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The werewolf before the door of the law: Considerations on *bando* and language in the thought of Agamben

Abstract: For Agamben, the situation of sovereignty resembles the event of language in that both are affected by the state of exception. This essay thus seeks to investigate the incidence of the state of exception in language and how through language, man, or rather the humanity of man, is called into question. The conclusion appears to be a warning so that the dehumanization that occurred in Auschwitz does not occur again, as it is in the field of possibilities of man.

Keywords: Agamben, *Bando*, State of exception, Language

In a passage of *The Trial*, Franz Kafka (2015) describes a scene where a peasant arrives in front of an open door protected by a guard who tells him he cannot enter. The peasant wishes to enter; therefore, he waits. He does not confront the guard, nor does he attempt to violate the injunction; he merely waits for a release that never materializes, although the door is always open. No one else approaches to pass through the door, and they stay there, just him and the guard, before the open door. At the end of his life, at the last moment, the peasant asks the guard why no one, except him, has ever attempted to pass through the door, and he learns that the door was created just for him.

Giorgio Agamben (1995) uses this scene to note that the peasant's situation before the door of the law is a situation of abandonment – a situation that in Latin, *bando*, suggests that the man is abandoned before a law that exists but has no meaning, a pure law that does not prescribe anything, a law that merely abandons. Kafka's text, from this perspective, reveals that man is handed over to the *bando*, that is, to the power of the law that prevents him from entering, to the pure form of the law, which is that the law is stronger, as it does not provide for anything, it only exists as enunciation.

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This situation of *bando* explains the state of exception suggested by Agamben. In technical legal terms, this exception is the suspension of the entire legal system, which is made possible by a rule within the legal system – a rule that suspends what the system itself has prescribed, revealing an inside and an outside, in a relationship that includes something through exclusion. Hence, it is through the *bando* that Agamben conceives the sovereign exception scheme in which the law is applied by not being applied, keeping itself out of itself, in its *bando*, that is, the *bando* reveals two features of the sovereign exception: the first is a blur between legal and outlaw; the second is that the law exists without law, i.e., with no form of law.

Agamben's interpretation (2003) of Kafka's text also suggests that the peasant is not a loser, someone who lost his life before the law, because the text does not say that the peasant died waiting to walk through the door but as someone who actually wanted the closure of the law. We can imagine that he hoped the law would no longer be in effect in its exception so that another law could arise, or perhaps that this situation was not a state of exception.

The state of exception, in legal discourse, is a legal form of that which cannot have a legal form, and it is in this sense that Agamben can include life, which is unpredictable, in the sphere of law. At the same time, by including life, the political issue is placed into question because the state of exception is a situation in which is at stake the difference between political and legal, between the law and the living. Before this situation, Agamben (2003) seeks to understand what it means to act politically.

We must recall that the text guiding Agamben's answer to this question is Walter Benjamin's *On the Concept of History*, written in 1942, in which the German philosopher argues that the state of exception has become the rule. From this affirmation, Agamben (2003) claims that the state of exception reveals not only a government technique but a constitutive paradigm of the legal order that demonstrates its actuality in several contemporary events where the legal safety device has become the rule, as in Guantanamo and in the US after the September 11 attacks.

Another example provided by Agamben (2003) is the case of emergency decrees, which are common in Italy. In such cases, the executive exercises the atypical role of legislating. A similar situation arises in Brazil through the use of the provisional measure, which has replaced the decree of law in the 1988 Constitution. The provisional measure largely allows the executive to perform the legislative function. The emergence of the executive in the field of the legislative is merely a demonstration of what to Agamben is a larger problem because it is possible to consider the state of exception in a broader context, in the applicability of law as a zone of indifference, in

which there is neither inside nor outside the legal system, only a threshold where inside and outside exclude each other.

However, what is paradigmatic in the state of exception is the relationship between the law and the living. In the eyes of Agamben, the ultimate goal of politics is, in an undisguised way, the management of life. Through the idea of exception, Agamben seeks to answer the question of how life inhabits the polis through the understanding that man is not only a social being but also a being of language. Just as man can be banned from the polis, he can be banished from language: man is a being of language that may not have language, precisely because the non-word can occur.

Agamben (2016) recognizes that what distinguishes men from animals is not that the former have language while the latter do not but that man is the animal that is conscious that he has language and tongue, that he can use his tongue as an object and create a division between subject and speech because through the tongue, man performs a speech act, that is, man turns the use of language and its interpretation into an event.

From this notion, we can say that there are states in which the life of the citizen who inhabits the polis is a bare life, that is, a life treated by politics as purely biological, without human or animal attributes, removed from human language, and therefore that can be killed.

The *Homo sacer* is the paradigm par excellence of contemporary politics explaining the bare life, according to Agamben (1995). It is a term from classical Roman law that takes the form of a speech act consecrating a subject and then abandoning him, keeping him apart from other men. It does not mean that the subject is being punished in a technical legal sense. However, because he partakes neither of the human, nor of the animal, nor of the divine, the *Homo sacer* can be killed. In other words, this is a borderline case in which this “undetermined” being can be killed without committing a crime. The *Homo sacer* is not condemned but abandoned by the law. He thus becomes a victim of his destiny without any legal or religious sphere to protect him.

By suspending a man’s rights, by abandoning him to his own destiny, the Roman State creates a state of exception of the law itself. In other words, there are cases in which the law itself announces when it is no longer valid. For Agamben, the paradigm appears to be an inconsistency: it is the establishment of a case that suspends what made it possible – a state of exception. The *Homo sacer* is thus left on his own; he is taken from his “social being” and left in his bare life.

From that point, following in the footsteps of Michel Foucault, Agamben (2008b) is able to rethink what we traditionally consider as law, state, and sovereignty, for example. These are no longer considered based on the notion of a law that can be defined in all its aspects and without something outside of it but on the notion of a law in relation to what is

exterior to it and at the same time constitutes it. This is exactly how Agamben understands the term abandonment in relation to the universal themes of law, state, and sovereignty – they are thereafter understood based on a model in which power penetrates the bodies and the rules in our forms-of-life.

The term *form-of-life* employed here refers to how Agamben understands the life that cannot be separated from the way the living being lives.

Therefore, if it is true that power penetrates the bodies and rules in our forms-of-life, then every life is an example and not the rule – each case, each singularity, reveals power in some way. From singularity to singularity, power is revealed in its exception – an exception that reveals what was hidden in power. Thus, we understand why the *Homo sacer* represents a paradigm for Agamben (2008b): this case uncovers a form-of-life that has become the rule, as is suggested more radically by Benjamin (“the rule is the exception”). It is a case that reveals how politics became biopolitics, in which different forms-of-life became simply lives.

If the case has become the rule, Agamben (1995) can state that the *Homo sacer* is the original political relationship, and the sacredness that justifies this state of exception is the form of implication of the bare life in the legal-political order. However, even if it is not a punishment in a strict sense, is banishing a man from his own social world not a form of violence?

Agamben (2008a) states that a man is designated *Homo sacer* when he breaks the oath of peace between men and gods. By breaking this oath, man breaks with his human order and passes into an order of indeterminacy. Breaking an oath does not lead man to punishment because it was not exactly a crime that was committed; instead, it is an act that begets a *curse*.

In the relationship of dehumanization suffered by the *Homo sacer* with regard to language, man is only abandoned from his condition of living being to become a bare life through a speech act in the form of a curse.

Language is not a divine creation or a human invention, as Agamben (2016) demonstrates, it is a means by which man humanizes himself dividing life and language so that both are articulated.

With the gods as witnesses, the act of breaking an oath, this speech act, as Agamben (2008a) understands it, becomes an event. This event, this act that is established by language in the breach of an oath, is what makes the curse possible. This curse means that the oath breaker is no longer human, as he is no longer in the domain of those that keep the oath, nor divine, as he is not welcomed by the gods as their equal, nor animal, for he does not participate in the human language, neither vowing to nor blaspheming the gods. With the gods as witnesses, in the speech act, man curses himself and enters a zone of indeterminacy.

Vowing, in this case, is an act that announces the possibility of its own exception – it announces the possibility that a man’s speech does not

correspond with his action. If a person makes a vow but does not fulfil it, this person not only loses his dignity as a man but also announces his curse – through his own speech act, he places himself in the possibility of excluding what is essential to him. The oath is, therefore, the essential possibility of man becoming non-human – a possibility that speech itself can announce the exclusion of man from language, from the human realm. In this perspective, language, the speech act, has the same structure as the state of exception created by the Romans: it is within the law itself that the possibility lies of law no longer being valid.

With the oath, curse becomes possible. Consequently, it is language, that which makes us human, the speech act, the possibility of blasphemy, that makes room for the existence of a non-language, a non-human. Thus, the curse is not what justifies the oath but that which is opened as a constitutive possibility of the very act of vowing.

In this case, Agamben (2008a) is using language as performance, that is, there are acts that establish new states of affairs. Through the act of vowing, the state of affairs that was in effect becomes another state of affairs. What is in effect can be abandoned in a speech act – such as blasphemy, for example. From that moment on, what existed ceases to be in place. When he is declared a *Homo sacer*, man ceases to be a man – and that which was valid is abandoned.

What is striking in this performative speech act is man's ability to become non-human by announcing what suspends his humanity. In addition, language, because it can be performative, can be violent. Even as it establishes a union between two people, it can break the humanity of man – the pledge of peace between men and gods. Man is essentially a language being, and it is exactly this language that can break his essence. In other words, man is a being who places his own life in danger with the act of fulfilling what is essential to him: to speak.

Furthermore, for man, there is also the possibility of becoming an exception, a *Homo sacer*, where the non-possibility of talking is what justifies its exception. Agamben (1998) uses as an example the case of Auschwitz, where men became non-human. In this case, they lost their humanity not by an act of their own speech but because they were dehumanized and because their life became a bare life by the very fact of having been removed from their humanity, from their conviviality with other men, and because they were placed in a situation outside the human, without a motherland, without any identity with a State.

That is what Agamben (1998) identifies as the *Muselmann*, or rather the non-man, as people used to designate those beings who subsisted in concentration camps without any possibility of being identified with what we call human. A man who has lost his language, released to the world as object, this *Muselmann* wanders, even if he has not voiced any blasphemy,

without word, without the ability to participate in the communicative act. These living-dead bear witness to the possibility of the human announcing to others his capacity to no longer be human, namely, the possibility of having in the voice of someone else the state of exception as a possibility of being that which is not but that the evocation of the voice echoes as an event...

How can man no longer be human ?

In *Sein und Zeit*, written in 1927, Martin Heidegger (2006) states that the *Dasein* is a being of possibilities. In other words, even the most absurd situations are on the horizon of possibilities of man. Thus, we would be acting in bad faith, following the thought of Jean-Paul Sartre, if we did not assume that it is possible to act in an inhuman way – in a way that we do not expect man to act.

However, certain events, according to Agamben (1998), can change what we deem possible. Auschwitz was one of those events. As in performative speech, in which speech introduces a new way of being, an event introduces new possibilities that were not foreseen. Heidegger's conception of the *Dasein*, in this case, cannot embrace the performative aspect in the establishment of something. It is true that we are beings of possibility, that there is a horizon of possibilities that we are able to perform even if we are ashamed to imagine them. However, there are cases that were not in this horizon. It is as if something broke what was considered possible. Auschwitz opened a horizon in which man becomes non-human.

The question of the animality of man is not new. There is a long reflection on the threshold between the human and non-human. In fact, Agamben (2002) states that, since Aristotle, this is the fundamental question of metaphysics, as the very definition of man incorporates animality (“rational animal”). There is an animality in man. However, could this animality be something non-human?

It is on the basis of openness that Heidegger (1982) seeks to differentiate man from animal. In certain ways, animals are open to the world. However, such openness does not allow the animal to partake in world-formation. The animal does not shape the world — he is “poor in world”. Man is able to use openness as something of his own – to realize entities as entities and to use the world around in his world-forming. To have a world means being open to it in the same way the entities around us are, and to take care, take ownership, be absorbed, and act in relation to them. Man is world-forming because he meets the world with openness.

However, there are times when human life is no longer able to be absorbed in this world – times when the human form-of-life is disconnected from its form and becomes simply living. It is this possibility that Heidegger would not have predicted when considering the *Dasein* a being of possibilities. By its very definition, the *Dasein* can never be thought of unless

it is thought of in relationship to a way of life. The *Dasein* is being in relation: a being-in-relationship-with others (concern); a being-with others; a being-together-with the world; and a being-towards-an-end (a being-to-death). Furthermore, what if man no longer has a form-of-life and simply has a bare life?

This is the case of Auschwitz – man loses his human condition by losing his form-of-life and becomes simply a living being. This bare life demands, furthermore, that we confer upon this being a new name: *Muselmann*, a living being, in a bare life, without any form of life defining him that can attest to man's humanity. It is true that we are animals. It is true that there is an animality in man. Agamben (2002) is actually highlighting another possibility: that this animality can become the very definition of the being – without any adjective that differentiates man from another animal, that is, a bare life without any adjective, a being in which we can no longer recognize humanity, not even in its physical form.

Shortly after the Second World War, Primo Levi (one of Agamben's main references) attempts to describe what a man is after having suffered dehumanization in the concentration camps. He describes a man-animal in whom we cannot precisely determine the threshold between man and animal. Giorgio Agamben (1995) notes that this is not a new figure in Western history. Although Auschwitz was the event where this new possibility was established, the man-animal, the *werewolf*, is a figure that, in the Anglo-Saxon tradition, appears as borderline. In this tradition, there is a chance that man be tried and abandoned, by that same trial, by the law. He starts to wander in an area of indeterminacy and can no longer be considered a man – or at least a man who lives with other men *under* the same law. The werewolf wanders through the world, and he no longer has a human form-of-life. That bare life, that life without form-of-life, is what Auschwitz produced in a way that we had never expected: to turn a being of possibilities into a being *without* a form-of-life.

However, if the figure of the werewolf already existed, why is Auschwitz an event? If the man-animal was possible, why was he not foreseen in the being of possibilities such as Heidegger describes?

Auschwitz is an event because it establishes as rule that which was only a possibility – it introduces the exception as the rule when contemplating what is man. When Levi (1989) asks, “what is this, a man?”, he forces us to use the exception as rule when reflecting upon what is the man (the singular becomes the rule to think about the universal – what is “the” man and not “a” man). When man is turned into a werewolf, an animal-man, there is no longer any law that can ensure his form-of-life because all that is left is his bare life – something that any living organism has. The animal-man enters a zone where the possibility of being killed is real. The law abandons him and makes possible what was not possible: man becoming non-human.

In a way, the animality of man is not strange. It is something very close, because we are animals, but also distant, because we are men. Sigmund Freud (1919), for example, highlights how there is something unsettling in situations where *that* which is familiar and simultaneously strange becomes present. What is apparently foreign is revealed because it is part of who we are. Agamben never questions the animality of man. What he challenges are the moments when the animality of man becomes the rule: when a law imposes the abandonment as rule, that is the state of exception.

The Auschwitz event compels us to resignify our history. Something that introduces new possibilities also requires the past to be resignified based on these new possibilities. Freud (2010), for example, states that any event can have a delayed effect that resignifies our history. Living brings the risk that an experience ruptures our way of being and makes us be differently due to a resignification of who we are. Benjamin (2009) insists that history is the field of thought par excellence because every event makes us look at things in a different way than the way we were used to – nothing should be forgotten, and even the things we were not expecting must be uncovered. History is, somehow, our way of being humans. Suspending any moment of this history is barbaric. Even Auschwitz must be remembered. In fact, it is not a question of “even”, but rather, “it is precisely” Auschwitz that must be remembered. This event made us face something that *necessarily* resignifies our way of being. *We will never be as we were before*. Forgetting, in this case, is acting in bad-faith. If that which was impossible has become possible, so the possible becomes necessarily a horizon.

The *Homo sacer* is the establishment of a possibility that was once impossible. It introduces an exception that was made possible. In addition, it has the effect of obliging us to rethink everything under the light of something we previously thought to be impossible. *The strange becomes familiar*. Our animality becomes present, and the bare life, *real*. An event that becomes real resignifies what we were. We can then be open to the bare life (without a form-of-life) – something unthinkable for Heidegger, for example.

The position of Agamben (1996) also leads us to rethink the spectacle. For him, since Guy Debord, it has become common to affirm that we live in a society of spectacle. What is innovative in Debord (the idea of spectacle), when it is announced, becomes natural – naturalized. What once appeared as a disruption, a reading that resignified our understanding of society, became too obvious but not too much in all its possible dimensions. Agamben (2001) once said that it is not worth writing a text if it does not have addendums. In other words, it is not worth writing something that does not have a larger horizon of thought or further questions that may be raised. In one of his works, he decides to compose a gloss of the work of Debord. In this commentary, Agamben states that we live in a society of spectacle, but he resignifies this state of social being by

saying that our spectacle is *language*. Just as there is the possibility of a bare life, without a form-of-life, there is the possibility of a language that is expropriated from man – which takes away from man what is essential to him (an empty speech that is not directed at another person as something of his own). Speaking is, to man, his most essential way of being (that which makes man a social being). If he is mute (merely babbling and randomly saying this or that without really communicating), man could not have been defined as a social being; if he is unable to communicate, man languishes (loses his unique feature: to be a form-of-life) in a bare life. Speaking, man is capable of forming social relationships. Losing what makes him a man, man is dehumanized.

Perhaps Agamben's greatest denunciation of our times is to show that man becomes *Homo sacer* not only because of an event, such as the concentration camp, but also due to the very nature of man: to speak. The fact that man is human makes it possible for him to lose his humanity. The fact that he speaks makes it possible for man to blaspheme. Having a body is to have the possibility of losing it. Both to be and to have appear to collapse in this case. *Being* a man can turn him into non-human. *Having* a social, communicative nature can bring man to muteness (in relation to those close to him). We can be and have something and, at the same time, *given we can be and have something*, we make it possible the loss of being and having something. There is something strange in that. That which constitutes us brings the possibility that we languish. The animality of man, for example, can be what makes living possible, even if it dehumanizes him. A *Muselmann* – that being in an area of indeterminacy – might be the only witness to the impossible: making possible what is not expected. What type of speech would we hear? Would it be something we could recognize?

If speech is something communicable, which makes us understand each other, maybe the secret of a *Muselmann's* muteness would lead us to a different order in respect to what we know about ourselves. Its incommunicable wheezing, as Levi recounts, might have reconfigured forever what a man is. Expropriated, it makes the man a simple living being and uses the singularity as the reference point to define what the man is himself.

This possibility is not unusual in the 20th century. Freud once said that we just have to throw a crystal on the floor to see that it breaks at the invisible lines that were already there. We just have to throw a man on the floor to see a *Muselmann*...

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