence, embodying a life that is excluded from both human and divine law, and a familiar theme of Agamben's *homo sacer* project since 1995.⁴ In his latest collection, Agamben applies these insights to the current epidemic where, in the name of 'biosecurity', liberal democracy is surrendering to a new despotism, even totalitarianism, and citizens are accepting unprecedented restrictions on their freedoms.⁵ This situation led the philosopher to the title of his collection: *Where are we now?*, as well as the underlying question of how long citizens will continue this state of epidemic politics, an obvious state of exception?⁶

Agamben's critics believe that he trivialised the problem of the epidemic and remains in an abstract critical approach to policy, which never lead to concrete policy alternatives. In addition, the vocabulary he uses is denounced, with rhetoric as: the epidemic is invented, we live in a conspiracy, corona policy is barbaric, science has turned people into vegetative beings, the state has turned into a Nazi camp, Italy is a laboratory, civil war is imminent, and so on. The question we would like to thematise in this article is to what extent Agamben's interventions on the epidemic can be transformed into more concrete, 'down to earth' policy assignments for the Netherlands through a collection of expert views. The Netherlands Scientific Council for Government Policy (WRR) and the Royal Netherlands Academy of Arts and Sciences (KNAW) have asked scientists to write essays about Dutch policy issues in response to the epidemic. Their essays are compiled in *COVID-19: Expertvisies op de gevolgen voor samenleving en beleid (COVID-19: Expert views on the implications for society and policy)* (2021). In both Agamben's collection of essays and the collection of essays published by the WRR and KNAW, three main themes emerge: the epidemic and its relationship to science, society, and politics.

3 Giorgio Agamben, 'Homo Sacer. Sovereign Power and Bare Life', in: *The Omnibus Homo Sacer*, ed. and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 2017), 137-140.

4 In Latin, *sacer* means simultaneously 'holy' and 'accursed'. In this connection, Sigmund Freud's findings concerning the 'Antithetical Meaning of Primal Words', in: *Five Lectures on Psycho-Analysis, Leonardo da Vinci and Other Works*, ed. and tr. James Strachey, (London: The Hogarth Press and the Institute of Psycho-Analysis, 1957), 155-161 are interesting. Freud noted that certain basic words of a language may be used to express contrary meaning.

5 The *homo sacer* as an accursed entity is similar to Hannah Arendt's 'superfluous man' who may be destroyed for the sake of his superfluity, see Hannah Arendt, *The Origins of Totalitarianism* (Cleveland: World Publishing Company, 1962), 457: 'Totalitarianism strives not toward despotic rule over men, but toward a system in which men are superfluous.'

6 Giorgio Agamben, *Where Are We Now? The Epidemic as Politics*, tr. Valeria Dani (London: ERIS, 2021), 7-10.

2 Epidemic and Science

According to Michel Foucault, there are three types of policies to deal with epidemics. First, the medieval leprosy policy. Leprosy was seen as punishment from God because the leper had turned away from God; the state's response was banishment, isolation, and exclusion of the sick.⁷ Second, the plague policy in the early modern period consisted of disciplinary mechanisms, control networks, and the surveillance and confinement of plague sufferers. Third, the smallpox policy of the late eighteenth century led to the first vaccination measures, immunity strategies, statistical surveys, and risk assessments.⁸ Alongside quarantine, this third policy was an example of liberal 'governmentality' for Foucault – a compound of governmentality and rationality. It denotes the technologies and self-consciousness by which a policy regime governs and the rationality with which a governing regime legitimises itself; thus, involving both the exercise of and reflection on a political power. Foucault linked this governmentality to the question of how open environments could be governed and regulated through the creation of medical campaigns, data collection, and statistics.

Agamben's latest work about COVID-19 can be read as an update of Foucault's work about epidemic politics. There have been at least two similar epidemics to COVID-19 in the past: the Black Death in the fourteenth century and the influenza epidemic of 1918, better known as the 'Spanish flu'. These are similar epidemics in the sense that they are major outbreaks of infectious diseases that had significant global impacts. While the death tolls of the Black Death and the Spanish flu were incomparably larger than COVID-19, all three epidemics prompted substantial societal responses and measures by states to mitigate their spread and impact. Despite COVID-19's lower death toll in comparison to historical epidemics, the severity of the measures enacted globally reflects ongoing concerns about its potential effects and the precautionary approach taken by governments to manage its spread and consequences. The Black Death resulted in the death of a 25-50% of the European population. The global death toll of the Spanish flu is estimated at 30 to 100 million people. In comparison, the death toll of COVID-19 is still much lower with 5-6 million people (December 2021).⁹ Despite this relatively low death toll, the measures enacted by states worldwide are much more severe.

Agamben's essays and interviews on the COVID-19 pandemic and policy are, as we mentioned in the introduction, controversial. One of the larger stones of contention for his colleagues, such as Jean-Luc Nancy and Benjamin Bratton, is the following

- 7 Michel Foucault, *History of Madness*, ed. Jean Khalfa, tr. Jonathan Murphy and Jean Khalfa (London: Routledge, 2006), 3-8, 355-358.
- 8 Michel Foucault, 'Lecture 1: 11 January 1978', in *Security, Territory, Population: Lectures at the Collège de France 1977-1978*, eds. Michel Senellart, François Ewald, and Alessandro Fontana, tr. Graham Burchell (Basingstoke: Palgrave Macmillan, 2009), 1-23.
- 9 Maarten Prak, 'Gevolgen van crises. Een historisch perspectief' ('Consequences of crises. A historical perspective'), in eds. WRR and KNAW, *COVID-19: Expertvisies op de gevolgen voor samenleving en beleid (COVID-19: Expert views on the implications for society and policy)* (The Hague: WRR/KNAW, 2021), 9, 8.

initial proposition: the ‘invention’ of the epidemic provided a new basis for the state of exception after the exhausted threat of terrorism.¹⁰ In both cases the media and authorities provoked a state of exception, with severe freedom limitations and a suspension of normal living and working conditions, whilst, according to Agamben, there is little going on:

“In order to make sense of the frantic, irrational, and absolutely unwarranted emergency measures adopted for a supposed epidemic of coronavirus, we must begin from the declaration of the Italian National Research Council (NRC), according to which ‘there is no SARS-CoV2 epidemic in Italy’ and ‘the infection, according to the epidemiological data available as of today and based on tens of thousands of cases, causes light/moderate symptoms (a variant of flu) in 80-90% of cases. In 10-15%, there is a chance of pneumonia, but which also has a benign outcome in the large majority of cases. We estimate that only 4% of patients require intensive therapy.’ (11)”

Infection as the basis for the state of exception makes every person a potential infectee, just as terrorism as the basis for the state of exception makes every person a potential victim of terrorism.¹¹ According to Agamben, the decay of human relationships and the state-implemented restrictions on freedom are much worse now than during the wave of terrorism (14-6). The lockdown, the closed schools, the curfew, the one-and-a-half-meter distance rule, they have all had a strong effect on us and our relationships. The question, however, is whether these relationships have really changed drastically and if this is a lasting change. Although this period will of course be etched in everyone’s memory, the negative effects in the medium and long term do not seem to be equally strong for everyone. Historians who have compared major disasters make a distinction between the generic effects and redistributive effects of a disaster. According to Maarten Prak, in the long run, the social impacts of wars and pandemics defy easy categorisation. While these crises will remain deeply etched in the memories of those who lost their lives and their loved ones, the negative effects on medium and long-term scales appear relatively muted for others. The increased demand for mental health support during the current pandemic may persist even after the disease itself is brought under control. Major events such as the Great Depression and World War II brought about significant changes, driven in part by a widely held belief that fundamental alterations were imperative. The subsequent economic prosperity that ensued also

10 Jean-Luc Nancy, ‘A Viral Exception’, in *Coronavirus, Psychoanalysis, and Philosophy: Conversations on Pandemics, Politics, and Society*, eds. Fernando Castrillón and Thomas Marchevsky (London: Routledge, 2021), 27; Benjamin H. Bratton, ‘Agamben, Having Been Lost’, in *The Revenge of the Real: Politics for a Post-Pandemic World* (London: Verso, 2021), 112.

11 The concept of ‘potentiality’ has been an important theme in Agamben’s work from the outset, see for example his essay on the expression ‘I prefer not to’ in Herman Melville’s *Bartleby, the Scrivener: A Story of Wall Street* (1853): Giorgio Agamben, ‘Bartleby, or On Contingency’, in *Potentialities: Collected Essays in Philosophy*, ed. and tr. Daniel Heller-Roazen, (Stanford: Stanford University Press, 1999), 243-271.

facilitated these transformations, a relationship that remains complex and contested.¹²

According to Agamben, the decay of human relations is not an immediate consequence of the 'epidemic as politics'. Rather, this decay can be traced back to the historical separation, dating back to Antiquity, between the state's definition of life on a purely biological, animal level ('naked' or 'bare' life, *zoe*), and the cultural and political dimensions of life (*bios*). The state regards life as a *zoe* and reserves for itself the ability to transform it into a *bios*. State sovereignty thus determines who is 'human' with full citizen rights and who is limited to life as a *zoe*. This separation is borne by science, specifically by a science where there is little room for dogmatism, and pragmatism is the norm, particularly evident in disciplines such as medicine where bare life is the immediate object of study and practice.¹³ For it is medicine that has made it possible to keep bare life alive in a vegetative state (34-7). For physicians, disease is what must be fought. However, the goal of that fight is not the health of political and cultural life, but the healing of bare life, i.e., the bodies that make up the population (50). The same emphasis on bare life over cultural life has been implemented by states during the COVID-19 pandemic with immunity as a prime goal instead of the rehabilitation of social and cultural life.¹⁴ Within the framework of 'epidemic as politics', it was anticipated that immunity would increase through repeated vaccinations and natural infections. However, due to viral mutations, it was also anticipated that vaccination policies would not lead to eradication. Microbiologist Roel Coutinho outlined scenarios wherein significant immunity could be built up within five years through natural infections and high vaccination coverage in the most optimistic scenario. Conversely, viral changes could render prior infections and vaccinations nearly ineffective, potentially resulting in significantly higher annual infection peaks in the most pessimistic scenario.¹⁵

12 Prak, 'Gevolgen van crises', in: WRR and KNAW, *COVID-19*, 13.

13 Roberto Esposito argues in his *Immunitas: The Protection and Negation of Life*, tr. Zakiya Hanafi (Cambridge and Malden: Polity Press, 2011), 121 that the 'point of intersection between political knowledge and medical knowledge is the common problem of preserving the body'.

14 Biological immunity is here contrasted with sociocultural life, whereas for Peter Sloterdijk immunity, in addition to biological, also inescapably embraces sociocultural life as he points out in his *Spheres* trilogy, Volume I *Bubbles – Microspherology*, II *Globes – Macrospherology*, and III *Foams – Plural Spherology*, tr. Wieland Hoban (Los Angeles: Semiotext(e), 2011, 2014, and 2016), *passim*, and in his more recently published work *You Must Change Your Life: On Anthropotechnics*, tr. Wieland Hoban (Cambridge, UK: Polity Press, 2013), 449: 'While biological immunity applies to the level of the individual organism, [...] social immune systems concern the supra-organismic, that is to say the co-operative, transactional, convivial dimensions of human existence: the solidaristic system guarantees legal security, provision for existence and feelings of kinship beyond one's own family; the symbolic system provides security of worldview, compensation for the certainty of death, and cross-generational constancy of norms.'

15 Roel Coutinho, 'COVID-19. Wat gaat de toekomst ons brengen' ['COVID-19. What will the future bring us'], in WRR and KNAW, *COVID-19*, 16-17.

3 Science and Society

The usual strategy of scientists is to mimic reality in a laboratory. There, useful signals and phenomena are separated from noise and contamination to facilitate investigation. For a scientific claim to truth, the results, however, also need validity outside the laboratory.¹⁶ This is where applied ‘citizen science’ comes in: an approach to scientific research in which citizens play an active role. Thanks to the cooperation of citizen volunteers, scientists have more data to analyse and can produce knowledge in a shorter amount of time.¹⁷ By including citizens in the scientific process, the entire society is transformed into a living lab. This democratic approach to science can, however, easily shift and become a tool for oppression, as the line between citizen scientist and citizen lab rat is very thin. Initially, volunteers were perceived as citizen scientists contributing to public health research. However, if not meticulously managed, this engagement can raise concerns regarding informed consent, the risk of exploitation, and the ethical boundaries between voluntary participation and inadvertent coercion.

This dynamic underscores how democratic approaches in scientific endeavours may blur into scenarios where individuals might feel compelled to participate, potentially leading to unintended consequences or ethical quandaries. Agamben believes that the replacement of democracy by science has dangerous consequences as physicians and scientists are burdened with decisions that ultimately involve social and political implications. In this manner, the epidemic immediately becomes political, not only because the second part of the word *epidemios* comes from *demos* (44). What happens when such a phenomenon is ‘upon’, *epi*, the *demos*? Agamben points out that Italy has been such a laboratory from the late 1960s onwards as a reaction to terrorism. The same governmental techniques developed in reaction to terrorism are now being implemented against the epidemic (59).

In this society, the citizen does not have a right to health, but is obliged to it by law: from ‘health safety’ to ‘biosecurity’ (55-56). The promised health rights do not offer the opportunity for individual uncoerced choices but are state powers subjected to the interests of antagonist groups, i.e., those who resist or question the imposition of stringent health policies and biosecurity measures that they perceive as infringing on individual liberties and rights.¹⁸ According to Agamben, bare life became a belief in itself in (Italian) society, as the entire population was willing to sacrifice everything in order to avoid getting sick during the first COVID-19 wave. People sacrificed normal living conditions and human relationships, in work, friendship, love, and their religious and political beliefs (17). The dying died alone, the dead were buried or cremated alone – this had never

16 See Bruno Latour and Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts* (Princeton: Princeton University Press, 1986), 105-150, 187-234.

17 Barend van der Meulen, ‘Burgerwetenschap. De rol van burgers in kennis voor beleid’ [‘Citizen science. The role of citizens in knowledge for policy’], in WRR and KNAW, *COVID-19*, 86-89.

18 Thomas S. Szasz, *The Theology of Medicine: The Political-Philosophical Foundations of Medical Ethics* (NYC: Harper Colophon, 1977), 117.

happened since Antigone, according to Agamben. Just as with the war against terrorism, Agamben wonders how any society could have accepted all these limitations on the basis of a risk that was impossible to determine.

Agamben's critique highlights the profound societal and personal sacrifices borne during moments of crisis. However, it is imperative to recognise that these measures often responded to immediate and uncertain threats to public health. Many saw the constraints and regulations, though onerous, as indispensable for curtailing the potential spread of a highly contagious virus, shielding vulnerable populations, and alleviating strain on healthcare systems. Drawing parallels to the war on terrorism raises legitimate concerns regarding the delicate balance between security imperatives and civil liberties. Yet, within the context of a global pandemic, prioritising public health was widely perceived as crucial for safeguarding communities worldwide, even amidst initial challenges in quantifying exact risks.

The focus on bare life can be viewed not only through an individual lens but also through a collective one. This perspective aligns with envisioning a robust role for the state in addressing cognitive and socio-economic damages post-pandemic, as detailed in the paragraph's final sentences. The difference between individual self-determination and assumed collective self-determination becomes apparent in dealing with social norms and directives from the state.

Agamben noted this polarisation in Italian society, which parallels dynamics observed in the Netherlands. This division is starkly evident in the disparity in vaccination readiness: individuals with lower education, income, and non-Western migration backgrounds are notably less inclined to get vaccinated compared to their counterparts with higher education, income, and no migration background. Sociologist Godfried Engbersen highlights that this gap is particularly pronounced in Rotterdam-Zuid, where vulnerable groups faced heightened infection risks due to their work and living conditions.¹⁹ The consequences of this divide are especially profound for younger generations, who have experienced disruptions in education and social integration during the pandemic. The upcoming years will be critical for addressing the cognitive and socio-economic fallout. Addressing social deprivation effectively necessitates a proactive state approach that bolsters economic security, invests in education, enhances labour market opportunities, and improves housing quality. Such measures aim to rebuild trust among groups directly impacted by the epidemic's socio-economic and medical consequences, fostering support for future policies.²⁰

19 Godfried Engbersen, 'Parallele werelden. COVID-19 als contravloeiend – over oude en nieuwe ongelijkheden' ['Parallel worlds. COVID-19 as a counterfluid – on old and new inequalities'], in WRR and KNAW, *COVID-19*, 54-55.

20 Engbersen, 'Parallele werelden', 56.

4 Society and Politics

Concern for human health is currently very prominent on most political agendas, which sounds attractive at first but political concern for a healthy life also opens doors to serious risks. Indeed, biopolitics tends to run fatally into thanatopolitics, as Foucault described it:

“[T]he state has essentially to take care of men as a population. It wields its power over living beings as living beings, and its politics, therefore, has to be biopolitics. Since the population is nothing more than what the state takes care of for its own sake, of course, the state is entitled to slaughter it, if necessary. So the reverse of biopolitics is thanatopolitics.”²¹

Over the past decades we have witnessed an increasing residential and educational segregation. This segregation is accompanied by persistent health differences: the (healthy) life expectancy of the lower educated is almost fifteen years shorter than that of the higher educated. As noted in the previous section, the groups with little social capital also have a greater distrust of the state and feel more disrespected by politicians.

These socioeconomic health disparities were exacerbated during the COVID-19 outbreak. Statistics Netherlands (CBS) calculated that mortality from COVID-19 in the first months after the virus outbreak was twice as high for the lowest-income group than for the highest-income group.²² The biopolitics of group immunity has turned into a thanatopolitics in which the lowest-income groups (and people in nursing homes or awaiting crucial medical treatment) have been ‘written off’, in accounting terms.²³ Agamben argues that the more the state approaches its citizens as assets to be cared for and improved, the higher the risk of these lives becoming a life not worth living, a ‘lebensunwerten Leben’.²⁴ Just as state and life must remain separate, Agamben argues that state and the technological approach of medicine must remain separate.

As has become clear during the current epidemic, medical grounds have provided the ideal excuse for an unlimited technological control over social life – the QR code is an example (80-81). Digital technology is becoming increasingly crucial to our social and economic functioning and with this, the influence of Big Tech continues to grow along with the corporal, political, and individual trust in data.

21 Michel Foucault, ‘The Political Technology of Individuals’, in *Technologies of the Self: A Seminar with Michel Foucault*, eds. Luther H. Martin, Huck Gutman and Patrick H. Hutton (University of Massachusetts Press, 1988), 160.

22 Engbersen, ‘Parallele werelden’, 53-54.

23 Achille Mbembe, one of the great contemporary thinkers within the study of postcolonialism, also argued that various forms of life today are subjugated to the power of death and that the Foucauldian notion of biopower is insufficient to account for contemporary forms of the subjugation of life to the power of death, see Achille Mbembe, *Necropolitics*, tr. Steven Corcoran (Durham: Duke University Press, 2019), 66-92.

24 Agamben, ‘Homo Sacer’, 113-114.

We live in a society where surveillance, analysis, and the influencing of behaviour, e.g., ‘nudging’, happens on a very large scale. For years the dominant idea among scientists, entrepreneurs, and politicians was that technological progress would automatically lead to social progress. However, recent scandals have sobered us from this digital euphoria. For instance, Edward Snowden revealed the lengths states would go to collect data. The way politicians have shaped digitisation over the past two decades is now putting democracy to the test.²⁵ The COVID-19 pandemic acted as an accelerator for digitisation, as the fight against the epidemic became largely a technocratic process aimed at achieving the state’s objectives of efficiency, data-driven decision-making, standardisation, communication enhancement, and adaptability. The experts were in charge, the administrators listened, and the members of parliament and citizens were in the role of listeners.²⁶

However, this digitisation happened along the old lines of Web 2.0, further straining public values, such as privacy, security, and autonomy.²⁷ Agamben’s idea is confirmed in the policy challenges observed by technologists Rinie van Est and Linda Kool. Among their most generic policy challenges is the encouragement of valuable digitisation, specifically through the influence of Big Tech, and stand-reserving the benefits of digitisation, in the hopes that the digital will play a weighty and ‘corporate socially responsible’ role in the lead to the next epidemic.²⁸ For Agamben, the only possible policy challenge now is a wholesale assault on sovereignty itself. He argues that it is difficult to determine whether today’s Europe is a democracy that is taking on increasingly despotic forms or a despotism that masquerades as a democracy (59-71). A degeneration into violent despotism seems the logical consequence, as the current state of ‘health terror’ is permanently solidifying the sovereign state of exception in time and space.

Agamben’s critique explores the transition from the Weimar Republic to Nazi Germany, revealing sovereignty’s inherent violence and its capacity for extreme dehumanisation. This perspective, rooted in Agamben’s *Homo Sacer* project, argues that sovereign power, unchecked, can culminate in atrocities such as Auschwitz. However, critics like Žižek challenge Agamben’s analysis. In his post-9/11 essay ‘From Homo Sucker to Homo Sacer’ (2002), Žižek questions Agamben’s framework, suggesting that it oversimplifies complex historical and political dynamics. Žižek’s critique centres on the reductionist implications of Agamben’s ‘state of exception’

25 Rinie van Est and Linda Kool, ‘Digitalisering. De coronapandemie en de noodzaak van waardevol digitaliseren’ [‘Digitization. The corona pandemic and the need for valuable digitization’], in WRR and KNAW, *COVID-19*, 80-81.

26 Jerfi Uzman, ‘Rechtsstaat. De Pandemie voorbij: onze democratische rechtsstaat na COVID-19’ [‘Liberal state. Beyond the Pandemic: our liberal democracy after COVID-19’], in WRR and KNAW, *COVID-19*, 105.

27 Web 2.0 is our current version of the World Wide Web (WWW), it is centralised and dominated by large companies that provide services in exchange for personal data. The next version, Web 3.0 is a decentralised model, built on community values where anyone on the network has permission to use the service. This Web 3.0 could be the new digital paradigm in which a democratic approach to digitalisation becomes plausible.

28 Van Est and Kool, ‘Digitalisering’, in WRR and KNAW, *COVID-19*, 83-84.

thesis, arguing that it neglects broader socio-political contexts and the complexities of power dynamics within modern states:

“The problem with Agamben’s deployment of the notion of *Homo sacer*, however, is that it is inscribed into the line of Adorno and Horkheimer’s ‘dialectics of Enlightenment’, or Michel Foucault’s disciplinary power and biopower: the topics of human rights, democracy, rule of law, and so on, are ultimately reduced to a deceptive mask for the disciplinary mechanisms of ‘biopower’ whose ultimate expression is the twentieth-century concentration camps.”²⁹

The Dutch state chose to curtail fundamental rights through emergency ordinances. Even though parliament was still functional, it played no significant role in crisis management, which relied on a regional approach. These emergency ordinances were adopted by non-democratically elected security councils, and it was not until the end of 2020 that the COVID-19 measures were finally given a legal basis through parliamentary approval. In this sense, the Netherlands was governed for eight months on the basis of undemocratic emergency ordinances that were invariably legitimised by ‘necessity breaks the law’, *necessitas non habet lege*. This was a violation of the legitimacy of the law and the trust of citizens.³⁰ The fact that policymakers brushed aside the legal options of the state of emergency and states of exception in fundamental rights opens the door to a culture where violations of fundamental rights become the new ‘doctrine’ – though it must be acknowledged that this may be temporarily inherent in every pandemic.³¹ The concept of sovereignty explains the nature of every legal order, i.e., the exception defines the general rule.³² Agamben applies this to the state of exception, defining it as the inclusion of the right to life in the exception, simultaneously included and excluded in the legal order. Biopolitics is thus a continuation of sovereignty, as is shown by the increasing reliance of governments worldwide on the state of exception.

A second argument supporting Agamben’s camp thesis posits that bare life is increasingly becoming the fate for substantial segments of society. The Nazi camp exemplified a place where individuals were reduced to a state resembling vegetative existence, devoid of their human face. The face is the channel for expression, allowing for language and facial expressions to communicate and expose oneself to others. By speaking, man enters the realm of signification, where no figure or

29 S. Žižek, ‘From *Homo Sucker* to *Homo Sacer*’, in *Welcome to the Desert of the Real: Five Essays on September 11 and Related Dates* (London and NYC: Verso, 2002), 95. See also another contribution in the same volume: ‘From *Homo Sacer* to the Neighbour’, 112-34.

30 Barbara Oomen, ‘Mensenrechten. De staat van de democratische rechtsstaat’ [‘Human rights. The state of liberal democracy’], in WRR and KNAW, *COVID-19*, 100.

31 Uzman, ‘Rechtsstaat’, 104.

32 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, tr. George Schwab, fw. Tracy B. Strong (Chicago and London: The University of Chicago Press, 1985), 15. Schmitt cites Kierkegaard: ‘The exception explains the general and itself.’ See Søren A. Kierkegaard, *Repetition: An Essay in Experimental Psychology*, tr. Walter Lowrie (Princeton: Princeton University Press, 1946), 153.

parameter can hold them – it gives the possibility of resistance and the option to hold on to their own humanity. The speaking face is the site of politics and by masking or limiting this, one destroys the human political dimension. Agamben sees the depoliticisation of policy symbolised in the mouth mask requirement that makes speaking difficult and hides the face of the speaker. Where the face mask possibly inspires confidence for some,³³ Agamben sees the mask as a symbol for an ‘empty space’ that can be subjected to limitless control at any moment (86-87). This concept of ‘empty space’ (volkloser Rau) comes from Hitler. According to Agamben, Hitler did not mean by this term a desert or other geographical space without inhabitants. He was concerned with a fundamental biopolitical intensity that can persist in any space and aims to make all life bare. ‘Empty space’ names the driving force of the camp as a biopolitical machine that transforms geographical space into an absolute biopolitical space. In it, human life is transformed and limited to a biopolitical identity.³⁴ In short, the horrors of Auschwitz are always ready to reappear in our lives, according to the Italian philosopher. While concerns regarding facial expressions and political symbolism are valid, the connection to face masks and depoliticisation, in our view, overlooks the diverse interpretations of public health measures and the resilience of modern societies against totalitarianism.

5 Reflection

The appeal of Agamben’s overall oeuvre is his ceaseless attempt to free ‘life’ from ‘law’. Briefly, he does this because where law gets a grip on life, it also gets a grip on death: *vitae necisque potestas*. In *Where Are We Now?* Agamben undertakes this attempt 21 times – in more or less successful pieces. We read these pieces as a sincere *cri du coeur* from a man who never saw his theories put to practice to such an extent: his previously hidden ‘hidden matrix’ arrived in the unconcealed, i.e., it became openly visible and evident in the real world. As much as we sympathise with Agamben’s work in general, in this volume he seemed a little too eager to put his theory into practice. The critique on Agamben’s work is that it limits itself primarily to abstract sinister reflections that the reader may be invited to interpret as concrete ‘interventions’, as he calls his texts himself.

In our article, the aim was to throw Agamben down to earth by subjecting his interventions to the *adequate* expertise of scientists. However, when his reflections are translated into concrete, policy-like measures, they lose the allure and seductiveness inherent in his political theory, revealing the difficulty in distilling tangible actions from Agamben’s ideas. Nevertheless, in our best findings, a philosopher does not need to come up with policy briefs or solutions to social

33 See, for example, the excerpt on whether or not to wear the face mask in Albert Camus, *The Plague*, tr. Stuart Gilbert (NYC: Vintage, 1991), 173: ‘The journalist asked if it was really any use. Tarrou said no, but it inspired confidence in others.’

34 Giorgio Agamben, ‘Remnants of Auschwitz. The Witness and the Archive’, in *Omnibus Homo Sacer*, 818.

problems, and ethics is not necessarily a 'force for good'. Ethics does not have to be the pathfinder for ethical policies, nor does ethics have to judge whether policies are ethical, in the sense of good or evil. On the contrary, a philosopher and an ethicist must maintain an open attitude that lends itself to philosophical analysis. More than that, ethics is supposed to insert the needle under the skin and point out where evil is to be found in well-intentioned policies.

In addition, Agamben's interventions lead to a more pessimistic denouement than the expert visions of the WRR and KNAW. The lockdown and curfew were presented by Agamben as measures that would last as long as possible, but in practice it was clear to everyone, at least in the Netherlands, that this was an *ultimum remedium* and would be abolished as quickly as possible. Moreover, there are plenty of voices that believe that the lockdown and the curfew even came too late and lasted far too short. His old friend, Nancy stated that:

“... in Europe, the dillydallying, the skepticism and the hardheadedness are more prevalent than in many other places. This is our 'reasoning reason' legacy, libertine and libertarian; in other words, the legacy we, old Europeans, considered the very life of the mind.”³⁵

Furthermore, Agamben, who is best known for his work on the relationship between state and citizen, fails to apply this analysis to the epidemic and the relationships between corporation, state, and citizen. He discusses the state's medical and digital interventions but leaves behind the role of the big corporations that actually produce these measures, e.g., vaccinations and QR codes. In reality, the size of corporations – Big Pharma, Big Tech, etc. – leads them to behave increasingly as sovereign states through new fields of power and private regulation, i.e., 'corporate sovereignty'.³⁶ With this omission, Agamben not only obscures the crucial role of this new form of sovereignty in shaping public life, but also neglects the emerging reality in which corporations, through their control over essential infrastructures and technologies, exercise sovereign-like authority over individuals and societies.

35 Jean-Luc Nancy, 'A Much Too Human Virus', in *Coronavirus, Psychoanalysis, and Philosophy*, 27.

36 Bart Jansen, 'Political Theology in Business Ethics: Corporate Sovereignty According to Carl Schmitt', *Jus Cogens: A Critical Journal of Philosophy of Law and Politics* (2024). <https://doi.org/10.1007/s42439-024-00094-3>