Killing with Impunity: St. Augustine & Giorgio Agamben on Sovereignty

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Although the contemporary Italian political philosopher Giorgio Agamben is not a religious thinker, there is a remarkable affinity between aspects of his thought and that of St. Augustine of Hippo. This paper attempts to show that, like Agamben, Augustine locates the origin of sovereignty in the sovereign's decision to place some person(s) outside the protection of law. Moreover, both thinkers are alert to the fact that, given the structure of sovereignty, sovereign authority's decision to deprive persons of legal protection is not subject to oversight, even when the sovereign acts unjustly. In other words, Augustine and Agamben agree that sovereigns murder with impunity. To prove this thesis, the paper first outlines Agamben's account of how sovereignty constitutes itself, namely, through the exclusion of "bare life." Next, it examines several texts from The City of God to show that Augustine holds a similar theory regarding the historical origins and character of political authority. Finally, the paper considers how Augustine's Regula ad servos Dei anticipates Agamben's call to found political communities outside the purview of law.

I. Introduction

Michel Foucault has famously proposed Jeremy Bentham's panopticon as the architectural paradigm of modern society. In Bentham's prison design, the few guards stationed in the central tower observed the inmates arranged in the multi-floor cylindrical structure around them. The inmates, in contrast, never knew with certainty whether or not they were being observed; they only knew that they might have been. In this way maximum discipline was maintained with minimal intervention on the part of the limited prison staff. In *Discipline & Punish* Foucault argues at length that the panopticon functions as an architectural paradigm for all modern institutions. In contrast to ancient "civilizations of spectacle," which were structured to give the maximum number of persons access to a very few objects (consider how well the Roman basilicas and amphitheaters served this end), contemporary societies are structured to give very few elites access to as much information as possible.[1]

In the tradition of Foucault, the contemporary Italian philosopher Giorgio Agamben has proposed an even more threatening architectural model, which he claims has structured Western politics in a hidden way since its inception: the concentration camp. Whereas Foucault argues that the panoptic society permits elites to deploy power over the masses by collecting information and exerting psychological pressure, Agamben's camp paradigm claims that physical violence founds every juridical order the West has known. For Agamben, the murderous organizational detail of Auschwitz, and not Bentham's prison design, most effectively illuminates the nature and structure of Western politics.[2] Surprisingly, there are numerous

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[1] Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York: Random House, 1995), 216.

[2] Agamben's philosophical analysis of sovereignty bases itself on the history of European and North American political institutions. Nevertheless, when he claims, "In Western politics, bare life has the peculiar privilege of being

interesting connections between Agamben's thought and the political thought of St. Augustine of Hippo. Like Agamben, Augustine was at times fascinated by the political significance of space. For example, at the very outset of *The City of God*, he reminds his readers (some of whom were eager to blame Christians for Rome's imperial decline) that when the barbarians sacked Rome, Christian churches were the only spaces the aggressors respected as safe havens for Rome's citizens. Moreover, one could find shelter in those churches regardless of one's religion: even strangers to the household of the faith were safe in the House of God.[3] Thus Augustine's account of how Rome's churches functioned in a time of war offers a strange inversion of Agamben's analysis of the concentration camp: while camps are typically places where religious, ethnic, or racial minorities are "abandoned," i.e. deprived of the protections of law, Christian churches on the occasion of Rome's sacking were privileged places of protection, not only for certain social groups, but for the many.

In this paper I consider a single point of connection between the political thought of Augustine and Agamben, namely, that each locates what Agamben calls "sovereign violence" at the root of the political order. In *Homo Sacer: Sovereign Power and Bare Life,* Agamben argues that the relationship between sovereign authority and "bare life" founds every juridical order. Agamben's phrase "bare life" (*la vita nuda*) signifies human life included in the juridical order only by means of an exclusion depriving it of the protections the law affords. Since it dwells beyond the law, bare life may be killed without the killer being held legally responsible. As I will explain, Agamben asserts that the vulnerability of some persons to be killed with impunity has been a feature of Western politics from the beginning.[4]

A close reading of *The City of God* reveals that Augustine holds a similar theory regarding the historical origins and character of political authority. After outlining Agamben's theory of the relation of sovereignty and bare life, I will link Agamben and Augustine by examining a few texts from *The City of God*: XIX, 14-15, where Augustine likens political authority to slavery; IV, 4, where Augustine argues that the single difference between a sovereign like Alexander the Great and a band of pirates is that the former commits his crimes with impunity; and XV, 5, where he considers how two sovereigns, namely Cain and Romulus, were both fratricides. In the final section of the paper, I'll show how the agreement between

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that whose exclusion founds the city of men" (*Homo Sacer*, 7), I do not take him to assert that this is the case *only* in Western politics. By restricting the breadth of his claims, he allows for the possibility of a political order not founded on the exclusion of bare life. Yet, for Agamben, if such an order has existed, it necessarily lacked a sovereign. For attempts to read non-Western, e.g. Asian, political events through an Agambenian lens, see Melissa Lefkowitz, "Accepting/Rejecting: China's Discursive Reconfiguration of *Zoe* for a New Era in Organ Donation," *Concentric: Literary and Cultural Studies* 40/2 (2014), 203-18; and Darren Southcott, "State of Exception: An Agambenian perspective on the detention of North Koreans in South Korea," *Refugee Law Initiative: Working Paper No.2* (December 2011, http://www.sas.ac.uk/sites/default/files/files/RLI/RLI_WorkingPaper_No2.pdf).

[3] "The shrines of the martyrs and the churches of the apostles are our witnesses; for during the sack of the city they sheltered those who fled to them: both their own people and strangers (*ad se confugientes suos alienosque receperunt*)." Augustine, *The City of God against the Pagans*, trans. R.W. Dyson (Cambridge: Cambridge University Press, 1998), 4.

[4] As I hope to show toward the end of this paper, Agamben notes a significant exception to this rule, namely the alternative political communities constituted by the monastic and mendicant religious Orders.

Agamben and Augustine on the theoretical plane leads both to imagine how human beings might form communities outside the purview of law.

II. Agamben on sovereignty and bare life

As its title indicates, in *Homo Sacer* Agamben focuses on the enigmatic figure of the "sacred man." According to Roman law, the sacred man was alien to both law and religion; that is, he could be killed with impunity, but not sacrificed to the gods.[5] For Agamben, the figure of the *homo sacer* is as significant today as it was in the ancient world, for "if today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*."[6] Moreover, Agamben notes that, since in practice the recognition of human rights often depends on the recognition of citizenship,[7] today's refugees and stateless persons resemble the Roman *homo sacer*, living as they do outside the protection of law.[8]

To illustrate Agamben's views on the origin of sovereignty and its relation to bare life, let's imagine how for Agamben a political regime arises. First, every regime requires a sovereign authority. For Agamben, it matters not whether the sovereign is a single person, a group of persons, or whether sovereignty is vested in citizens, as in a democracy. Further, let's imagine that as of t_1 the sovereign has made no decision about what constitution and other laws will govern the populace or whom the law will protect.[9] That sovereign authority is temporally and ontologically prior to the law in this fashion is related to what he calls the "paradox of sovereignty." According to this paradox, which Agamben derives from Carl Schmitt, "the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law. This means that the paradox [of sovereignty] can also be formulated this way: 'the law is outside itself.'"[10]

Although at t_1 the sovereign hadn't instituted a constitution or other laws, at t_2 the sovereign makes what Agamben calls the "sovereign decision,"[11] i.e. he institutes a juridical order and decides whom that order includes and whom it excludes. Let's imagine that, according to the sovereign decision, those with blue eyes are regulated and protected by the laws, while

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[5] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), 82.

[6] Agamben, *Homo Sacer*, 115. As Agamben writes a little further on, "Modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it what is at stake in political conflict," 124.

[7] Agamben, *Homo Sacer,* 132: For instance, Agamben points out that in Nazi Germany Jews and others about to be transported to concentration camps were always first stripped of German citizenship.

[8] "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" (Agamben*, Homo Sacer*, 128).

[9] Agamben, *Homo Sacer*, 19: Agamben follows Carl Schmitt, who argues that the sovereign decision "proves itself not to need law to create law."

[10] Agamben, *Homo Sacer*, 15.

[11] "Sovereign decision" is a major concept for Agamben. He writes, "the sovereign decision on the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning" (Agamben, *Homo Sacer*, 19).

those with eyes of other colors are not. In Agamben's terms, those whose eyes are not blue have been placed in the sovereign ban, i.e. they have been "abandoned" by the law. According to Agamben, those with brown, green, or hazel eyes, etc., are now vulnerable to being killed with impunity or otherwise deprived of their rights. Furthermore, since, unlike those with blue eyes, they were never citizens to begin with (having originally been excluded from the juridical order by the sovereign decision), they are powerless to sue for legal redress. For this reason Agamben writes, "Western politics first constitutes itself through an exclusion (which is simultaneously an inclusion) of bare life."[12] Moreover, "the [political] rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule."[13] The exclusion of bare life is at once an inclusion inasmuch as bare life, rather than enjoying the law's protection, becomes its victim.

Stepping forward in time, let's imagine that the sovereign decides that a blue-eyed person originally included in the political order is no longer worthy of the law's protection. For Agamben, this person is likewise "abandoned" by the law and becomes bare life. His abandonment "preserves the memory of the originary exclusion through which the political dimension was first constituted,"[14] and he joins those previously banned in the precarious position of being excluded from the law's protection. Although the Romans called this figure *homo sacer* ("sacred man"), Agamben argues that he has reappeared throughout political history. For Agamben, the "sacred man" is of foremost importance for understanding the nature and structure of sovereignty. Like the sovereign, the sacred man is at once inside and outside the juridical order. Since he was placed in the sovereign ban by the law, he clearly finds himself within the purview of law; but since he lives in a no-man's-land beyond the law's normal protections, he exists outside the law as well. In other words, the "sacred man" or "bare life" and the sovereign are correlative figures at the origin of any political regime. These two figures presuppose and imply one another: "the sovereign is the one with respect to whom all men are potentially *homines sacri*, and the *homo sacer* is the one with respect to whom all men act as sovereigns."[15] Without a sovereign deciding to whom the juridical order will apply, there can be no order; neither can there be an order, however, unless there is also "bare life" about which the sovereign will decide. For Agamben, bare life and sovereign authority are equally ontologically prior to any political regime.[16]

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[12] Agamben, *Homo Sacer*, 7. Bare life is included precisely in being excluded, for "the law affirms itself with the greatest force precisely at the point in which it no longer prescribes anything—which is to say, as pure ban" (Agamben, *Homo Sacer,* 49-50).

[13] Agamben, *Homo Sacer*, 18.

[14] Agamben, *Homo Sacer*, 83.

[15] Agamben, *Homo Sacer*, 84.

[16] Agamben's account of sovereignty's origin reminds us of Hobbes' similar account. As the above rehearsal of Agamben's account has tried to explain, bare life and the state of exception remain internal to the juridical order inasmuch as the sovereign is always outside the law and thus retains power to remove citizens from the law's protection, i.e. to cause the re-appearance of bare life hidden by the sovereign decision. Agamben argues that, similarly for Hobbes, "the state of nature is not a real epoch chronologically prior to the foundation of the City but a principle internal to the City, which appears at the moment the City is considered *tamquam dissoluta*, 'as if it were dissolved' (in this sense, therefore, the state of nature is something like a state of exception)." Moreover, as Agamben denies that other persons bestow governing authority on the sovereign (for bestowal of power by the many

Two brief points summarizing what Agamben thinks about sovereignty and bare life: first, *alienation* and *exclusion* are at the root of Western political regimes. Recall from our illustration that the sovereign decision rendered all those not having blue eyes beyond the protection of law. Moreover, just before the sovereign decision, the whole populace was vulnerable to being abandoned by the law. Even now, Agamben thinks, all citizens are potentially bare life, a fact of which we are reminded every time political authority alienates persons whose lives are deemed no longer worth living. Another way of expressing Agamben's view that alienation structures politics is to say that no political order regards its citizens as vested with *inalienable* rights.[17] After all, sovereign authority regards all its citizens as potential *homines sacri*, i.e. bare life. Second, for Agamben, up to now Western political regimes have been inherently *violent*, inasmuch as they are founded by violence that then repeatedly causes the appearance of bare life. This is evident if we ask how the sovereign authority, whether it consists of a single person, a group of several, or if it's vested in all citizens, becomes sovereign in the first place. Obviously, the sovereign doesn't derive power in virtue of an election, since sovereign authority is independent of a juridical order in which elections occur. Ultimately, the source of the sovereign's authority is nothing other than raw muscle and might. After all, it's hard to imagine why any group of persons would voluntarily subject itself to the vulnerability that accompanies potential bare life unless those persons judged their collective strength insufficient to challenge the sovereign's claim to power. Caught in the dilemma of either waging a *bellum omnium contra omnes*, or pledging fealty to a sovereign who could ban any of them at any moment, they judge the latter the more secure (or, better, the less precarious) option. Nevertheless, the truth about the hidden enmity that exists between sovereign authority and citizens emerges whenever sovereign violence causes the appearance of bare life.

presumes a juridical order that does not yet exist), so for Hobbes, "the foundation of sovereign power is to be sought not in the subjects' free renunciation of their natural right but in the sovereign's preservation of his natural right to do anything to anyone, which now appears as the right to punish" (*Homo Sacer,* 105-6).

[17] Of course, political orders do exist that claim to recognize inalienable rights accorded to persons by an authority that transcends the state. Yet, Agamben rejects these claims by observing that political authority in democratic countries often uses law to remove persons from the law's protection. As an example of such "banning," Agamben cites President George W. Bush's order of November 13, 2001, which called for the "indefinite detention" of noncitizens suspected of terrorist activities against the United States. According to Agamben, the order "radically erases any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Not only do the Taliban captured in Afghanistan not enjoy the status of POWs as defined by the Geneva Convention, they do not even have the status of persons charged with a crime according to American laws. Neither prisoners nor persons accused, but simply 'detainees', they are the object of a pure de facto rule, of a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from juridical oversight" (Giorgio Agamben, *State of Exception*, trans. Kevin Attell [Chicago: The University of Chicago Press, 2005], 3-4). Another example (though I am unaware if Agamben uses it) would be the internment of Japanese Americans in the wake of the bombing of Pearl Harbor. In that case, the U.S. government by force of law placed U.S. citizens outside the law's protection. For Agamben, though the American republic's founding documents recognize persons' inalienable rights, the origin and structure of sovereignty does not permit the recognition of inalienable rights in practice.

III. Augustine and Agamben

Having shown how for Agamben political regimes are structurally violent and alienating, our burden is now to show that St. Augustine is of a similar mind. As mentioned at the outset, our thesis is that Augustine locates the same enmity between sovereign authority and "bare life" at the origin of politics, along with the concomitant tendencies toward exclusion and violence. Now let's begin to show this connection by looking at a few texts from Augustine's *City of God*.

At the conclusion of Book XIX, 14 of the *City of God*, Augustine explains that in a rightly ordered household, whose inhabitants belong to the Heavenly City, "even those who command are the servants of those whom they seem to command." Moreover, "they [command] from a dutiful concern for others: not out of pride in ruling, but because they love mercy."[18] For Augustine, when God created rational, and therefore social beings, he intended them to dwell in communities governed by fatherly authority, not in sovereign states. As Augustine says, "[God] did not intend that His rational creatures, made in his own image, should have lordship over any but irrational creatures: not man over man, but man over the beasts. Hence the first just men were established as shepherds of flocks, rather than as kings of men."[19] For Augustine, political, i.e. sovereign, authority is a kind of slavery imposed on human beings as a punishment for sin. Being subject to slavery, human beings are to overcome the diabolical pride that estranged them from communion with God.[20]

Augustine's etymology of the Latin *servus* in chapter 15 of Book XIX illustrates his view of the nature of political servitude. He writes:

> [*Servus*] is believed to have derived its origin from the fact that those who might have been slain under the laws of war were sometimes spared [*servabantur*] by the victors, and so were called *servi* because they had been preserved. But this preservation could not have come about other than through the deserts of sin.[21]

Notice that the conquered soldiers of whom Augustine speaks are precisely what Agamben describes as bare life: overcome in battle, their conquerors do not regard them as fellow citizens vested with rights. They dwell in a legal no-man's-land, and may be killed with impunity. For Augustine, there is an analogy between the soldiers enslaved by the victors in war and those enslaved to political authority: just as a defeated soldier is alienated from the protections of the law, on account of sin human beings are alienated from the small communities God intended us to inhabit. Sin has rendered all human beings bare life. According to God's plan for rational creatures, the leader of the community was to be its servant; in the political order imposed because of sin, the governed are slaves of kings and emperors. In part II of *Homo Sacer*, in a

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[18] Augustine, *The City of God*, 942.
[19] Augustine, *The City of God*, 942.
[20] Paul Weithman, "Augustine's Political Philosophy," *The Cambridge to Augustine*, ed. Eleanor Stump and Norman Kretzmann (Cambridge: Cambridge University Press, 2001), 237-238.
[21] Augustine, *The City of God*, 943.

chapter entitled "*Vitae Necisque Potestas*," Agamben argues that persons subject to sovereign authority are "politicized only through an abandonment to an unconditional power of death."[22] Augustine's comparison of political rule to slavery conveys a similar view, if we consider that in the ancient world a master could kill his slaves with impunity. For Augustine, part of the misery of our post-lapsarian condition is that we are all continually vulnerable to being killed by an authority whom no other human power can punish.

At this point a question arises: Is the "fatherly" authority Augustine thinks God originally envisioned all that different from the authority of a sovereign state? Surely, the head of a family uses force to discipline his children, as a sovereign uses violence to enforce the law, albeit on a larger scale.[23] The difference between power exercised in the small communities Augustine envisions and the authority of a sovereign state seems quantitative, not qualitative. For Augustine, the difference regards the goals to which fatherly and sovereign authority are ordered. Earlier in chapter 14 of Book XX, Augustine explained that in virtue of man's rational soul, with God's help man "subordinates all that he has in common with the beasts to the peace of that rational soul." Next, "he refers all peace, whether of body or of soul, or of both, to that peace which mortal man has with the immortal God."[24] Since what is inferior ought to be ordered to what is superior, man's whole interior life ought to be ordered to God. Moreover, the rational creature's duty to order his life to God has implications for common life, since God commands the rational creature to love his neighbor. Augustine writes: "It follows, therefore, that he will take care to ensure that his neighbor also loves God. . . . Also, as far as he can, he will do the same for his wife, his children, his servants, and all other men."[25] In light of these passages, we see that, for Augustine, the goal of "fatherly" authority over the community is the love of God: the father of the community has the same duty in regard to all its members, as each member has in regard to his neighbor, namely to cultivate the love of God. Authority over common life is not an end-in-itself; rather it serves the community's obedience to God.

If fatherly authority over a community serves the love of God, what goal does sovereign political authority aim to achieve? We've already seen that God permits something he didn't originally intend, namely the evil of enslavement to political authority, in order to rein in the pride that moved human beings to sin.[26] Nevertheless, renewed humility on the part of persons subjected to kings and presidents is only a *per accidens* effect of political servitude, since for Augustine, those wielding political authority rarely if ever principally intend their subjects'

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[22] Agamben, *Homo Sacer*, 90.

[23] For example, Augustine writes, "If anyone in the household is an enemy to domestic peace because of his disobedience, he is corrected by a word, or by a blow, or by whatever kind of punishment is just and lawful, to the extent permitted by human society; but this is for the benefit of the person corrected, so that he may be readmitted to the peace from which he sundered himself" (*The City of God*, 944).

[24] Augustine, *The City of God*, 941.

[25] Augustine, *The City of God*, 941.

[26] Augustine also regards death as an evil *per se*, which God does not directly intend, though for some persons it does have salutary *per accidens* effects. Death "is beyond doubt the punishment of all who are born of [Adam]. But if undergone for the sake of godliness and righteousness, it becomes the glory of those who are born again; and, though death is the wages of sin, it sometimes ensures that no wage is paid to sin" (*The City of God*, 547).

growth in Christian virtue. Satan, founder of the Earthly City, and the angels conspiring with him fell by delighting in their own power,[27] and those who rule in the Earthly City follow their vicious example. As Augustine writes:

> In the Earthly City, princes are as much mastered by the lust for mastery as the nations which they subdue are by them; in the Heavenly, all serve one another in charity, rulers by their counsel and subjects by their obedience. The one city loves its own strength as displayed in its mighty men; the other says to its God, "I will love thee, O Lord, my strength."[28]

For Augustine, earthly kingdoms serve love of self instead of love of God. Earlier we noted Augustine believed that at the beginnings of human history, communities were small. Those who commanded did so over a tight-knit population. Later, human beings formed cities, countries, and ultimately, empires, on account of the diabolical lust for mastery unleashed when man fell. Kings' love for their own strength and desire to display it before others led them to wage war against neighboring peoples and to enslave the conquered. For example, Augustine regards Nimrod, great-grandson of Noah and founder of Babylon, as a paradigm of earthly kings.[29] He notes that Scripture calls Nimrod a "mighty hunter against the Lord,"[30] and he interprets this description as follows: "For what does this mean, what is a "hunter," if not a deceiver, an oppressor, a slayer of earth-born creatures? Thus he, with his peoples, began to build a tower against the Lord: a tower which symbolizes his ungodly pride."[31] The figure of Nimrod thus illustrates the willingness of earthly kings, above all those of Babylon and Rome, to slay their fellow creatures for the sake of expanding and displaying their dominion.

More evidence for connecting Augustine's concept of political rule to Agamben's account of sovereignty comes in *The City of God* IV, 4. In that passage Augustine enumerates what a band of robbers and an unjust kingdom share in common. For example, each has a leader; each is bound together by a set of "laws" and a sharing of goods. If the band of robbers grows so much in membership that it acquires territory, establishes a government, and even manages to lord it over entire peoples, the band "assumes the name of kingdom more openly. For the name is now manifestly conferred upon it not by the removal of greed, but by the addition of impunity." In the same passage, Augustine recounts an exchange between Alexander the Great and a captured pirate. When Alexander asked the criminal what he hoped to accomplish by his treachery, the pirate answered, "The same as you do when you infest the whole world; but

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[27] Augustine, *The City of God*, 498.

[28] Augustine, *The City of God*, 632.

[29] Nimrod's significance for Augustine as the type of earthly kings is all the clearer due to the continuity Augustine sees between history's two great empires, i.e. Babylon and Rome: Rome is the "daughter of Babylon" (*The City of God,* 848), such that together these two form a single political dynasty. Nimrod's founding of Babylon means, therefore, that he also founds the tradition of political rulers.

[30] Though Augustine notes that one may translate the Greek *enantion* in the Septuagint Bible either as "before" or "against," he is convinced that Nimrod's pride demands the word be translated as "against" (Augustine, *The City of God,* 703).

[31] Augustine, *The City of God*, 703.

because I do it with a little ship I am called a robber, and because you do it with a great fleet, you are an emperor."[32]

Reading this passage, it's not difficult to see a correspondence with Agamben's views of sovereignty and bare life. Augustine points out that the only qualitative distinction between a band of robbers and an unjust kingdom is that the ruler of the kingdom, e.g. Alexander the Great, does what he does with "impunity." Recall from our treatment of Agamben that this is precisely what distinguishes a sovereign from a murderer: whereas a sovereign can "abandon" another human being with impunity, a citizen who takes the life of another citizen is answerable to the law. As Agamben writes, "It is the sovereign who, insofar as he decides on the state of exception, has the power to decide which life may be killed without the commission of homicide."[33] As the pirate complains when he meets Alexander, the only difference between a sovereign and a criminal is that the former has the might to make right. Alexander's meeting with the pirate shows that, as Agamben has argued, the brute strength in virtue of which the sovereign stands outside the law entitles him to commit evil acts with impunity.

Still more interesting for our purposes is a passage from *The City of God,* XV, 5, where Augustine treats the sovereign violence that accompanied the founding of the Earthly City by Cain and the foundation of Rome by Romulus. It's worth our while to quote Augustine's text at some length:

> The first founder of the Earthly City, then was a fratricide; for overcome by envy, he slew his brother, who was a citizen of the Eternal City, and a pilgrim on this earth. It is not to be wondered at, then, that, long afterwards, at the foundation of that city which was to be the capital of the earthly city of which we are speaking, and which was to rule over so many nations, this first example . . . of crime was mirrored by a kind of image of itself. For there also, as one of the Roman poets says in telling of the crime, 'The first walls were wet with a brother's blood'. . . . Therefore, in order that one of them should wield entire mastery, his colleague was removed; and what would have been kept smaller and better by innocence was increased through crime into something larger and worse.[34]

Notice that Romulus' slaying of Remus re-presents Cain's murder of Abel in several respects: first, both killings take place outside any juridical order—in neither case is there a civil authority to which the fratricide is answerable. Second, according to Augustine both murders are motivated by a desire to seize power completely for oneself—both Cain and Romulus understand that there can be only one sovereign authority in a city, and each wishes that authority to reside in himself. Moreover, the text bears witness that for Augustine, as for Agamben, the foundation of a juridical order involves the founder, i.e. the sovereign who stands outside the law, placing

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[32] Augustine, *The City of God,* 148.
[33] Agamben, *Homo Sacer,* 142.
[34] Augustine, *The City of God,* 640.

another in the ban. As Augustine writes of each fratricide, "In order that one of them [i.e. Cain and Romulus] should wield the entire mastery, his colleague was removed." As we know from our examination of Agamben's theory of the structure of sovereignty, every juridical order is instituted by a sovereign decision that removes some persons from the protection of the law. Moreover, even those not removed by the sovereign's original decision remain potential "bare life," perpetually vulnerable to removal from the juridical order by an act of the sovereign. Finally, one notes that Augustine regards the violence with which Cain founds his city as paradigmatic: Romulus' treachery "mirrors" Cain's. Given the importance of Cain and Romulus for the history of political rule (Cain was the first ever to found a city, while Romulus was the founder of history's most powerful empire), Augustine treatment of them indicates that he regards them as genuine paradigms of the connection between sovereign rule and the violent revelation of Agambenian bare life.

Now another question arises: though Augustine regards the empires of Nimrod, Romulus, and Alexander as constituted by murder, couldn't he simultaneously allow for the possibility of a just earthly kingdom, governed by a member of the Heavenly City and thus not constituted by violence? Moreover, doesn't Augustine's reference to "rulers" and "subjects" in the Heavenly City at XIV, 28 (see p. 7) lead us to believe he thinks one can exercise sovereign authority justly? Perhaps, but this suggestion is weak unless one can point to a historical kingdom Augustine regards as just. Further, one may take the phrase about "rulers" in the Heavenly City as referring to God, powerful angels, or the apostles, etc. The best candidate for a just earthly kingdom is the one instituted by God himself over Israel, and which Augustine discusses in Book XVII of *The City of God*. May one regard David's line as governing God's people in justice?

At the end of Book XVI of *The City of God*, Augustine observes that thus far his book has treated the first three stages of the development of the City of God: Book XV focused on the time from Abel to the Flood (first stage), and Book XV concerned the period from Noah to Abraham (second stage) and from Abraham to David (third stage). For Augustine, "David marks the point, as it were, at which God's people begins to come of age. For we may regard the time between Abraham and David as the adolescence of the nation."[35] Next, Augustine observes, "In the third age . . . the yoke of the Law was imposed, an abundance of sinners appeared, and the earthly kingdom had its beginning."[36] It's no coincidence, I submit, that Augustine mentions these three features of the third stage in one breath, since they are intrinsically related: the imposition of the law causes the appearance of sinners, for "through the law comes the knowledge of sin" (Romans 3:20) and "sin is not reckoned when there is no law" (Romans 5:13). Moreover, the "abundance of sinners" caused the earthly kingdom inasmuch as Israel rejected God and wanted an earthly king in his place (1 Samuel 8:7). That God acceded to Israel's request and gave them a king in the person of Saul (and later, in David and his line) is consistent with what Augustine has already said about the nature of political, i.e. sovereign, authority: it is an

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[35] Augustine, *The City of God*, 763.
[36] Augustine, *The City of God*, 764.

evil not originally intended by God, but which he permits to discipline human beings' pride.[37] Moreover, even if a thoroughly just man were to be king of Israel (or of any kingdom, for that matter), it would not imply that kingship as an institution is structurally just. As Agamben argues, and as a number of Augustine's texts also show, sovereign authority answers to no one for its crimes; on the contrary, it *claims* "the natural right to do anything to anyone."[38] An emperor like Alexander has free rein to plunder whom he will, as long as no stronger ruler overcomes him. If a virtuous person happens to rule, this means only that sovereignty's tendency to cause the appearance of bare life lies temporarily dormant or is actualized less frequently and with fewer casualties.

Let's summarize the agreement between Agamben and Augustine with regard to sovereignty and bare life. *First*, the three texts from *The City of God* we've focused on (XIX, 14; IV, 4; and XV, 5) show that, for Augustine, sovereign authority acts with impunity upon bare life: victors in war enslave or kill enemy prisoners; Alexander conquers and pillages without answering to any law; and Cain and Romulus murder their respective brothers without being punished at the hand of any human authority. *Second*, the same three texts show that force is ultimately what founds sovereign authority: the victors in war to whom Augustine compares political rulers can only enslave prisoners of war because they've emerged victorious in battle; Alexander can do as he pleases because, as the pirate observes, he is supported by a massive army; and Cain founds a city without having to share power because he assassinates his brother. And *third,* Augustine's treatment of the fratricides Cain and Romulus serves to show how the exclusion of "bare life" correlates with sovereign authority. All three of these points correspond precisely to Agamben's description of the sovereign-bare life relation.

IV. Agamben and Augustine: "a completely new politics"

One may gather further evidence of the affinity between Agamben and Augustine by a look at the practical recommendations each draws from his account of the origin of political power and its relationship to bare life. At the outset of *Homo Sacer*, Agamben explains that his work calls for "a completely new politics—that is, a politics no longer founded on the exception of bare life."[39] To whom does Agamben turn for examples of what "a completely new politics" might look like? In a recent work entitled *The Highest Poverty: Monastic Rules and Form-of-Life*, Agamben focuses above all on St. Francis of Assisi and his earliest followers. However, it comes as no surprise that earlier in the book, in a chapter entitled "Rule and Law," Agamben turns to Augustine. He cites the conclusion of the *Regula ad servos Dei,* where Augustine writes, "The Lord grant that you observe all these things with joy, not as slaves under the law, but as those who have been set free by grace."[40]

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[37] At 1 Samuel 4:10-18, the judge Samuel predicts the ways Israel will experience the rule of kings as a punishment.
[38] See footnote 16 above.
[39] Agamben, *Homo Sacer,* 11.
[40] Giorgio Agamben, *The Highest Poverty: Monastic Rules and Form-of-Life* (Stanford University Press, 2013), 29.

Why does Agamben recall Augustine's *Regula* here? First, for Agamben, precisely because monks like those Augustine addressed were not slaves to the rule (or to the abbot, for that matter), monastic communities constituted a new kind of political community. Agamben recalls that the first Christian monks understood their life as a *fuga saeculi*. St. Ambrose developed a tradition he inherited from Philo by linking flight from the world and priesthood, since "the minister of God's holy altar is the one who is in flight from his own."[41] Agamben says, "It is on this basis that monastic exile from the world could be conceived as the foundation of a new community and a new public sphere. . . . 'Exile from the world' is first of all a political gesture that in Philo and Ambrose is equivalent to the constitution of a new community."[42] Recall that Agamben agrees with Hobbes that in a sovereign state, the sovereign alone retains his right to kill while the subjects surrender theirs. The sovereign does not have obligations to his subjects, and they have no rights he must recognize. Agamben notes that this is not true of the new political order constituted in monastic communities.

For instance, in the seventh-century *Pactum* (a contract between the monks and their abbot) of St. Fructuosus of Braga, the monks pledge the following to the abbot: "Whatever you desire for the safety of our souls to pronounce, teach, perform, reprimand, excommunicate, or correct in accordance with the Rule, we shall completely carry out with humble heart . . . ." The *Pactum* continues by listing penalties the monks agree to suffer for infidelity to the Rule, the most grave of which is excommunication from the monastery.[43] On the other hand, the monks also remind the abbot that should he refuse to reform himself after committing a grave injustice against any of the monks, they reserve the right "of consulting another monastery, or else a bishop who lives under the Rule, or a Catholic count who is a defender of the Church, and of inviting them to meet with us, that, in their presence, you may correct yourself and fulfill the tenets of the Rule."[44] For his part, in the *Regula*, Augustine writes of the monastic superior in the *Regula* in much the same way as he does of the father of a household in *The City of God* XIX: "But let the one who has authority over you think of himself not as one dominating by power, but as one serving happily in charity. When he is exalted in your presence by honor, in fear let him be subject to God at your feet."[45] Unlike sovereign states structured according to Hobbesian contract, monastic communities like those of Fructuosus and Augustine were governed by mutual obligations between superior and subjects.[46] Moreover, like his subjects, the abbot was answerable to the form of life expressed in the religious Rule.

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[41] Ambrose, *Flight from the World*, in *Seven Exegetical Works*, trans. Michael P. McHugh (Washington, D.C.: Catholic University of America Press, 1972), 285; cited in Agamben, *The Highest Poverty*, 50.
[42] Agamben, *The Highest Poverty,* 50-51.
[43] Fructuosus, "Pact," in *Iberian* Fathers, vol.1 ed. and trans. Claude W. Barlow (Washington, D.C.: Catholic University of America Press, 1969), 208; cited in Agamben, *The Highest Poverty,* 51-52.
[44] Fructuosus, "Pact," 209; cited in Agamben, *The Highest Poverty*, 52-53.
[45] Augustine, *Regula ad servos Dei*, 7: Ipse vero qui vobis praeest, non se existimet potestate dominantem, sed caritate servientem felicem. Honore coram vobis praelatus sit vobis, timore coram Deo substratus sit pedibus vestris. [http://www.augustinus.it/latino/regola/index.htm]
[46] Agamben, *The Highest Poverty*, 53.

The second reason Agamben refers to Augustine's text on the monk's interior freedom to observe the Rule regards a distinction Yan Thomas finds in Roman law, namely between biographical personality and juridical personality. Unlike biographical persons, juridical persons are abstractions that arise by statute. Biographical and juridical personalities are distinct inasmuch as law does not norm every aspect of a person's life. Thus law and life are typically distinct, and law applies to the biographical person as something extrinsic to him. In contrast, monastic rules merge *vita* and *regula* for consecrated persons like the ones Augustine addresses in the *Regula*. Religious life seeks to regulate every aspect, every moment of the monk's life, with the result that the monk's life tends more and more to incarnate the rule. For Agamben, monastic and religious Rules are not laws, but written expressions of a "form of life."[47] To the extent that a monk assumes the form of life proper to his consecration, he becomes the Rule. In this way the distinction between biographical and juridical person dissolves, since law cannot "apply" as something extrinsic to one who embodies the Rule. The monk's life, regulated above all by the schedule of prayer and work, becomes a liturgy offered to God.[48] Adopting a form of life so at odds with the *saeculum,* religious effectively set themselves beyond the sphere of secular law. This explains why medieval jurists were at a loss regarding how the *corpus iuris civilis* could possibly apply to religious, e.g. the early followers of St. Francis.[49] To the extent that the monks to whom Augustine addressed his *Regula* merged rule and life, they placed themselves outside the law, and therefore beyond the sovereign ban. Thus Augustine exhorts them to observe it as free men, and not as slaves, i.e. not like those who are coerced by political authority.[50]

The similar suggestions of Augustine and Agamben regarding forms of community life beyond the law face a typically Augustinian objection: given the damage inflicted on human nature by sin, aren't coercive institutions like the State necessary for common life? As I explained earlier, Augustine denies that human beings are *naturally* inclined to form coercive political institutions; rather, he regards such institutions as necessary for humans' moral rehabilitation: since the origin of sin is pride, subjection to political authority is meant to teach human beings the humility without which salvation is impossible. Nevertheless, some texts in

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[47] For example, speaking of religious vows as understood by several authors of monastic Rules, Agamben says, "Neither Basil nor Pachomius nor Augustine seem to want to link the monastic condition to a formal act of a character that is in any way juridical." And Agamben quotes Catherine Capelle's work on religious vows, where she says, regarding Basil's conception of the vows, "*Homologia* [lat., *professio*] means, in Basil, now the proclamation of faith, now a sort of promise, an obligation or the adhesion to a mode of life. There is obligation, certainly, but indirectly, and only because there is a consecration. We are here on the cultic level, not the moral or even less the juridical level" (Catherine Capelle, *Le voeu d'obéissance des origines au XIIe siècle: Étude juridique* [Paris: Librairie générale de droit et de jurisprudence, 1959], 43-44); cited in Agamben, *The Highest Poverty*, 38-39.
[48] "If the Church had extracted a liturgy from life, this had nonetheless been constituted into a separate sphere, whose proprietor was the priest, personifying the priesthood of Christ. The monks do away with this separation and, by making their form of life a liturgy and the liturgy a form of life, institute between the two a threshold of indiscernibility charged with tensions. Hence the predominance of the Office of prayer, reading, and psalmody in the rules over that which is sacramental in the proper sense." Agamben, *The Highest Poverty*, 83.
[49] Agamben, *The Highest Poverty*, 28.
[50] Of course, Agamben does not take an interest in religious *regulae* and "forms of life" in order to recommend consecrated life to everyone. Rather, he means to show that the West has already seen forms of community life that, through the merging of life and law, constitute themselves without excluding bare life.

The City of God indicate that, for Augustine, political authority isn't strictly necessary for humans' moral rehabilitation. For example, recall the passage we considered above where Augustine argues that since God did not originally desire any human being to rule over another, "The first just men were established as shepherds of flocks, rather than as kings of men. This was done so that in this way also God might indicate what the order of nature requires, and what the desert of sin demands."[51] It is significant that the "first just men" of whom Augustine speaks necessarily lived *after* the sin of Adam and Eve. Moreover, relying on the Scriptures, Augustine considers the first just men to have lived, not in large cities, but in communities organized around the maintenance of flocks. Such communities would perforce have been small. In other words, even after the self-inflicted wound of original sin, human beings remain capable of living justly without the coercive authority of sovereign states. On account of the connection he draws between sovereign political authority and slavery, Augustine argues that the possibility of living in small, "stateless" communities explains "why we do not read the word 'slave' anywhere in the Scriptures until Noah, the just man, punished his son's sin with this name."[52] This speaks in favor of the view that Augustine reckons life beyond the law to be possible for human beings, even after our fall from original justice.

Moreover, recall what Augustine said in condemnation of the fratricidal acts of Cain and Romulus: "In order that one of them should wield entire mastery, his colleague was removed; and what would have been kept smaller and better by innocence was increased through crime into something larger and worse."[53] This text gives us to believe that the first sin of Cain and Romulus was not the murder of their respective brothers, but the desire to found cities over which each would be the sole master. Had Romulus never desired to found the Roman *res publica*, neither would he have had motive to murder his brother. For Augustine, the option was open to both Cain and Romulus to found small communities, where they could have dwelt in innocence and commanded as the servants of those they seemed to command.[54] Instead, Cain and Romulus each exchanged justice in favor of reigning over a larger number of persons. Most significantly for the purposes of this essay, however, these texts show that, although Augustine considers sovereign political authority as a punishment for sin and as ordered to humans' moral rehabilitation, he doesn't view it as necessary for that end *simpliciter*. On the contrary, political authority is necessary for moral growth only on the condition that human beings live in large cities. If Augustine is correct in this view, the small communities he holds up as models for life beyond the law (and which Agamben admires as instances of politics not founded on the exception of bare life) begin to appear as realistic possibilities despite the realities of original sin and concupiscence.[55]

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[51] Augustine, *The City of God*, 942.

[52] Augustine, *The City of God*, 942-3. Genesis 9:20-27 recounts how Noah, having become drunk, lay naked in his tent. When he awoke and learned that his youngest son Ham had failed to cover his nakedness, but instead exposed him to shame before Shem and Japheth, Noah swore that Ham would be a slave to his older brothers.

[53] Augustine, *The City of God*, 640.

[54] Augustine, *The City of God*, 942.

[55] As Christopher Anadale has reminded me, Agamben is not the only contemporary philosopher to extol the virtues of small communities. For example, in *After Virtue*, Alasdair MacIntyre argues that the modern liberal state exists only to impose the social order necessary for people to pursue their own self-interest. Therefore, "the modern state is

Recently, Paul J. Griffiths has argued that Agamben writes about monks and mendicants, "to help us imagine a form of life that cannot be subject to legal rule, because the form of life and the rule have become coextensive."[56] Since, like Giorgio Agamben, Augustine diagnoses sovereign political rule as beginning with violence and sustained by slavery, he also works to imagine forms of life beyond the State. As readers of *The City of God* know, Augustine has ample intellectual resources to imagine community life that transcends law. In faith he knows that those predestined to salvation already belong to the Heavenly City. Such persons, even as subjects of earthly kingdoms, seek goods that are above. They do not *enjoy* but only *use* temporal goods. They observe the Gospel (formulated in documents like Augustine's *Regula*) not "as slaves under the law," but as disciples liberated by grace. As pilgrims *en route* to the Heavenly City, they escape enslavement to earthly authority. If a secular thinker like Agamben desires to think "a new politics no longer founded on the exception of bare life," like Augustine, he'll have to consider how common life lived outside the law necessarily requires an ordering to transcendent truth and goodness.

[56] Paul J. Griffiths, "Share and Share Alike," *Commonweal* (January 24, 2014), 26.