

The autonomy of the political and the dissolution of the Jews

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Abstract

This essay argues that the more the state or the political is treated as autonomous the more the specific conception and history of Jews dissolves into a universalised and universalistic 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 diverse 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.

This essay argues that the more the state 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' (Draper, 1977, p. 113).

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or the political as an autonomous entity, rights are seen as always provisional, not in the sense that they can be rescinded (history offers ample examples of such rescission), but that their application to Jews is dependent not upon the Jews themselves (in the sense of their place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.

A current theme in critical legal and critical political literature is a renewed focus on 'the political' as the foundation of the contemporary world.¹ It is for this reason that so much attention is paid to a reconsideration of the French Revolution and its aftermath (Zizek, 2007, pp. vii–xlii). 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.

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1 See Chantal Mouffe, 1993, 2006; Ernesto Laclau, 2005; the recently published lectures of Michel Foucault, 2004; Alain Badiou, 2006, 2007; Slavoj Zizek, 2007.

This essay argues that this concentration on the autonomy of the political and its relation to terror reproduces in critical theory the very error that produced the terror in the first place. Then as now, the error was to believe that the autonomy and universality of the state must be understood in terms that excluded and dominated any particularist input. 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.² 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 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, 1992a)

Nowhere are these points more in evidence than in the question of Jewish emancipation and the rights through which it is expressed. Even in Bauer’s and Agamben’s very different accounts of Jewish emancipation, we see the ‘Jewish question’ through the prism of the autonomy of the political. Both Bauer and Agamben present juridical rights of emancipation as conditional upon a *political* decision. It is for this reason that I have chosen the work of two seemingly disparate thinkers, one writing at the dawn of modernity and that other at a possibly prematurely proclaimed dusk.

Since this political sovereignty 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 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 political universalism. 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 (Carlebach, 1978).

By the time of Bauer’s contribution in the early 1840s, the ‘Jewish question’³ had been simmering in Germany for well over three-quarters of a century. The broader context of Bauer’s contribution was the important overturning of emancipatory gains that were made prior to the Wars of Liberation and were set in motion during the ensuing years of Reaction (Carlebach 1978; Draper, 1977)⁴. This

2 See Karl Marx, 1992a, 1992b.

3 At this period, the ‘Jewish question’ turned on whether and on what terms Jews can, should or should not be emancipated from the political and social constraints imposed upon them.

4 For a list of decrees and the matters covered, see Carlebach, 1978, p. 59.

gradual erosion was not only opposed by sections of the various Jewish communities in Germany, but also by the liberal industrialists of the more progressive urban areas.

The late 1830s and early 1840s also saw the ascendancy to the throne of Friedrich Wilhelm IV and his approach to this question. Despite early hopes, Friedrich Wilhelm IV's policy on the Jewish question can best be described, literally and politically, as 'reactionary'. According to Carlebach, the new monarch:

[L]onged for a full restoration of the traditional estates in Prussia, for the revitalisation of the nobility and for a greatly strengthened Church to give meaning and substance to his cherished faith in Prussia as a great "Christian-Germanic" state, a Prussia modelled on the Christian Stadestaat as advocated by Karl Ludwig von Haller.' (Carlebach, 1978, p. 66)

With this overall outlook, Friedrich Wilhelm commissioned a draft law on the subject which 'advocated nothing less than a return to the middle ages' (ibid., p. 68), whereby Jews would be reduced to the status akin to that of a feudal 'corporation' which, in the words of the bill, would entail:

'Excluding Jews from military service and, self-evidently, from offices and positions of honour for ever, and generally to keep Jews and Judaism totally outside the state.' (cited in Carlebach, 1978, p. 68)

It was this draft bill and the discussions that ensued that provided the immediate context for Bruno Bauer's reflections on the subject.⁵

What is important about Bauer's argument, and the reason why Marx felt called upon to challenge it, was that it came, not from the conservative right, but, seemingly, from the critical left (Draper, 1977).⁶ 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 continued existence of Jews *as Jews*, was incompatible with what he took to be the nature of emancipation.

Bauer's polemic against Jewish emancipation was aimed not only against their inclusion within the contemporaneous German *Christian* state, but also within 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.' (Draper, 1977, p. 113)

In the face of this *universal* oppression, therefore, all gradation of oppression, indeed, of the division of the oppressed into a subcategory 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.

5 Bruno Bauer was a prolific contributor to the current affairs of his day even if, as a radical, his writings were often heavily censored. The state was willing to make an exception on matters concerning the Jews (Carlebach, 1978).

6 Carlebach (1978) argues that many radicals, and not only Bauer, managed to escape the usual censorship of their views on the monarchy and the state, through expressing their criticism as a commentary on the 'Jewish question'.

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, since the secular state emerged out of the skin of the Christian state, it is not enough any more for the Jews to become Christian, but, rather, they must adopt the 'later' stage of 'Christianity in dissolution' (quoted in Marx, 1992a).

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; see McLellan, 1969), 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 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, 1977, 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 (Horkheimer and Adorno, 2002), 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, 1977, 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.

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 state, 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 of emancipation that Bauer locates the 'origins' and meaning of juridical 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.' (Marx, 1992a)

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 (Carlebach, 1978), the question remains as to why he got it so wrong. The answer to this question, I believe, is a consequence of his overarching theoretical thinking and the application of that thought to the question of political emancipation and legal rights. 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' (Rosen, 1977, p. 231). What Bauer means by this phrase, of course, is that 'reality' is 'self-consciousness' and religious forms (i.e. self-consciousness's earthly appearance) mere illusion. Marx précised 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.' (quoted in Rosen, 1977, p. 226)

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

Amongst the more specific criticisms Marx (Rosen, 1977) 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, 1977, 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 an 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 [was] such that it had to be satisfied with a superficial conception and, therefore, had to rely upon the approval of the mass.' (quoted in Draper, 1977, 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. 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. (Marx, 1992a)

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 the Jews' social existence upon which Marx rests his analysis of rights and, ultimately, their 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.' (Marx, 1992a)

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.’ (Marx 1992a, pp. 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 the post-Revolutionary constitutions of France and North America, 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.*’ (Marx, 1992a)

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 each 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 humanity/spirit duality 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 the porous nature of the state.

Unlike Bauer’s (at least initial) acceptance of the French Revolution, 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 de Maistre.⁷ As Žižek notes in his introduction to the speeches of Robespierre:

7 That Agamben can be placed in this tradition is supported also by a perusal of those whom he cites with approval, from Chateaubraïnd, through Schmitt, through Saint Bonnet and others; see Lively, 1965. (For an alternative reading of this tradition, see Mouffe, 1993.)

'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 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. (Zizek, 2007, 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 these events banished God and spirit from the profane world leaving humanity to the arbitrary vagaries of man's unfettered hubristic powers⁸. These two elements are combined and given effect in Agamben's conception of 'the political' as biopolitics in general and his account of Nazism in particular. It is interesting to note, however, that despite the vast theoretical gulf that separates Bauer's thought (and its Rousseauian framework), from Agamben's (who, as noted, is heir to Rousseau's self-appointed nemesis, de Maistre), the outcome of the dissolution of the Jewish aspect of the Holocaust into a universalist conception of the state's autonomy remains the same.

Whereas for Bauer, emancipation is treated as leading to individual *autonomy* as expressed through (abstract) juridical rights, for Agamben, emancipation is treated in the framework of abstract domination of the natural and the nation. At the heart of this distinction is an unresolved tension within the modern notion of emancipation itself. For Bauer, the rights that express emancipation are seen as developing from the idealism of religion and culminate in the consciousness of the self, that is, of the *individual*. For Agamben, on the other hand, emancipation is placed within the context of the emancipation of 'the people', 'peoples' or nation. Within this context, 'individual' rights come to be mediated, or rather, granted, through the prism of the (modern) nation. In other words, if, for Bauer, rights originate from the side of religion (i.e. the emancipation of self-consciousness from its religious forms, most notably that of (the individualism of) Christianity), for Agamben, rights emerge from the successful outcome of humanism through a *conflict* or *contestation* with religion, or at least, with the mystery of religion.

For Agamben 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 difficulty, as the previously excluded realm of nature (or mortality and natality; i.e. bare life; Agamben, 1995) into 'the political'. As he states:

'[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.' (Agamben, 1995, p. 4)

This inclusion is symptomatic of an approach that highlights the alleged *autonomy* of the state. 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 Marx's critique of the terror of the Revolution.⁹ However, rather than overcoming this classical distinction between the political and *oikos*, Agamben utilises it for his novel approach to emancipation and the rights through which it is expressed. It is to be noted also that this reference and utilisation of classical thought as applicable to

8 'Or it can retain the conjunction "humanism *and* terror", but in a negative mode: 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, 2007, p. xiii).

9 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.

the modern world permits Agamben to utilise not only classical *political* concepts, but also classical *legal* concepts. Most notable amongst these is the juridical (and theological) concept of *homo sacer*, of one who could be killed but not sacrificed.

It is through this meaning of emancipation and the rights connected with it, that Agamben's thought connects with Foucault's later work (see, for example, Foucault, 2005). Drawing on Foucault's premise of 'biopolitics' – that the central concern facing the nation was articulated through the language of health and contagion and the need for a 'healthy population' – Agamben offers an account that places it as the central concern and meaning of emancipation which, in turn, is treated as becoming the sole content and mark of political (i.e. state) sovereignty.

Correspondingly, since Agamben rests his definition of the state on the Schmittian conception of sovereignty through which 'he is sovereign who decides on the exception' (Schmitt, 2005), Agamben treats this sovereign power, most notably 'the state of the exception' in purely biopolitical terms. Read in this light, therefore, emancipation and rights become nothing other than expressions of this biopolitical concern with the health of the nation. It is in this way, therefore, that emancipation and the right to inclusion (as well as the fate of exclusion) becomes imbricated in the *praxis* of biopolitics.

It is this overarching biopolitical concern that gives rise to the obsession with the life and health of the nation. Agamben expresses this obsession through his argument that the distinguishing mark of the modern, emancipated nation-state is its concern with 'bare life'. As he states:

'The same bare life that in the *ancien regime* was politically neutral and belonged to God as creaturely life and in the classical world was (at least apparently) clearly extinguished as *Zoë* from political life (*bios*) now full enters into the state's legitimacy and sovereignty.' (1998, p. 127)

Through this prism of humanist biopolitics, Agamben accounts for the meaning and substance of juridical rights and their conflation of the political and the 'natural':

'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.' (1995, pp. 127–28, emphasis added)

It is important to note, however, that this biopolitical concern is not merely applied to an already existent national population, but, rather, is inscribed within the body or make-up of the person itself:

'The link between politics and life . . . is not (as 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 biologically given.*' (1995, pp. 147–48, emphasis added)

Therefore, rather than confronting an external, 'objective' population, biopolitics believes itself capable of creating that national population in its own (humanist) 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*.

This definition of the political – biopolitics – then comes to the fore in the very nature of sovereignty: the state of exception. Agamben traces the origin of the state of exception to Revolutionary France and, just as de Maistre universalises and reifies the 'reign of terror', Agamben universalises and reifies the 'moment' of the 'state of siege' or 'state of exception'. Put briefly, the state of exception is the sovereign power to suspend the constitution for the sake of its protection. At these moments, the diversity of state powers – i.e. the separation of powers between the executive, legislative and judiciary – merge within the

singularity of an absolute sovereign power. More specifically for present purposes, is the immediacy or fusion between political power and bare life:

‘It is in this no-man’s land between public law and political fact, and between the juridical order and life, that [*State of Exception*] 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* difference – between the political and the juridical, between law and the living being.’
(Agamben, 2005, pp. 1–2)

Correspondingly, the state of exception, standing as it does at the threshold of juridical and extra juridical power, melds the two to such an extent that, as Agamben phrases it:

‘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.’
(1995, p. 168)

Fused into one through the state of exception, the biopolitics that was the mark of emancipation now shows itself as domination. This point comes to the fore in the connection Agamben makes between the state of exception and ‘the camp’.

If, in Agamben’s thought, the state of exception comes to represent the bounded autonomy of the absolutism of the political, it is ‘the camp’ that is its topographical manifestation.¹⁰ 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.’
(1995, p. 169)

A consistent theme throughout Agamben’s work on this issue is the idea that Nazism and the Third Reich that existed between 1933 and 1945 be understood as a ‘paradigm’ of modern biopolitics and the state of exception. It expresses the totalitarianism that he believes is present within every modern democracy and which, as noted, originated in the French Revolution. For example, in the *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 of the Protection of the People and the State, which suspended the articles of the Weimer 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.’
(2005, p. 2)

It is within this notion of the Third Reich as a state of exception that Agamben is able to locate the specificity of the Nazi camps; that is, as an institution operating at the interstices of politics, law and bare life:

‘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

10 For a critique of Agamben’s concept of ‘the camp’ see, Mesnard, 2004.

entrusted to the SS and – thanks to *Sutzhaf* – placed outside the rules of penal and prison law, which then, subsequently, had no bearing in it.’ (Agamben, 1995, p. 169)

As noted above, 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. All mediations are cancelled in the camp. In the case of Nazism, along with the fusion of law and power, fact and application of rule, exception and norm, inclusion and exclusion, is the biopolitical (national) distinction between Jew and Aryan. The camp is also the threshold (although Agamben does not phrase it this way) 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 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 is the immediate production of the specifically German body, just as its production is the application of the rule.’ (Agamben, 1998, pp. 173–74)

What is interesting about this account of the (Nazi) camp is its emphasis not so much on the power of *destruction*, but on the power of *creation* (hence, its connection with the divine, or at least with humanity’s usurpation of the divine). Indeed, this is Agamben’s uniquely novel contribution to the history of ‘the camp’, the importance of which should not be understated. From the above quote, it is not solely the case that the Nazis destroy the Jews, but that, at one and the same time, they create the Aryan. Yet, it is precisely at this moment of what Agamben sees as the fusion of creation and destruction that he moves toward dissolution of a specifically Jewish aspect of the Nazi murders into an overtly universalist stream of history.

Discussing the significance of the Nazi 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.’ (1999, p. 85, emphasis added)

The creation of the *Musselman* is deemed the ‘decisive function’ of biopolitics, the state of exception, Nazism and ‘the camp’. 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 and meaning is the apparent birth of an entirely new form of life; *homo sacer* or the *Musselman*.

In the camps, in the furnace of unlimited and absolute power ‘man’ has found the power to finally usurp God through seemingly creating life. However, Agamben believes that it is a life that is devoid of the divine spark and, instead, bears the mark of its biopolitical creator. This new life, *homo sacer*, exists, like the state of exception, like the camp, in the threshold of the divine and profane, of heaven and hell and life and death. The one who can be killed and not sacrificed, *homo sacer* is the new *universal* citizen, the immediate product of the Revolutionary emancipation and the rights through which it was expressed – an ‘absolute biological substance’.

What is so troubling about Agamben’s account of emancipation and antisemitism is the way in which it replicates Marx’s comments about Jacobin terror. Despite the differences in the approach to emancipation and rights that separate Bauer from Agamben, one problem is consistent. The nature

of the political demands the dissolution and abstraction of the Jews into either the 'citizen' or the '*Muselman*' – which, as we have seen, are but two sides of the same coin. If for Bauer emancipation is the product of idealism, for Agamben it is the product of a brute humanism incorporated into the absolutism of 'the political'. Either way, any notion of a historical development of antisemitism, one that relies on the playing out of emancipation and rights beyond the autonomy of the political and dependent upon a specific historical context and specific historical developments is ruled out of court from the outset. Jewish existence and Jewish dissolution, in other words, come to be explained through the prism of idealism or through the prism of power and positivism, of brute facts imposed upon the world.

Contrast this view with Hannah Arendt's account of antisemitism and the Holocaust that recognises the agency (political and extra-political) 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.'
(Arendt, 1979 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 on '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.'
(Arendt, 1979, pp. 5, 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.'
(Arendt, 1979, p. x)

It is from this perspective that Arendt offers a critique of modern emancipation, rights and anti-semitism that is the outcome of a 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 late eighteenth century was almost stillborn. Chief amongst these problems was a lack of those willing to finance the state institutions. Whereas the *ancien régime*, 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.¹¹ It is at this point that the Jews presented themselves as a

11 For a discussion of the bourgeoisie's relationship to the state, see Marx, 1996.

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 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 not handle by themselves the ever-growing demands of state business, were these privileges finally extended to the whole of Western and Central Jewry.' (Arendt, 1979, 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 emerged from its shortcomings 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.' (Arendt, 1979, 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, although Arendt identifies the seeds or origins of totalitarianism within the nation-state, she draws a strong distinction between it 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,¹² she still offers an account of Nazism that draws on its external preconditions. That precondition is what she terms 'superfluosness'. Superfluosness 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 'superfluous' 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 agency of 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.

12 Arendt notes that assimilation was almost complete following the loss of the Jews' financing of the state.

Conclusion

'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 demagoguery.' (Arendt, 1979, 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*.¹³

By focusing 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 all other aspects of existence 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, emancipated, 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,¹⁴ but also, a Holocaust without Jews. And, as 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 impersonal course of events which the doctrine of eternal antisemitism had considered them to be.' (Arendt, 1979, p. 8)

Unless and until we take Arendt's injunction seriously along with her insight that, 'history is made of many groups and that for certain reasons one group was singled out' (1979, p. 5) – including amongst those reasons, 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.

13 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]' (1989, p. 30). (For an alternative approach to Agamben's philology, see Nietzsche's discussion of the term 'good' in the first essay of (2002).) Agamben does not offer a substitute word or concept to refer to the specifically Jewish dimension to the Nazi mass murders.

14 See Fine, 2001; Bernstein, 1996.

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