

Biopolitics and Normativity

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In this paper we will propose an account of what the biopolitics might be in its genetical, descriptive and normative aspects. This concept – biopolitics – the biopolitical theory, here standing in for the work of elaborates as a matrix of relations in the exercise of state power over, through and for the sake of its subjects, where the state power is considered as a juridico-constitutional order and the subjects as constituted through the government of the biological potentialities of their livelihood. Even though this concept was devised for purposes of a radical critique of the legal foundation of sovereign power, the purpose of our biopolitical concern here is to discern behind this negative aspect of a radical critique its normative potentiality that is still in want of a thorough consideration. This lack of normative rapprochement, however, is not entirely a question of the theoretical affiliations of biopolitical authors. It rather reflects the strategic tension of the biopolitical theory to leave behind the totalizing negativity of biopolitics. In its demand for a total reworking of the structure of legality, it stakes its normative claim.

1. Biopolitics – a twofold shift

1.a. Biopolitical heteronomy of reason of state

In his lectures on *Security, Territory, and Population* at the Collège de France in the mid 70s Foucault analyzed the structural shift in the post-Westphalian European political constitution that made itself present in the diminishing concern of the sovereign powers with the territorial conquest and its increasing interest in the heightening of state's forces through population politics. This change from "territory state" to "population state" was accompanied by the deployment of a host of policies that had their purpose in the accretion of population's health, longevity, birthrate, education, wealth, etc., and that led to the development of a

host of institutionalized practices and sciences that we came to know as disciplinary.

New biopolitical regime was thus characterized by two important structural changes at the heart of political constitution. Firstly, the subsistence of the state ceased to be the sole purpose of the exercise of governance, the state was no longer its own end. The state power had rather commit itself to improving the livelihood of its subjects, thus maintaining its inner political stability and improving its resources in the foreign political and economic competition. Although this may not seem as to big of a change from the practices of the territorial state – it also sought to maintain its authority at home and its dominance abroad – this increased interests in the population issues, however, marked a profound displacement in the governance of the state. Namely, the sovereign power resided no longer in the art of conquest, now it resided first and foremost in the governing of humans.

And this emerging immanentism of state politics, where the exercise of power resorted for its legitimacy to the internal political issues, introduces an important cleavage within the political system. In his analysis of the new art of government, new governmentality, Foucault points out that only once the population state with its internal political concerns sets in, the notion of the reason of state appears. Though this may come as a surprise, it would be hasty and erroneous to conclude that the reason of state should denote state as THE reason, i.e. that state comes before any reason. The reason of state as a “new matrix of rationality”, where the sovereign power is vested in the governing of humans, presupposes that the reasons for state action reside somewhere else rather than in the state itself, and thus it calls forth a differentiation between the state and the society, which the state applies its efforts to and founds the reasons for those efforts on. Therefore, the shift to the population state goes hand in hand with the division between the society and state, on one hand, and sets in motion processes of legitimation, on the other. This differentiation and the increasing

importance of the society in the processes of legitimation received another turn with the advent of the liberalism. In the lectures *The Birth of Biopolitics*, held a year later, Foucault suggests we should understand liberalism of all different colors and hues not as an ideology or a political theory, but rather as a method of critical reflection of the exercise of government where government itself is vicarious to the society's ends. Yet, Foucault fails to go further into this process of autonomization of the society from the state either in terms of the consequences of biopolitics or the emergence of public sphere. But let us for the moment leave aside the problems of liberalism and society, which we'll come back to later in our discussion of the biopolitics against the backdrop globalization, and turn our attention to the second constitutive change in biopolitics.

1.b. Biopolitical limitation of life

As we tried to demonstrate, in managing the internal forces of state the biopolitical regime directed its attention at the human resources of its subjects. This didn't only lead to new practices in the art of governing and the ensuing structural changes in the negotiation of reasons between state and society, the shift to biopolitics also introduced a new anthropological paradigm in the governance of subjects. In administrating the welfare of population the biopower conceives of human resources in terms of the "general system of living beings", i.e. in terms of human as human species and not humankind. The malleable material in which the state power now impresses its authority is the biological composition of its subjects: new practices of medication, vaccination, sanitation, penal correction, mass-education, manufactorial production, later factory production, and the attendant institutions, in brief the whole emerging disciplinary dispositive finds the immediate referent of its action in the somatico-psychological conditioning of its subjects.

With the historical emergence of biopolitics, which we could along the lines of our previous exposition now define as *the formation and organization of potentialities*

of human life through the exercise of state power, a greater problematic massively enters center stage of the examination of political constitution – how does the juridico-constitutional order include life in general, or what in turn what remains of life outside the constituted order? Taking up Aristotle’s distinction between the two ancient Greek notions life: that of *zoe* standing for the mere fact of bare life that is common to all living beings and that of *bios* standing for a qualified life common to a group of people, a way of life, i.e. life where its *that* is indissociable from its *how*, Giorgio Agamben in his seminal *Homo Sacer, The Sovereign Power and Bare Life* suggests that the established stability of political order depends on the reigning-in and the structuring of the nativity – if we were to go back to this Hannah Arendt’s term to describe the productive potentiality for transformation and consequently subjectivation of political agents that is at stake here – nativity common to the political life. Hence state-form necessarily dissociates life from its forms-of-life by imposing in its biopolitical guise the institutionalized prefiguration of life, on one hand, and reducing in its legal constitution life to a protected zone of intervention, on the other. This reduced life is nowadays either subject to the state-sponsored bioethical deliberation on where life legally begins and ends and which technological and scientific interventions are morally admissible, or subject to the state-sponsored transnational humanitarian and coercive policing efforts at saving or repressing human lives.

Consequently, in its negative aspect the biopolitical theory is a critique of the modes of exclusion and limitation imposed by the existing state-form on the collective forms-of-life of the multitude – forms-of-life that are based on the productive potentiality for becoming and transforming and are governed by the indissociability of the life from its collective form, i.e. by the collective cognitive experience of the life in common, that we also know as the general intellect.

2. Legality in biopolitical theory

2.a Legality as the center of analysis in biopolitical theory

In the reception, at least, of biopolitical theory the importance of the analysis of legality for the biopolitical theory has not been given due attention, even though – and that can be rightfully said – the domain of legality occupies the central position in the concerns of biopolitical theory.

We will quote only two exemplary passages, which directly situate the fundamental character of legal categories. Agamben: "Philosophy is always already constitutively related to law, and every philosophical work is always, quite literally, a *decision* on this relationship" (*Potentialities*, p. 161). Or standing very prominent at the beginning of Negri and Hardt's "Empire": "Empire is materializing before our eyes. <...> Along with the global market and global circuits of production has emerged a global order, a new logic and structure of rule - in short, a new form of sovereignty. Empire is the political subject that regulates this global exchanges, the sovereign power that governs the world." (*Empire*, p. 11)

The quote from "Empire" immediately draws attention to the way the biopolitical theory conceives of law: law is reductively understood only through the prism of sovereignty and sovereign power. Taking up Carl Schmitt's concept defining sovereignty as "a limit concept" of law, and consequently as the only one worth analysing, the authors at issue try to rearrange the Schmittian framework to accommodate the reflection on conditions of post-fordist global system. Moreover, we maintain that the relevance of biopolitical theory resides in the fact that it made the legal production stand as a paradigm of production *per se*, thus redescribing the field of marxist theory.

Now, if law is primarily sovereignty – and according to Schmitt sovereignty is inherently linked to the problem of the “state of exception” –, law in its radicalized form becomes “summary judgment”, i.e. law of state of exception *in force*. Or formulated in a different manner: Sovereignty, which is according to Schmitt, now in the biopolitical interpretation becomes a continuous extra-legal place of legal production.

In this view legality is primarily conceived in its constitutive function that is as the establishing of the domain of law itself. This why for biopolitical authors the problem of domain or space of legality becomes decisive – and that might account for one of the reasons of the recent popularity of this kind of theory: namely, the concept of domain or space, as expounded by Hardt, Negri and Agamben, seems to be, without any further modification, applicable to the phenomena of globalization and production of global space.

What is meant by that?

If the sovereignty constitutes the fundamental category of biopolitical analyses, following there in Schmitt’s footsteps, and if the sovereignty is concomitantly extra-legal, it is not difficult to conclude that the space of legality is in fact “empty”, i.e. in it all categories with the exception of sovereignty are eliminated, and sovereignty occupies the whole of the domain. Such space is in what concerns legality qualitatively or categorially indifferent, and maybe the only remaining criterion is a quantitative differentiation of the extension of factual spaces where such *Standrecht* legality is applied. Legality in that sense is the issue of geography, and so it should not come as a surprise that the vocabulary the biopolitical theory uses to speak of the globalized world seems so simple.

Or as David Harvey points out in his book "Spaces of Hope", while discussing the *Communist manifesto*, and we think this applies also to the intention of the authors at issue: "How to build a political movement at a variety of spatial scales

as an answer to the geographical and geopolitical strategies of capital is a problem that in outline at least the Manifesto clearly articulates. How to do it for our times is an imperative issue for us to resolve. We cannot set about the task without recognizing the geographical complexities that confront us. We need to find ways to construct a dialectics of politics that moves freely from the micro- to macro-scales and back again." (p.52)

So the space that is at stake here is a space that is qualitatively indifferent, or scalable: a space where shortcuts can freely be made between the individual perceived both as *zoe* and *bios* and the global constitution of the post-fordist capitalism, or Empire, because – as these authors maintain – no qualitative criteria exist that would guarantee the incommensurability and heterogeneity of different legal, or even political perspectives.

But to what extent can such a global space of biopolitical legal production be normative? In this decisive issue, the authors leave behind the schmittian terrain. They try to qualify and characterize the phenomenon they describe. Agamben takes up and radicalizes Benjamin's critique of Schmitt, and states that what is at stake in the biopolitical production is that what is "in force without significance", what has *Geltung ohne Bedeutung*. Here one cannot speak of normativity, not in sense of that notion.

To sum it up: legal production is the paradigm of the post-fordist production. It is qualitatively indifferent, i.e. scalable and non-signifying, i.e. a-normative.

The pathos of biopolitical theory grows out of the fact that the authors we are discussing here take such a characterization of legality, in a sort of heroic-militant gesture, as their epistemological starting ground, maintaining that as much as it should be thoroughly criticized such radicalized schmittian framework provides nevertheless more chances for a more accurate analysis than other possible approaches.

2.b Normative rapprochement to biopolitics – legality and exclusion (Agamben & Honneth)

As we have previously pointed out, the juridical life – life codified within the legal system, is reduced to a life in need of protection from the technological and scientific encroachments. This leads us to conclude that the ultimate figure of this biological life safeguarded by laws is a life that is under threat of ceasing to be life, and ultimately life that is threatened by death. Legality is thus constituted in this liminal case of political life and death. In keeping with the Schmittian understanding of the sovereign power as that one that decides on the life and death equally as on the state of exception and (re-)establishment of legal order, we see that the proceduralization of the sovereign power in the law making introduces the limit case of sovereign decision on the inclusion and exclusion of life into the legal order. Although this might be construed along the lines of the perpetual state of exception argument, we won't pursue that line of argument. We take recourse to this normalization, rather than the totalization, of limit case to point to the normative kernel behind the legal inclusion and exclusion and the threat of death.

Axel Honneth in his *Struggle for Recognition*, in the section 6 on the *Personal Identity and Humiliation*, draws attention to the metaphors of death and corporeal corruption that beckon to experiences of exclusion and respective pathological symptoms and affective motives in the struggle for recognition. There he refers to the notions “psychological death” and “social death” commonly used to designate the experience of abuse (*Mißhandlung*) and denial of rights/discrimination (*Entrechtung*). The figure of social death thus presides over the exclusion from the social and governs the dynamics of normative processes of recognition.

The two regimes of exclusion – exclusion from the legal order and exclusion from the social recognition – are different, because the biopolitical regime not only denies the social recognition, but also excludes from the dynamics of social

recognition those who are tributaries of the legal order yet are not equal members of the society, and thus cannot enter reciprocal processes of recognition. Such is the case of illegal immigrants, asylum seekers, refugees, of all those who do not take part in the deliberative processes of a legal order, yet fall under its authority. And to include those tributaries yet not members, it would require to create legal accommodations beyond limitations of state. Consequently, if we were to restate the biopolitical analysis in normative terms, we could claim that it is (an appeal for) a normative theory of legality beyond state-form.

3. Normative aspects of biopolitical theory

3.a Non-state-forms

Earlier in our exposition we promised to come back to the differentiation processes between state and society that were created along with the new form of governmentality within the disciplinary dispositive. From the analyses of Michael Hardt and Toni Negri in their two books, *Labour of Dionysus, A Critique of State-Form* and *Empire*, two following three developments in the postmodernity can be retraced: a) instead of the mediation there is a complete separation and autonomy of the state from the society, in the sense that the state maintains its stability through increased proceduralization and administrativization of the social processes of decision-making and production, thus warding itself off from the social struggles and unrest; b) the disciplinary mechanisms expand to exit the confines of institutions and to imbue the entire society with their functions of education, health, labor, etc., so that the social life becomes a perpetual process of learning, healthcare, work, thus creating what Gilles Deleuze dubbed the society of control; c) social processes and economic processes integrate on a global scale to create a global society of control that is one and has no outside.

Now, the globalization recasts in new light the relation between the state-form and society and, consequently, the issue of biopolitics. If we were to follow the transformations of labor – and labor is for the biopolitics, as has been demonstrated by Paolo Virno in his *Grammatica della moltitudine*, of utmost relevance, because labor as labor-force is the productive potentiality of life itself –, we see that the regime of factory production spreads all over society to create a society-factory, where production processes increasingly include social communication, thus creating a new form of labor – social labor. This is labor that has re-conquered its collective potential substance and is only managed by the capital. This is why this process is ambivalent – new immaterial collective transnational labor, created by the capital, creates also possibility for the multitude – the subject of resistance to the global domination of capital – to appear.

“The productive cooperation of the social worker, through its technico-scientific, immaterial, and affective labor, creates the network of self-valorization that animate constituent power.” (*Labor of Dionysus*, 295)

3.b Auschwitz as an ethical question

In his book "Remnants of Auschwitz" Agamben analyzed more concretely some of the phenomena he already addressed in his book "Homo Sacer". For Agamben Auschwitz constitutes primarily a philosophico-ethical issue, that he tries to strip of the legal categories of guilt, innocence and responsibility. Moreover, the very possibility and actuality of an ethics that would correspond to the biopolitical epoch is formulated as: *Ethica more Auschwitz demonstrata*.

"With the emergence of biopower, every people is doubled by a population; every democratic people is, at the same time a demographic people. In the Nazi Reich, the 1933 legislation on the "protection of the hereditary health of the German people" marks this caesura perfectly. The caesura that immediately follows is the one by which, in the set of all citizens, citizens of "Aryan-descent" are

distinguished from those of "non-Aryan descent". A further caesura then traverses the set of citizens of "non-Aryan descent" separating Jews (Volljuden) from Mischlinge. <...> Biopolitical caesuras are essentially mobile, and in each case they isolate a further zone in the biological continuum, a zone which corresponds to a process of increasing Entwuerdigung and degradation. Thus the non-Aryan passes into the Jew, the Jew into the deportee, the deportee into the prisoner, until biopolitical caesuras reach their final limit in the camp. This limit is the Muselmann <"half-dead" prisoner of the KZs>. At the point in which the Haefling becomes a Muselmann, the biopolitics of racism so to speak transcends race, penetrating into a threshold in which it is no longer possible to establish caesuras. Here the wavering link between people and population is definitively broken, and we witness the emergence of something like an absolute biopolitical substance that cannot be assigned to a particular bearer or subject, or be divided by another caesura.

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

In 1937, during a secret meeting, Hitler formulates an extreme biopolitical concept for the first time <...>. Referring to Central-Western Europe, he claims to need a volkloser Raum, a space empty of people. How is one to understand this singular expression? It is not simply a matter of something like a desert, a geographical space empty of inhabitants. Hitler's "peopleless space" instead designates a fundamental biopolitical intensity, an intensity that can persist in every space and through which peoples pass into populations and populations into Muselmaenner. Volkloser Raum, in other words, names the driving force of the camp understod as a biopolitical machine that, once established in a determinate geographical space, transforms it into an absolute biopolitical space, both Lebensraum and Todesraum, in which human life transcends every

assignable biopolitical identity. Death, at this point, is a simple epiphenomenon." (Remnants of Auschwitz, p.84-86)

This long passage from Agamben demonstrated once again that here the concepts of legality and space are thought together. But the point Agamben wants to make – and that he thinks is of decisive ethical relevance – is the status of life and death. Or rather the anachronic character of those concepts in regard to the ethical dimension.

Muselmann, a half-dead human being in the concentration camp in whom *zoe* and *bios* have collapsed in one another to indistinction, is according to Agamben the liminal figure of western societies, i.e. an outlaw that can be killed, yet whose killing does not enter into any sort of economy of tragic religious sacrifice, but rather guarantees the continuity of biopolitical production.

Or formulated in a different manner: if the function of the classic sovereignty was "make die, let live", then the 20th century biopolitical production can be summed up in the function "make survive".

But ethical issues in Agamben seem to be rather "anthropological" ones – it is rather a sort of "weak anthropology", where Auschwitz designates the emergence of a new kind of humanity and of respective philosophical questions. It is in deed something that Agamben described elsewhere as an "anthropological change that is just as decisive in the context of the individual's natural history as the liberation of the hand by the erect position was for the primate..."(Potentialities, p.260)

4. Normative aspects of biopolitical theory

The normative aspect of the biopolitical theory has been more or less left aside both by the biopolitical authors themselves and in the reception of their work. We

maintain that that is not by chance, because that which we call biopolitical theory is in a way a "theory without name". What do we mean to say by that? We mean to say that the biopolitical theory as a theory of the post-fordist capitalist system in a sense does not have a positive title to designate its own theoretical agenda. It seems that the "hidden" name of the biopolitical theory is highly relevant, for we think that when Negri\Hradt or Agamben speak of biopolitics that they provide "only" the descriptive part of their efforts, and that the concealed theoretical intention lies elsewhere.

It might be the case that, for instance, the concept of life, as used by the biopolitical theory and as presented here, as a truly fundamental part of that theory conceals another deeper, we think, normative part of that theory.

In brief: for the authors at stake the index of normativity is neither the concept of life nor that of production – it is rather concepts such are Arendtian notion "miracle" (in Virno), Benjaminian understanding of Messiah (in Agamben) or trick or notion of kairos (in Negri).

Therefore, we maintain that the context that the biopolitical theory stems from is more of a messianic provenance rather than political theory – even though the convergences between the two domains are almost endless.

The inherent messianism of the biopolitical theory is in the central position of legality that is first taken only to be destroyed or relinquished, but that extra-legal space of social production, unlike the affiliate concept of sovereignty in Schmitt, is not determined by the ecstatic elan of the tragic hero, nor is thought teleologically. So, in what sense can the trick, miracle or kairos be normative?

We'll offer three possible directions.

1. Phenomenology of the collective in the biopolitical theory is radically set apart from the phenomenology inspired by Heidegger, because at its center it places the phenomenology of love and solidarity, and not of death. Namely, the figure of heroic sovereign decisionism in Heidegger is structurally determined by the fact that the death is on one side entirely certain, yet the moment of its incidence is entirely undetermined. From there follows a certain Heideggerian kairology, i.e. the enduring mobilization of the individual that is tragically confronting its finitude. The biopolitical phenomenology does not start out from such ecstatic model, exactly because it holds such model for an already historically actualized in the conditions of post-fordist production, and in that sense a banal one.

2. Thus understood, post-fordism is in the same time the realization of utopia of the collective of virtuosos. Namely, if the prevailing form of labor in the post-fordist conditions is intellectual – not only with regard to the division between manual and intellectual labor, but also with regard to the very structure of intellectual labor as of a heterogeneous production where the worker is not exhausted in the process of production – post-fordism can be called the "communism of capital" (Virno). But the post-fordist virtuosity is a servile virtuosity that subsumes itself to work and to present conditions of work, whereas the authors at stake want to think the virtuosity that would be associated with action.

3. In his book "On Psychotheology of Everyday Life – Reflections on Freud and Rosenzweig" Eric Santner placed the biopolitical analyses in the context of Rosenzweig and Benjamin's philosophy. Following him we can say that the primary intention of the subject of messianic action, who is the hero of the biopolitical narrative, is twofold:

- messianic collective action is primarily concerned with verification, and not the legitimation of the existing state of affairs

- purpose of messianic action is not an ecstatic destruction that feeds on the fancy that something "outside" the existing state of affairs is possible, the genuine messianic action is rather the one in which one lives and acts in the "midst of life" (in der Mitte des Lebens) that Rosenzweig talks about.