

*The Autonomy of the Political and the Dissolution of The Jews*

David M. Seymour  
School of Law  
Lancaster, LA1 4YN  
01524 592530  
d.seymour@lancaster.ac.uk

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This essay argues that the more the State or the political is treated as an autonomous from society, the more the specific conception and history of the Jews dissolves into a universalised category. From this perspective, the emancipatory Rights granted to Jews appear as exercises of an arbitrary Sovereign power rather than the product and compromises of social interests in which Jews are present. This thesis is articulated through a discussion and comparison of two anti-emancipationist radical thinkers; Bruno Bauer and Giorgio Agamben. Where Bauer demands the Jews' emancipation from Judaism as a precondition for the granting of Rights, Agamben dissolves the specific Jewish dimension of the holocaust into a universalist notion of domination and the figure of the *Musselman*. I conclude by noting that, in the wake of this dissolution, any reference to Jewish specificity, even in death, can be interpreted as the Jews demanding "special privileges" over and above others, thereby running the risk of the Holocaust taking its place in the chain of the antisemitic imagination.

*The Autonomy of the Political and the Dissolution of The Jews*

This essay argues that the more the State or the political is treated as an autonomous entity, the more the specific conception of the Jews dissolves into a universalised and universalistic category. The consequence of this relationship is that any notion of Jewish specificity is undermined and is replaced instead by the language of “special pleading” or “special privileges”; that is, to quote Hal Draper, replaced by the language of “wooden sectarianism”.<sup>1</sup>

Since this relationship between the autonomy of the State and the dissolution of the Jews turns on an increasingly nihilistic attitude toward modern (political) emancipation, this essay offers not only a critical defence of such emancipation, but also of the juridical rights through which that emancipation was realised. On this point, I argue that in treating the state or the political as an autonomous entity, rights are seen as always provisional, not in the sense that they can be rescinded (history offers ample examples of such rescission), but that their application to the Jews is dependent not upon the Jews themselves (in the sense of their place and location in the world), but upon the conditional grace of others.

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<sup>1</sup> Hal Draper, *Karl Marx's Theory of Revolution*, Monthly Review Press, London, 1977. p.113

A current theme in critical legal and critical political literature is a renewed focus on “the political” as the foundation of the contemporary world.<sup>2</sup> It is for this reason that so much attention is paid to a reconsideration of the French Revolution and its aftermath.<sup>3</sup> In the past the emancipatory aspects of the Revolution hid the reality of terror that accompanied it, now, the inverse is the case; the rights of Man inaugurated by the Revolution are now subsumed and reduced to an aspect of the Terror. For some thinkers of this view, rights in particular and law in general are *nothing other* than violence and, as such, are not so much part of the answer as part of the problem.

This essay argues that this concentration on the political and its relation to terror reproduces in critical theory the very error that produced in the terror in the first place. Then as now, the error was to believe that in the separation of state from society, the former was not only autonomous of the latter, but was also the moulder of the latter. To put the matter in the language of Hegel and Marx, the *universality* of the State sought to impose itself on the *particularism* of civil society.<sup>4</sup> Speaking with special reference to the question of religion, Marx notes the following,

Of course, in periods when the political state as such is born violently out of civil society, when political liberation is the form in which men strive to achieve their

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<sup>2</sup> See Chantal Mouffe, *The Return of the Political*, Verso, London, 1993, *On the Political*, Routledge, London, 2006, Ernesto Laclau, *On Populist Reason*, Verso, London, 2005 and the recently published lectures of Michel Foucault, *Society Must be Defended*, Penguin, London, 2004; Alain Badiou, *Being and Event*, Continuum, London, 2007; *Metaplotics*, Verso, London, 2006; Slavoj Zizek, *Virtue and Terror (Revolutions): Maximilien Robespierre*, Verso, London, 2007

<sup>3</sup> See the discussion on this point in the introductory essay in Slavoj Zizek, *Virtue and Terror (Revolutions): Maximilien Robespierre*, Verso, London, 2007

<sup>4</sup> See Karl Marx, *On the Jewish Question and Introduction to a Critique of Hegel's Philosophy of Right*, in *Early Writings*, ed. Lucio Colletti, Penguin, London, 1992

liberation, the state can and must go as far as the *abolition of religion, the destruction* of religion. But it can do so only in the same way that it proceeds to the abolition of private property, to the maximum, to confiscation, to progressive taxation, just as it goes as far as the abolition of life, the *guillotine*. At times of special self-confidence, political life seeks to suppress its prerequisite, civil society and the elements composing this society, and to constitute itself as the real species-life of man, devoid of contradictions. But it can achieve this only by coming into *violent* contradiction with its own conditions of life, only by declaring the revolution to be permanent, and, therefore, the political drama necessarily ends with the re-establishment of religion, private property, and all elements of civil society, just as war ends with peace. [Marx, *OJQ*].

As with the rule of the political itself, the theoretical suppression of the social exercises a terror in its own theoretical way. It excludes and denies the social development and social presence of the diverse “particularities” (including, of course, the Jews) threatened by the dominance and autonomy of the universal of the political.

Nowhere are these points more in evidence than in the question of Jewish emancipation and the rights through which it is expressed. In the two accounts discussed here – Bruno Bauer’s and Giorgio Agamben’s – the entire “Jewish Question” is presented through the prism of the autonomy of the political. In each, the rights of emancipation are presented as dependent or conditional upon a *political* decision. The decision becomes, in other

words, the jurisdiction of the sovereign rather than the outcome of historically specific social developments.

Since this political sovereign acts, and can only act, in the name of the *universal*, the condition of emancipation becomes infused with a dependence on the criterion of universality. It denies the existence of social particularities which, in this case, includes the history and presence of actually existing, flesh and blood, Jews. It is for this reason, therefore, that in both Bauer and Agamben, Jewish emancipation is presented, and can only be presented, in terms of the Jews dissolution *as Jews* in the name of an overarching and autonomous universalist political. The Terror that the Universal wreaks on the Particular in general becomes, for both theory and theorist of Jewish emancipation, the Terror of the autonomy of the State and the dissolution of the Jews.

*I*

Perhaps the most notorious case in which the autonomy of the state was said to demand the dissolution of Judaism and the Jews was that advanced by the Berlin “left” Hegelian Bruno Bauer.<sup>5</sup>

Bruno Bauer’s contribution to the German “Jewish Question” of the early 1840s was to counter and if possible reverse the increasing groundswell of Jewish and non-Jewish

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<sup>5</sup> See Carlbach, J *Karl Marx and the Radical Critique of Judaism* London: Routledge and Kegan Paul, 1978, David McLellan, *The Young Hegelians and Marx*, Papermac, London, 1980; Zvi Rosen, *Bruno Bauer and Karl Marx*, Martinus Nijhoff, The Hague, 1977

demands for Jewish emancipation into the contemporary body politic.<sup>6</sup> What is unusual, however, about Bauer's argument, and the reason why Marx felt called upon to challenge it, was that it came, not from the conservative right,<sup>7</sup> but, seemingly,<sup>8</sup> from the critical left. As will become apparent, however, although Bauer did not hesitate to utilise the Christian right's arguments for his own, it was his belief that Jewish emancipation, or the emancipation of Jews *as Jews* was incompatible with the modern, secular emancipated state.

Bauer's polemic against Jewish emancipation was aimed not only against their inclusion within the contemporaneous German *Christian* State, but also with the modern, politically emancipated *secular* state. Bauer argued that since Christianity and Judaism related to each other in a state of theological antagonism, a state organised on the principles of Christianity, had every right, if not the duty, not only to exclude the Jews, but to keep them in the most humiliating and servile unemancipated conditions. Adding insult to injury, Bauer argued that since all forms of religion are the signature of unfreedom. In a *Christian* state, no-one is "truly free", not even those who benefit from the correspondence between their own and the state religion. The demand of the Jews for *their* emancipation, is, in effect, a demand for special consideration.

Everybody is unfree in an absolute monarchy. The Jew is only unfree in a particular manner. The hope and wish of the Jew should not be for the removal of his special misery but for the downfall of a principle. [quoted in Draper; p113]

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<sup>6</sup> For a full discussion of the "Jewish Question" of this time see, Julius Carlbach (*opp cit*)

<sup>7</sup> Marx originally had intended to challenge Hermes, the leading Christian conservative on this matter. See Carlbach, *opp cit*

<sup>8</sup> See Draper, pp.112-113 *opp cit*

In the face of this *universal* oppression, therefore, all gradation of oppression, indeed, of the division of the oppressed into a sub-category of oppressor and oppressed is ignored.

Where Bauer broke new ground, however, was in his argument against the Jews' emancipation *as Jews* into the modern, politically emancipated, secular state. To be permitted to enter this state, Bauer avers, entails that the Jews emancipate themselves from Judaism.

To justify this aspect of his counter-emancipationist thesis, Bauer argues that the mark of the modern emancipated state is its emancipation from religion. As a consequence of this religious emancipation only those individuals who have shed the shackles of religion can be permitted into its secularly-hallowed halls. On this count, again, the Jews *as Jews* are barred. Moreover, the secular state emerged out of the skin of the Christian state, it is not enough anymore for the Jews to become Christian, but, rather, they must adopt the "later" stage of "Christianity in dissolution".<sup>9</sup>

To appreciate this point fully, it is necessary to say a few words concerning the thinking that underpins Bauer's argument. Drawing on the critical theology of the Young Hegelians (most notably, David Strauss and Ludwig Feuerbach),<sup>10</sup> Bauer sought to uncover the "human" basis of religion. His own particular take on this basis was what he took to be the teleology of "self-consciousness". The move from Judaism to Christianity

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<sup>9</sup> See Rosen *opp cit*. Marx *opp cit*

<sup>10</sup> See McClellan, *opp cit*

to secularism is the move from a lack of awareness of humanity's creative powers to its full realisation that the world is, in fact, its own creation. That it has taken place initially through religious forms is itself a symptom of self-consciousness' lack of confidence.

From what has been said up to this point, it is hardly surprising to note the stages in this teleology and the place Bauer allocates to Judaism within it. Judaism, Bauer, argues, lacks any conception of self-consciousness at all. Rather, it is the religion of unreflective nature,

One of the various ways of strengthening the spirit of the Jewish people was the hierarchy, the caste system. The hierarchy exists wherever the spirit of the people is incapable – for lack of force, liberality, or religious abilities – of activating all the limbs of the folk.....It is the religious duty of the Jew, as Jew, to belong to a family, a tribe, a nation, i.e. to live for the sake of certain human interests; but it is only in a seeming advantage, based on a deficiency. Man in his universal essence, man as a member of a family, tribe or nation was still unknown to Judaism.  
[Rosen; pp.86-87]

In overcoming Judaism, Christianity exhibits a self-consciousness of “man's universal essence” in a way unknown to Judaism. Christianity's universality arises, according to Bauer, by absorbing into itself the entirety of humanity's awareness of itself as the power of creation. Christianity embodies the awareness of humanity's separation from nature (as

well as its power over it<sup>11</sup>), but does so in a distorted or inverse manner. At this stage in the story, self-consciousness lacks the strength and will to comprehend fully the consequences of this awareness. Instead, it makes its appearance through the theology of Christianity in which all humanity's creative energies are placed and through which real men and women are correspondingly devalued. As such "empty" beings, humanity cannot but see themselves as the playthings of an external, eternal and omnipotent God.

The political corollary of this awareness is the destruction of the Christian state and the establishment of the religiously emancipated political state.

As its terminology implies, the Christian state mirrors the relationship of God to humanity in its theological appearance. The state appears to be everything and its subjects nothing,

The Christian state is guided by the dictates of religion, it suppresses all manifestations of free and autonomous thoughts, leads to the banishing of the spirit, lulls all the predilections and aspirations of mankind, is guilty of causing crime, etc.. [Rosen; p.116]

It is only when "the people" are brought to the truth of their situation that they can inaugurate the era of "true freedom" through which self-consciousness becomes aware of itself as the driving spirit of world history.

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<sup>11</sup> Cf Adorno, T. W. (2002) and Horkheimer, M. (1989) *Dialectic of Enlightenment* California, Stanford University Press

It follows, therefore, that for Bauer, the destruction of religion and the destruction of the Christian state are one and the same thing. It is as a consequence of this set of beliefs that Bauer believes that the emancipated states in which religion is no longer either a bar or entry into the state, is identical with humanity's emancipation from religion *per se*. Those people who are still persuaded by the shackles of religion need not apply for entry.

It is within this theoretical context that Bauer locates the "origins" of rights and, in so doing, denies their applicability to Jews. Since "the universal rights of man" are the expression of the developed self-consciousness and since the Jews have remained outside that development, they cannot expect to share in its fruits. Indeed, as long as they remain Jews, they remain outside the realm of "the universal". Marx quotes Bauer at length on this point,

The question is whether the Jew as such, that is, the Jew who himself admits that he is compelled by his true nature to live permanently in separation from other men, is capable of receiving the *universal rights of man* and of conceding them to others.

For the Christian world, the idea of the rights of man was only discovered in the last century. It is not innate in man; on the contrary, it is gained only in a struggle against the historical traditions in which hitherto man was brought up. Thus, the rights of man are not the gift of nature, nor a legacy of past history, but the reward of the struggle against the accident of birth and against the privileges which up to now have been handed down by history from generation to generation. These

rights are the result of culture, and only one who has, *and only one who has earned and deserved them can possess them.*

Can the Jew really take possession of them? As long as he is a Jew, the restricted nature which makes him a Jew is bound to triumph over the human nature which should link him as a man with other men, and will separate him from non-Jews. He declares by this separation that the particular nature which makes him a Jew is his true highest nature, before which human nature has to give way.

Not only are Jews barred from “the universal rights of man” because of their restricted nature brought about by their exclusion from the history of self-consciousness, but to argue for rights and emancipation *as Jews* would again be to claim “priority treatment”. If humanity’s emancipation from religion is synonymous with the state’s emancipation from religion, why should the Jews be made an exception? From Bauer’s point of view, the very fact that the Jews are seeking emancipation as Jews can be read as a reflection of their innate particularist and narrow “nature”, one that is divorced from “Universal Humanity”. To be granted (and to grant) emancipation, therefore, the Jews have no option but to dissolve themselves into that general universality; to become “human” at the expense of being Jewish.

Leaving aside Bauer’s personal anti-Jewish animosity,<sup>12</sup> the question remains as to why he got it so wrong? The answer to this question, I believe, is a consequence of his

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<sup>12</sup> See Carlbach, *opp cit*

overarching theoretical thinking and the application of that thought to the question of political emancipation. In short, it exhibits a correlation between the autonomy of the theorist and the autonomy of the state or “political”.

At the core of this problem is Bauer’s notion of “criticism” or “pure criticism”. As Rosen makes clear, Bauer’s criticism is “absolute”. It is absolute in the sense that it posits “spirit” (of which self-consciousness is the specific expression) against reality, i.e. the actually existing world. Reality is treated by Bauer as, “the *illusory* existence of man in a society in which the conventional falsehood of ideology and “religiosity” reigns as the preferred status of various groups.....[p.231]. What Bauer means by this phrase, of course, is that “reality” is “self-consciousness” and religious forms (i.e. self-consciousness earthly appearance) mere illusion. Marx précis this relationship in *The Holy Family*,

On one side stand the mass as the passive, spiritless, historyless, *material* element of history; on the other side stands *the Spirit, the Criticism* – Herr Bruno and Co as the active element which all *historical* action proceeds. The act of social transformation is reduced to the *brain activity* of Critical Criticism.<sup>13</sup>

This prioritising and separation of idealism over materialism (which, paradoxically, is precisely what Bauer accuses Christianity of) has vast consequences when placed in relation to the question of Jewish emancipation in general and the question of rights in particular.

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<sup>13</sup> Draper, *opp cit* p.226

Amongst the more specific criticisms Marx<sup>14</sup> made of Bauer's "absolutist" standpoint two, when taken together, are of special significance in the present context. These criticisms are, first, the fact that the present is seen as the product of a past battle of *ideas* "devoid from any material basis" [Rosen, p.236]. In this exclusion from the "arena of real events", and this is the second point, the realm of ideas triumphs over the realm of *interests*.

It is not the case that Bauer believes merely in the primacy and perspective of ideas over materiality as the basis for "criticism", but he also believes that the purer the separation, the purer and more valid the criticism. It is because "[t]he Critical Truth "addresses itself not to the empirical man but to the "*innermost depths of the soul*" that social *interests* will have a negative impact on the purity of ideas. Bauer makes this point clear in his discussion of the shortcomings of the French Revolution,

"All great actions of previous history.....were failures *from the start* and had no marked success because the mass became *interested* in and *enthusiastic* over them; in other words, they were bound to come to a pitiful end because the idea involved in them such that it had to be satisfied with a superficial conception and, therefore, had to rely upon the approval of the mass" –quoted Draper; p.223]

It is in his earlier response to Bauer's anti-emancipationist argument that Marx presents the matter not only from the side of interest, but also from its inclusion in the side of idea.

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<sup>14</sup> See Rosen *opp cit*

This alternative approach to the Jewish question is apparent immediately in Marx's rejection of the concept of the "Sabbath Jew" for that of the "Everyday Jew".

Let us consider the actual, worldly Jew – not the *Sabbath Jew* as Bauer does, but the *everyday Jew*.

Let us not look for the secret of the Jew in his religion, but let us look for the secret of his religion in the real Jew.

What is the secular basis of Judaism? *Practical need, self-interest*. What is the worldly religion of the Jew? *Huckstering*. What is his worldly God? *Money*.

Very well, then! Emancipation from *huckstering* and *money*, consequently, from practical, real Judaism, would be the self-emancipation of our time.

What is of note here is not only Marx's recognition of the *social interest* of the Jews, but also its placement in a material historical development.

It is because of Marx's insistence on the Jews' material rather than idealist existence that he can dispense with the teleological "overcoming" of "the Jew" that Bauer sees in the unfolding of "self-consciousness". By recognising their social existence that Marx rests his analysis of rights and, ultimately, Jewish emancipation. Marx makes these points overt, "Judaism continues to exist not in spite of history, but owing to history."

Judaism has held its own *alongside* Christianity, not only as religious criticism of Christianity, not only as the embodiment of doubt in the religious derivation of Christianity, but equally, *because the practical Jewish spirit*, Judaism, has maintained itself and even attained its highest development in Christian society.

In speaking of “the practical Jewish spirit”, Marx is pointing to Judaism’s historical role in satisfying the needs and wants of earthly, as opposed to spiritual “man”. Or, in Bauer’s terms, remaining close to the nature disavowed and degraded by Christianity,

The Christian was from the very beginning the theorising Jew. The Jew is therefore the practical Christian and the practical Christian has once again become a Jew.....Christianity overcame real Judaism only in appearance. It was too *refined*, too spiritual, to do away with the crudeness of practical need except by raising it into celestial space.....Christianity is the sublime thought of Judaism and Judaism the vulgar application of Christianity. But the application could not become universal until Christianity as perfected religion had *theoretically* completed the self-estrangement of man from himself and from nature.....Only then could Judaism attain universal domination and turn alienated man and alienated nature into alienable, saleable objects subject to the slavery of egoistic need and to the market. [1992; 240, 241]

The Jews, in other words, have not only always been part of history, they had an important role to play in the development of the modern world. It was a role that in serving their own, particular, i.e. *self-interest*, has served the universal interest.

Turning to the question of “universal rights”, the so-called “rights of Man”, Marx is again explicit as to their origin, meaning and significance. Far from *excluding* the Jews on the ground of their “self-interest”, i.e. their *particularism*, Marx shows how it is precisely

that particularist interest that is protected by those rights. He analyses post-Revolutionary constitutions of France and North American, then argues that, since the Rights of Man are, in effect, the Right of private property,

None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society – that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community. In the rights of man, he is far from being conceived as a species-being; on the contrary, species-like itself, society appears as a framework external to the individuals, as a restriction of their original independence. *The sole bond holding them together is natural necessity, need and private interest, the preservation of their property and their egoistic selves.* [1972,]

Like the Jews, or, rather, the “everyday Jews”, so rights are the product of material, historically developed interests, in this instance, the interests of private property. They are nothing other than expressions of the nature and content of civil society. Far from the external connection between rights and spirit made by Bauer, and through which it is left to Bauer as the omnipotent sovereign and legislator of “self-consciousness” to decide to include or exclude, Marx highlights its internal connections. In doing so, he has shown that far from history and interests being grounds for refusal they are, in fact, the very basis and justification of inclusion.

What the review of this debate has shown is the connection between the position of the critic and the position of the state and the relationship of each – or seeming *lack of*

*relationship* – to the body politic within which is embedded; the more autonomous the critic and the more autonomous the state, the more provisional the rights and inclusion of the Jews. The more, theoretically and practically, the Jews become dependent on power, the more insecure they are and vulnerable to the whim of the theorist and the state. It is to a more recent account of Jewish emancipation, that we will now turn.

## II

If Bauer's account of emancipation emphasised "spirit" over materiality, Giorgio Agamben's work emphasises materiality over spirit; or, rather, "humanness" over spirit. What is interesting is that whichever side of the duality, humanity/spirit, is emphasised the result is the same – the dissolution of the Jews and the "Jewish Question" into a generalised and universalised stream of history. As will also become apparent, the cause of this replication again is the refusal to acknowledge, or, rather, the *suppression* of the middle term between humanity and spirit – the social.

Unlike Bauer's acceptance of the French Revolution (at least initially) Giorgio Agamben's work can be situated within the broad church of the critical counter-Revolutionary tradition, stretching as far back as the enigmatic discourses of Joseph deMaistre.<sup>15</sup> As Zizek notes in his introduction to the speeches of Robespierre,

The identifying mark of all kinds of conservatives is its flat rejection: the French Revolution was a catastrophe from its very beginning, the product of the godless

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<sup>15</sup> That Agamben can be placed in this tradition is supported also by a perusal of those whom he cites with approval, from Chateaubraind, through Schmitt, through Saint Bonnet and others. (For an alternative reading of this tradition see, Mouffe, *opp cit*).

modern mind; it is to be interpreted as God's punishment for humanity's wicked ways, so its traces should be done as thoroughly as possible. [p.vii].

Agamben's thought combines two of the most important elements of this tradition. The first is a complete rejection of the French Revolution through the idea that emancipation is nothing but domination through the universalisation of terror. The second is inherent within the first. It is the idea that it was these events that banished God and spirit from the profane world leaving humanity to the arbitrary vagaries of man's unfettered hubristic powers<sup>16</sup>. These two elements are combined and given effect that in Agamben's conception of "the political" in general and his account of nazism in particular.

One of the key aspects of the tradition in which Agamben works is the presentation of the Revolution solely in terms of abject terror and violence. If for deMaistre, this presentation meant universalising and reifying the "moment" of the "Reign of Terror",<sup>17</sup> for Agamben, it is the universalising and reifying of the "moment" of the State of Siege or State of Exception.<sup>18</sup> For Agamben, it is the state of exception that is offered as the wormhole or threshold through which democracy mutates into dictatorship and law into violence, and which, although emerging as a temporary resource in times of crisis, now becomes the normalised "technique of government",

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<sup>16</sup> "Or it can retain the conjunction "humanism *and* terror", but in a negative more: all those philosophical and ideological orientations, from Heidegger and conservative Christians to partisans of Oriental spirituality and deep ecology, who perceive terror as the truth – the ultimate consequence – of the humanist project itself, of its *hubris*. [Zizek p.xiii]

<sup>17</sup> On this point, see Jack Lively, *The Collected Works of Joseph de Maistre*, George Allen and Unwin, London, 1965.

<sup>18</sup> For an alternative reading of the State of Exception, see Marx *Eighteenth Brumaire*.

Faced with the unstoppable progression of what has been called a “global civil war”, the state of exception tends increasingly to appear as the dominant paradigm<sup>19</sup> of government in contemporary politics. This transformation of a provisional and exceptional measure into a technique of government threatens radically to alter – in fact, has already palpably altered – the structure and meaning of the traditional distinction between constitutional forms. Indeed, from this perspective, the state of exception appears as a threshold of indeterminacy between democracy and absolutism. [pp.2-3].....One of the essential characteristics of the state of exception – the provisional abolition of the distinction among legislative, executive and juridical powers – here shows its tendency to become a lasting practice of government. [p.7]

Existing within the interstices of separation of powers and the rule of law, the state of exception is said to create a novel and uniquely bounded autonomous political space.

Early on in *State of Exception*, Agamben makes clear the content of the state of exception,

It is in this no-man’s land between public law and political fact, and between the juridical order and life, that the present study seeks to investigate. Only if the veil covering this ambiguous zone is lifted will we be able to approach an understanding of the stakes involved in the difference – or the supposed

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<sup>19</sup> Cite Agamben’s article and my criticism of it.

difference – between the political and the juridical, between law and the living being. [pp.1-2]

This reference to law and living being is a reference to what Agamben's conceptualises as "biopolitics". As will become apparent, it is this notion of biopolitics that brings to the fore the second counter-revolutionary element of Agamben's critique of emancipation, that of hubris. Hubris expresses itself not only with the banishment and loss of the divine and the mysterious, but also the usurpation of (at least the Old Testament) God's powers of creation of and judgement over "natural" life; a power born out of modernity's unremitting and unhindered violence. It is with these points Agamben critiques modern political emancipation, rights and the Jewish Question.<sup>20</sup>

He says that what distinguishes the modern body politic from its pre-modern predecessor is not Marx's and Arendt's dichotomy between state and civil society, but the subsumption of the *oikos* (understood, not without difficulties, as the previously excluded realm of nature (or mortality and natality; i.e. bare life<sup>21</sup>) into that of "the political". This inclusion is symptomatic of an approach that highlights the alleged *autonomy* of the political. It is worth noting that Agamben's architecture rests upon an explanation of modernity that relies upon concepts of *classical* political philosophy; a point present in

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<sup>20</sup> Agamben's references to these issues can be found across the trilogy of work Agamben,, G (1995) *Homo Sacer: Sovereign Power and Bare Life*; Stanford University Press, California Stanford; Agamben,, G (2004) *State of Exception*, Chicago, Chicago University Press, Agamben, G (2002) *Remnants of Auschwitz*, New York, Zone Books

<sup>21</sup> See especially, *Homo Sacer opp cit*

Marx's critique of the Terror of the Revolution.<sup>22</sup> However, rather than overcoming this classical distinction between the political and *oikos*, state and household, Agamben merges them together under the same roof, or, rather, surrounds them by the same wall,

The same bare life that in the *ancien regime* was politically neutral and belonged to God as creaturely life and in the classical world (al least apparently) distinguished as *zoe* from political life (*bios*) now fully enters into the structure of the state and becomes the earthly foundation of the state's legitimacy and sovereignty. [p.127]

The only difference, therefore, between modern and classical thought is the *inclusion* of the *oikos*, of natality, within the confines of the political, of the state,

[T]he entry of *zoe* into the sphere of the *polis* – the politicization of bare life itself – constitutes the *decisive event of modernity* and signals a radical transformation of the political-philosophical categories of classical thought. It is even likely that if politics today seems to be passing through a lasting eclipse, this is because politics has failed to reckon with this *foundational* event of modernity. [HS; p.4]

It is in this context of an apparent “radical transformation” that the concept of “biopolitics” is so apposite to describe the fusion of *polis* and *oikos*. In the discussion of biopolitics that follows, it is important to keep in mind its seemingly *creative* and, at the same time, judgemental powers.

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<sup>22</sup> Marx has argued that part of the reason for the Jacobin terror was their confusion between the contemporaneous situation, and that of the classical world

Of vital importance for Agamben, is that the key elements of this fusion of the political and the natural (as expressed in the discourses of natural science) when taken together, constitute biopolitics' ontological status. Biopolitics, Agamben emphasises, is not the *application* of prior knowledge onto a pre-existing set of data, i.e. bare [natural] life, but is rather a power that creates, judges and executes at one and the same time<sup>23</sup>

The link between politics and life.....is not (as it is maintained by a common and completely inadequate interpretation of racism) merely an instrumental relationship, as if race were a simple natural given that had merely to be safeguarded. *The novelty of modern biopolitics lies in the fact that the biologically given is as such immediately political, and the political is as such immediately the biologically given.* [pp147-148; *emphasis added*]

Rather than confronting an external, "objective" world, biopolitics believes itself capable of creating a world in its own (humanist, scientific) image. Indeed, as just noted, the moment of creation and the moment of evaluation is a decision not so much *located* in the realm of the political, but is its very *definition*.

It is through this prism of biopolitics that Agamben offers an interpretation of modern emancipatory rights, most notably, the Rights of the Citizen and the Rights of Man. If, for Bauer, they are grounded in and the product of the idealism of Spirit and of self-consciousness, for Agamben, they are rooted in the humanist conception of biopolitics.

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<sup>23</sup> It is with this point, that the idea of the subsumption of the three elements of the separation of powers is collapsed into one moment of political power

Again, we see the subsumption of the natural (of natality) into the political along with the suppression of the social as an effective and meaningful site of legal development,

Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state.....*The fiction here is that birth immediately becomes nation such that there can be no interval or separation [scarto] between the two terms.* Rights are attributed to man (or originate in him) solely to the extent that man is the immediately vanishing ground (who must never come to light as such) of the citizen. [pp.127-128; emphasis added]

Autonomous of any connection with an “external”, (social) world, biopolitics is free to construct its own categories of inclusion and exclusion from within itself and according to its own premises. Rights (the means of inclusion and exclusion) are, as they were with Bauer, deemed detached from social interventions and social interests and are granted from without. It is within this overarching thesis that Agamben offers an account of nazism and the holocaust.

A consistent theme in Agamben’s work is the idea that Nazism, the Third Reich that existed between 1933 and 1945, be understood as a “State of Exception” It is the expression of the totalitarianism that he believes is inherent within every modern democracy and which is traceable to the French Revolution. For example, in *State of Exception*, Agamben argues,

Let us take the case of the Nazi State [*sic*]. No sooner did Hitler take power (or, as we should perhaps more accurately say, no sooner was power given to him) than,

on February 28, he proclaimed the Decree for the Protection of the People and the State, which suspended the articles of the Weimar Constitution concerning personal liberties. The decree was never repealed, so that from a juridical standpoint the entire Third Reich can be considered a state of exception that lasted twelve years. In this sense, modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. [p.2]

What is so important for Agamben, is not so much the seemingly normalcy and precedents<sup>24</sup> that attach to the Third Reich (indeed, in more than one place, a paragraph that begins with a discussion of the French Revolution is intertwined with facets of the “Nazi State”<sup>25</sup>), but that it is with nazism that the exception becomes the rule

*The state of exception thus ceases to be referred to as an external and provisional state of factual danger and comes to be confused with juridical rule itself.* [p.168 emphasis is in the original text.]

If in Agamben’s thought, the state of exception comes to represent the bounded autonomy of the detached state of the political, it is “the camp” that is its topographical

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<sup>24</sup> For a discussion on this point, see David M. Seymour, “From Critique to Positivism: Domination and the Naturalisation of Antisemitism” in *Law, Antisemitism and the Holocaust*, Routledge-Glasshouse, London, 2007

<sup>25</sup> See, for example, pp.128-131 *Homo Sacer (opp cit)*.

manifestation. Just as the state of exception, along with its biopolitical content, exists at the interstices of the separation of powers, the camp exists at the interstices of political geography. Tracing the intimate connection between the nature of the camps with the nature of the state of exception, Agamben concludes,

*The camp is the space that is opened when the state of exception begins to become the rule. In the camp, the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such remains outside the normal order.*

[p.169]

It is within this post-Revolutionary generality that Agamben locates the specificity of the nazi camps,<sup>26</sup>

When Himmler decided to create a “concentration camp for political prisoners” in Dachau at the time of Hitler’s election as chancellor of the Reich in March 1933, the camp was immediately entrusted to the SS and – thanks to *Schutzhaft* – placed outside the rules of penal and prison law, which then and subsequently had no bearing in it. [p.169]

Sealed within the autonomous bubble of the political, the camp is the location of the immediacy of the state of exception and its biopolitical content. It is in the camp where

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<sup>26</sup> On a critique of Agamben’s lack of distinction in his use of the concept of the camp, see Mesnard, P “The Political Philosophy of Giorgio Agamben: a Critical Evaluation” in *Totalitarian Movements and Political Religions*; Volume 5, Number 1, Summer 2004, pp. 139-157(19)

all mediations are cancelled and where state of exception and biopolitics, law and power, fact and application, exception and norm, inclusion and exclusion, Jew and aryan fuse into an equally interstitial moment that is autonomous of even the Kantian notions of space and time. Although Agamben does not phrase it in this way, it is the threshold also of the profane and the divine.

The camp is the space of this absolute impossibility of deciding between fact and law, rule and application, exception and rule, which nevertheless incessantly decides between them. What confronts the guard or the camp official is not an extrajudicial fact (an individual belonging to the Jewish race) to which he must apply the discrimination of the National Socialist rule. On the contrary, every gesture, every event in the camp, from the most ordinary to the most exceptional, enacts the decision on bare life by which the German biopolitical body is made actual. The separation of the Jewish body, just as its production is the application of the rule. [pp.173-174]

What is interesting about Agamben's account of the camp is the emphasis he places not so much of the power of *destruction*, but on the power of *creation*. (Indeed, this is Agamben's uniquely novel contribution to the history of "the camp"). From the above quote, it is not solely the case that the nazis murders the Jews, but that, at one and the same time, they created the aryan. It is at this point that Agamben takes the argument a step further. It is also here that any specifically Jewish aspect of the holocaust is dissolved into an overtly universalist stream of history.

Discussing the significance of the camps in *Remnants of Auschwitz: The Witness and the Archive*, Agamben brings into question both the specificity of Jewish extermination and its place within nazi *praxis*,

It is then possible to understand the *decisive function* of the camps and the system of Nazi biopolitics. They are not merely [*sic*] the place of death and extermination; they are also, *and above all*, the site of the production of the *Musselman*, the *final* biopolitical substance to be isolated in the biological *continuum*. Beyond the *Musselman* lies only the gas chamber. [p.85] *emphasis added*]

It is in the creation of the *Musselman* that is deemed the “decisive function” of the camps, of nazism and of the state of exception. The genocide of the Jews is but a means to an end, and, no longer an end in itself. The murder of Jews loses its specific meaning and is, instead, dissolved into something even more “significant” and universal. That significance is the birth of an entirely new form of life; *homo sacer* or the *Musselman*.

It is in the camps, in the furnace of unlimited and autonomous power that “Man” has found the power to finally usurp God and to create life. However, Agamben believes that it is a life that is devoid of the divine spark and, instead, bears the mark of its bio-political Creator. This new life, *homo sacer*, exists, like the state of exception, like the camp, at the threshold of the divine and the profane, between heaven and earth, between life and death – the one who can be killed and not sacrificed. *Homo sacer* is the new *universal*

citizen, the immediate product of the post-Revolutionary political Republic – an “absolute biological substance”.

What is so troubling about Agamben’s account of antisemitism is the way in which it replicates Marx’s comments about Jacobin terror and the manner in which the narrowness of political terror attempts to suppress the social along with its competing interests. And, as Marx’s critique of Bauer has shown, it is in the realm of the social not only that “real flesh and blood Jews” exist, but where their interests come into conflicts with the interests of other social parties which, in turn, gives rise to an anti-Jewish *praxis*.

Contrast this view with Hannah Arendt’s account of antisemitism and the holocaust that recognises the social and political agency that is involved in antisemitism. Although a full description of her account is beyond the scope of the present essay, a few comments will suffice.

The history of antisemitism, like the history of Jew-hatred, is part and parcel of the long and intricate story of Jewish-Gentile relations under the conditions of Jewish dispersion. [p.viii]

Arendt’s entire account of antisemitism can be understood as the consequence of a material clash of interests between Jews and Gentiles against the backdrop of modern, political emancipation. It is, moreover, an account that, far from denying the presence of Jews and Jewish interests, places them at the forefront. As the *Preface* of the section in “Antisemitism” in *The Origins of Totalitarianism* makes plain, Arendt’s concern is not an

indictment of Jewish agency (although that is certainly present), but, more fundamentally, is a reaction against the writing of history that makes Jews,

[T]he perfect innocence of the victim, an innocence which insinuates not only that no evil was done but that nothing at all was done which might possibly have a connection with the issue at stake.....There is.....a temptation to return to an explanation which automatically discharges the victim of responsibility; it seems quite adequate to a reality in which nothing strikes us more forcibly than the utter innocence of the individual caught in the horror machine and his utter inability to change his fate. [p.5; p.6]

Arendt's point here, of course, is that whilst the Jews are perfectly innocent of the accusations levelled against them, they are not "innocent" of the world that produced such myths. As she states,

For this comprehension [of the holocaust] a certain familiarity of Jewish history in nineteenth-century Europe and the attendant development of antisemitism is indispensable though, of course, not sufficient. [p.x]

It is from this perspective that Arendt offers a critique of modern emancipation, rights and antisemitism that is the outcome of a social and political presence, rather than the arbitrary consequence of autonomous power.

In accounting for modern antisemitism, Arendt looks most closely at the mechanisms of emancipation and the nature of the rights through which it was expressed. Put briefly, her

argument is that antisemitism was the product of a conflict between Jews and Gentiles brought about by the split between civil society and the state that she sees as characterising the modern body politic. For Arendt, the “autonomy” or separation of the state from civil society that followed the Revolutions of the later 18<sup>th</sup> century was almost stillborn. Chief amongst these problems was a lack of those willing to finance the State institutions. Whereas the *ancien regime*, relied on the nobility for its financial support, the emerging bourgeoisie was far too concerned with its own interests even to contemplate funding the new State.<sup>27</sup> It is at this point that the Jews presented themselves as a possible way to avoid collapse. Key to this strategy, however, was to ensure that the Jews remained outside the body politic, or, rather, outside the class structure of civil society. And, at this point, the needs and interests of the State coincided with the needs and interests of a Jewish desire to ensure “self-preservation and group survival”. Paradoxically, this coincidence of aims became the ground for the granting of rights, a grant that, as Marx also saw, was dependent upon Jewish presence and activity.

As Arendt makes clear, it was this equivocality of modern Jewish existence that lay entwined within the core of emancipation from the beginning,

Emancipation of the Jews, therefore, as granted by the national state system in Europe during the nineteenth century, had a double origin and an ever-present equivocal meaning. On the one hand, it was due to the political and legal structure of a new body politic which could function only under the conditions of political

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<sup>27</sup> For a discussion of the bourgeois’ relationship to the State, see Karl Marx, *The Eighteenth Brumaire of Louis Napoleon* in *Marx’s Later Political Writings*, ed. Terrell Carver, Cambridge University Press, 1996

and legal equality. Governments, for their own sake, had to iron out the inequalities of the old order as completely and as quickly as possible. On the other hand, it was the clear result of a gradual extension of specific Jewish privileges, granted originally only to individuals, then, through them to a small-group of well-to-do Jews; only when this limited group could no handle by themselves the ever-growing demands of state business, were these privileges finally extended to the whole of Western and Central Jewry. [p.12]

Arendt notes that the consequence of this specific relationship between State and the Jews, and which, was an “open secret” to all concerned, was that each class that entered into conflict with the State also entered into a conflict with the Jews. It was as a consequence of these clashes that when the nation-state evaporated a century and a half later the totalitarianism that replaced it structured itself around the specificity of the Jews and antisemitism,

[T]he Jewish question and antisemitism, relatively unimportant phenomena in terms of world politics, became the catalytic agent first for the rise of the Nazi movement and the establishment of the organizational structure of the Third Reich, in which every citizen had to prove he was *not* a Jew, then for a world war of unprecedented ferocity, and finally for the emergence of the unprecedented crime of genocide in the midst of Occidental civilization. [p.x]

It was, partly as a result of these conflicts that with the decline of the nation-state some hundred years or so later and its substitution with totalitarianism and the mass in place of state and civil society, the Jews were thrown into the storm centre of events.

As this last point makes clear, Arendt draws a strong distinction between the nation-state and totalitarianism (i.e. nazism). It is important to note, however, that even though she argues that antisemitism only came to maturity as an ideology or “key to history” *after* the reality of Jewish-Gentile conflicts of interests,<sup>28</sup> she still offers an account of nazism that draws on its external preconditions. That precondition is what she terms “superfluosity”. Superfluosity points to the idea that totalitarianism can only arise at a point in time when the majority of the nation-state’s population is deemed to be “superfluosity” in the sense of unnecessary for rational economic, social and political purposes. Indeed, it is the desire to make lives meaningful that Arendt sees as the attraction and necessity of totalitarianism. The point is, however, that for Arendt, in contradiction to Agamben, antisemitism, is the outcome not of autonomous and automatic practices, but of very real conflicts of interest brought about by very real socially-situated groups of individuals, including those of an active Jewish history. Arendt is thus able to hold on to both the universal significance of totalitarianism, its camps and its murders, whilst, at the same time, acknowledging the specific nature of nazism’s obsession with the Jews.

### *Conclusion*

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<sup>28</sup> Arendt notes that assimilation was almost complete following the loss of the Jews’ financing of the State.

Many still consider it an accident that Nazi ideology centred around antisemitism and that Nazi policy, consistently and uncompromisingly, aimed at the persecution and finally the extermination of the Jews. Only the horror of the final catastrophe, and even more the homelessness and uprootedness of the survivors, made the “Jewish question” so prominent in our everyday political life. What the Nazis themselves claimed to be their chief discovery – the role of the Jewish people in world politics – and their chief interest – persecution of Jews all over the world – have been regarded by public opinion as a pretext for winning the masses or an interesting device or demagogy. [p.3]

Sixty or so years later, a similar tendency is re-emerging. The specifically *Jewish* aspect of the holocaust is again being dissolved into a more generalised and universalised sweep of “history”. Just as for Bauer, modern emancipation demanded the dissolving of Jews into the onrushing wave of self-consciousness, for Agamben, the specific fate of the Jews is dissolved into the modern hubris of biopolitics and its Frankenstein like creation, *homo sacer*.<sup>29</sup>

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<sup>29</sup> In this context, it is interesting to note Agamben’s rejection of and refusal to use the term “holocaust” on the grounds that “the term’s usage in polemics against the Jews also has a history, even if it is a secret one not recorded by dictionaries.....the first use of *holocaust* with reference to a massacre of Jews in a violently anti-Semitic [*sic*] fashion [1189]” [*Remnants of Auschwitz*, p.30] (For an alternative approach to Agamben’s philology, see Nietzsche’s discussion of the term “good” in the first essay of *On the Genealogy of Morals* “Good and Evil, Good and Bad” ed. Keith Ansell-Pearson; CUP, Cambridge). Agamben does not offer a substitute word or concept to refer to the specifically Jewish dimension to the nazi mass murders.

By focussing their attention on the alleged autonomy of the state, both Bauer and Agamben reproduce the very terror at the theoretical level that is implied in Bauer's anti-emancipationist approach and is the object of critique in Agamben's work. At both the normative and descriptive levels, the universalism of the political is treated as if its dominance over and separation from the social is an accomplished fact. The terror Marx recognised as necessary in such domination – the suppression of particularities – is repeated. This replication, the entire presence and history of emancipated Jewry, that is, their modern *social* existence which includes their specific interests as well as their conflict of interests with other groups is denied and erased from the record. The specificity of antisemitism and the holocaust are dissolved into a universalist domination through which mass murder becomes the responsibility of no-one and the fate of all without distinction. Not only, therefore, are we left with a genocide without perpetrators,<sup>30</sup> but also, a holocaust without Jews. And, as Hannah Arendt notes,

In this inherent negation of the significance of human behaviour, they bear a terrible resemblance to those modern practices and forms of government which, by means of arbitrary terror, liquidate the very possibility of human activity. Somehow in the extermination camps Jews were murdered as if in accordance with the explanation these doctrines had given of why they were hated: regardless of what they had done or omitted to do, regardless of vice or virtue. Moreover, the murderers themselves, only obeying orders and proud of their passionless efficiency, uncannily resembled the “innocent” instruments of an inhuman

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<sup>30</sup> See Fine, R (2001) *Political Investigations: Hegel, Marx, Arendt*, London, Routledge and Bernstein, R. (1996) *Hannah Arendt and the Jewish Question* Cambridge: Polity.

impersonal course of events which the doctrine of eternal antisemitism had considered them to be.....[p.8]

Unless and until we take Arendt' injunction seriously along with her insight that, "history is made of many groups and that for certain reasons one group was singled out" [p.5] – including amongst those reason, the interests and choices of Jews – the risk is run that any reference to Jewish specificity, even in death, can be interpreted as the Jews, again, demanding "special privileges" and the holocaust itself takes its place in the chain of the antisemitic imagination.