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DESTITUENT POWER AND THE PROBLEM OF THE LIVES TO COME

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ABSTRACT
The figure of form-of-life is a life lived as a 'how' or a mode of living, beyond every relation. Form-of-life is a form of impotent, destituent power that seeks to deactivate the biopolitics that continuously divides and separates life itself. Agamben's work is remarkably silent on the question of reproductive rights. The pregnant woman's life is regulated continuously by biopolitics, yet Agamben does not discuss this regulation. The woman's relationship with her foetus is difficult to reconcile with Agamben's philosophy that seeks to think beyond every relation. In addition, the right to abortion is difficult to reconcile with form-of-life. It is not clear how a woman seeking an abortion is not exercising a sovereign decision to create bare life. I use the UK's abortion laws as a way to interrogate Agamben's figure of form-of-life, and to illustrate how, by not accounting for reproductive rights, Agamben's thought remains incomplete.

KEYWORDS
Destituent power; potentiality; form-of-life; abortion; reproductive rights.

1. INTRODUCTION*

The figure of form-of-life is a life lived as a 'how' or a mode of living. Form-of-life is a form of destituent power that seeks to live inoperatively. This article first sketches out the qualities and nature of form-of-life, showing how it lives as a monad, inseparable from its context because it is not in relation to it but is in 'contact' with it. Form-of-life struggles to account for liminal forms of life, such as the embryo or foetus. Agamben's work is remarkably silent on the question of reproductive rights. The pregnant woman's life is regulated continuously by biopolitics, yet Agamben does not discuss this regulation. The woman's relationship with her foetus is difficult to reconcile with Agamben's form-of-life. Form-of-life as a modal existence presupposes an ability to live one's life in a manner of contemplative use. However,

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contemplative use still necessitates some kinds of actions or behaviour which it is not possible for the unborn given their stage of cognitive development. In addition, the pro-choice right to abortion is difficult to reconcile with form-of-life. It is not clear how a woman seeking an abortion is not exercising a sovereign decision to create bare life. The implications of Agamben's philosophy of life can be argued to place him close to the doctrine of the Catholic Church and a pro-life position. I use the UK's abortion laws as a way to interrogate Agamben's figure of form-of-life, and to illustrate how, by not accounting for reproductive rights, Agamben's thought remains incomplete and difficult to separate from anti-feminist and pro-life politics.

2. FORM-OF-LIFE

Agamben, in his thought, makes clear that today 'life' (which must include the question of the status of the foetus or embryo) is no longer just a biological question:

> [T]oday ... life and death are not properly scientific concepts but rather political concepts, which as such acquire a political meaning precisely only through a decision (Agamben 1998: 64).

As Agamben explains in *The Open*, the concept of 'life' never is defined as such. There is no neutral ground with respect to the question of who counts as a full person or human being in our political order. This is absolutely the case with respect to abortion and the debates surrounding pro-life and pro-choice positions. What this means is that:

> [T]his thing that remains indeterminate gets articulated and divided time and again through a series of caesurae and oppositions that invest it with a decisive strategic function ... everything happens as if, in our culture, life were *what cannot be defined, yet, precisely for this reason, must be ceaselessly articulated and divided* (Agamben 2004: 13).

Western ontology divides, separates, excludes and pushes vegetative life to the bottom, where it functions as a foundation for sensitive life and intellectual life (Agamben 2016: 264). In *What is an Apparatus?* Agamben explains that:

> The event that has produced the human constitutes, for the living being, something like a division ... This division separates the living being from itself and from its immediate relationship with its environment (Agamben 2009: 16).

This ceaseless articulation and division is "the fundamental activity of sovereign power" which produces bare life through a decision (Agamben 1998: 181). This division is crucial for how life is treated in modernity. The division of life, which operates on a number of levels – vegetal and relational, organic and animal, animal and human (Aristotle 1984b; Agamben 2004: 13). These divisions pass as a "mobile border" within living man, and operate as an apparatus through which the decision

of what is human and what is not human is possible (Agamben 2004: 15). All living beings are in a form of life, but not all are (or not all are always) a form-of-life (Agamben 2004: 277).

Agamben's task in his thought is clear – to investigate the very divisions and caesurae which have separated man from 'non-man', the human from the animal, over and above taking positions on the so-called 'great issues' of the day such as human rights (Agamben 2004: 16). Man is essentially *argos*, inoperative, unable to be defined through work or vocation, and without a nature or essence (Agamben 2017: 52). As life has no essence, setting an arbitrary starting point for the beginning of life must be unacceptable under this thought. However, we will see that Agamben's thought still retains a certain tenderness for the unborn which cannot be captured by his view of man as *argos*.

Inoperativity cannot be thought of as "idleness or inactivity but as a praxis or potentiality of a special kind, which maintains a constitutive relation with its own inoperativity" (Agamben 2017: 53). This inoperativity consists of contemplating one's own potentiality to act:

> [I]s a matter of ... an inoperativity internal to the operation itself, a *sui generis* praxis that, in the work, first and foremost, exposes and contemplates potentiality, a potentiality that does not precede the work, but accompanies it, makes it live, and opens it to possibilities. The life that contemplates its own potentiality to act and not to act becomes inoperative in all its operations, lives only in its livableness (Agamben 2017: 54).

To be potential is to be capable of impotentiality (Agamben 1999b: 182). I am quoting from the English translation of the Italian essay *La potenza del pensiero* (Agamben 2005), published as *On Potentiality*. Despite this translation, the English essay loses something of the original Italian. Agamben's argument concerning potentiality rests on a reading of Aristotle's *Metaphysics*, and his use of *dunamis*. In Book Theta Aristotle states:

> esti de dunaton touto hōi ean huparxēi hē energeia hou legetai ekhein tēn dunamin, outhen estai adunaton [A thing is capable of which it is said to have the potentiality] (Aristotle 1984a, 1047a 24-26).

Dunamis is an ambiguous term in Aristotle. Attell argues that two senses of the term are relevant for Agamben: possibility and capacity. The former indicates something like pure logical possibility. The second sense indicates that someone is able to realise a potentiality or capability if external conditions do not prevent the exercise of that potentiality (Attell 2009: 39-40). I can exercise a capacity if nothing prevents me from doing so. While external conditions of possibility may determine whether I can exercise certain capacities, they do not determine the *existence* of these capacities. Agamben reading of Aristotle argues that potentialities persist even when they are not in act (Attell 2009: 40).

Dunamis's counterpart is *adunamia*. This is "potentiality not to" or "impotentiality". Without *adunamia*, *dunamis* or potentiality would immediately lead to actuality. The two form an indissoluble pair (Attell 2009: 41). Kevin Attell has translated a long passage from *La potenza del pensiero* which explains Agamben's defence of potentiality, and which has not been translated into English:

> [T]he impotentiality of which it is said that in the moment of the act will be nothing cannot be anything but that *adunamia* which, according to Aristotle, belongs to every *dunamis*: the potentiality not to (be or do). The correct translation would thus be "What is potential is that for which, if the act of which it is said to have the potential come about, nothing will be of the potential not to (be or do)" [...] But how are we then to understand "nothing will be of the potential not to (be or do)"? How can potentiality neutralise the impotentiality that co-belongs with it? A passage from *De interpretation* provides us with some precious indications. With regard to the negation of modal statements, Aristotle distinguishes and, at the same time, puts in relation the problems of potentiality and modal enunciations. While the negation of a modal statement must negate the mode and not the *dictum* (thus the negation of "it is possible for it to be" is "it is not possible for it to be" and the negation of "it is possible for it not to be" is "it is not possible for it not to be"), on the plane of potentiality things are different and negation and affirmation do not exclude one another. "Since that which is potential is not always in act", writes Aristotle, "even the negation belongs to it: indeed, one who is capable of walking can also not walk, and one who can see can not see" (21b 14-16). Thus, as we have seen, in book *Theta* and in *De Anima*, the negation of potentiality (or better, its privation) always has the form: "can not" (and never "cannot"). "For this reason it seems that the expressions 'it is possible for it to be' follow each other, since the same thing can and can not be. Enunciations of this type are therefore not contradictory. However, 'it is possible for it to be' and 'it is not possible for it to be' never go together" (21b 35-22a2). If we call the status of the negation of potentiality "privation", how should we understand in a privative mode the double negation contained in the phrase: "nothing will be of the potential not to "be or do"? Insofar as it is not contradictory with respect to the potentiality to be, the potentiality not to be must not simply be annulled, but, turning itself on itself, it must assume the form of a potentiality not to not be. The privative negation of "potentiality not to be" is therefore "potential not to not be" (and not "not potential not to be"). What Aristotle then says is ... If a potentiality not to be originally belongs to every potentiality, one is truly capable only if, at the moment of the passage to the act, one neither simply annuls one's own potentiality not to, nor leaves it behind with respect to the act, but lets it pass wholly into it as such, that is, is able not to not pass to the act (Agamben 2005: 284-285; Attell 2009: 43-44).

Actuality must be seen as the precipitate of the self-suspension of impotentiality (Attell 2009: 44). An existence *as* potentiality is not the potential to do something but also the potential to *not-do*, the potential not to pass into actuality (Agamben 1999b: 180). This potential not to be is capable of being and not being. Being or doing is founded on both the potentiality toward being or doing, and also on a modification of the potentiality not to be or do (Attell 2009: 42). Being-able is an essential 'having', *hexis*, constitutive of the living being (Seshadri 2014: 475). To be

human is to be consigned to a potential to not be or do (Seshadri 2014: 478). Freedom is not a question of will or status, or a way of being (or form of life) but it is a way of being in a relation to privation. Man is therefore capable of mastering his potentiality and accessing it only through his impotentiality:

> Only a potentiality that is capable of both potentiality and impotentiality is then a supreme potentiality. If every potentiality is both potentiality to be and potentiality not to be, the passage to the act can only take place by transferring one's own potentiality-not-to in the act (Agamben 2017: 41).

Agamben valorises a human *dunamis* that does not lead to act or work. He defines the human as founded on a paradoxical idleness or resistance with respect to act and work (Attell 2009: 48). This construction appears to presuppose that the inoperative being is a being with agency. An inoperativity that accompanies the work and opens it to possibilities implies an ability to open work to possibilities. Inoperativity seeks to found human actions on their impotentiality

> Thus, inoperativity ... is the space ... that is opened when the apparatuses that link human actions in the connection of means and ends ... are rendered inoperative. It is, in this sense, a politics of pure means (Agamben 2018: 85).

This inoperative life is 'form-of-life'.

3. FORM-OF-LIFE AND DESTITUENT POWER

Form-of-life is not thinking a better or more authentic form of life (Agamben 2016: 277). Agamben's community subtracts itself from every determinate aspect of belonging and simply exists as neither this nor that (with no essence), but solely 'thus' or 'whatever' (Agamben 1993: 1-3, 17-21).

Form-of-life is "a being that is its own bare existence, [a] life that, being its own form, remains inseparable from it" (Agamben 1998: 188). This life is not *bared* or *stripped* in the sense of being separated from its form but rather is exposed in a nudity that is nothing but the pure appearance of the inapparent, the complete exposure of the opaque, the revelation of the absence of secrets (Agamben 2010: 91). This form-of-life is encountered throughout Agamben's works: the 'glorious body' that is nothing but the earthly body divested of its functions and open to a new use (Agamben 2010: 91-103), objects of profanation and play (Agamben 2007: 73-91), and Franciscan monasticism (Agamben 2013: 122).

All these figures have in common is their subtraction from every particular predicate and their exposure in the bare facticity of their existence or 'being-thus' (Prozorov 2016: 180). They all equally have in common the fact that they are examples of already existing life, rather than existing as liminal figures whose status as living is under question. Being-thus is "neither this not that, neither thus nor thus, but *thus*, as it is, with all its predicates (all its predicates is not a predicate)" (Agamben 1993:

93). "Being-thus" means being "the thus" itself, rather than being what determines the thus. Being-thus is not a conservation of what already is, the status quo. Form-of-life lives "the thus", the exhibition of the being itself, rather than a determined aspect. This determined aspect is central to forms of life, or ways to live.

A form-of-life is the most idiosyncratic aspect of everyone; their tastes, which safeguards its secret in the most impenetrable and insignificant way:

> If every body is affected by its form-of-life as by a clinamen or a taste, the ethical subject is that subject that constitutes-itself in relation to this clinamen, the subject who bears witness to its tastes, takes responsibility for the mode in which it is affected by its inclinations. Modal ontology, the ontology of the *how*, coincides with an ethics (Agamben 2016: 231).

At the point where form-of-life is constituted, it renders *destitute* and inoperative all singular forms of life. A form-of-life is that which ceaselessly deposes the social conditions in which it finds itself to live, without negating them, but simply by using them (Agamben 2016: 274). At the point at which the apparatuses which divide life are deactivated, potential becomes a form-of-life is constitutively destituent (Agamben 2016: 277).

The ethical subject must constitute itself – again indicating that form-of-life relates to an already existing being with the capacity for living ethically. This reading of form-of-life is consistent with Agamben's description that form-of-life has a double tension inside of it. It is a life inseparable from its form, and also separable from every thing and every context. It must live its own mode of being, as a monad, inseparable from its context because it is not in relation to it but is in *contact* with it (it is a non-relational existence) (Agamben 2016: 232). It is worth quoting Agamben's definition of 'contact' in its entirety:

> Just as thought at its greatest summit does not represent but "touches" the intelligible, in the same way, in the life of thought as form-of-life, *bios* and *zoè*, form and life are in contact, which is to say, the dwell in a non-relation. And it is in contact – that is, in a void of representation – and not in a relation that forms-of-life communicate. The "alone by oneself" that defines the structure of every singular form-of-life also defines its community with others. And it is this *thigein* [thought], this contact that the juridical order and politics seeks by all means to capture and represent in a relation. It will therefore be necessary to think politics as an intimacy unmediated by any articulation or representation: human beings, forms-of-life are in contact, but this is unrepresentable because it consists precisely in a representative void, that is, in the deactivation and inoperativity of every representation. To the ontology of non-relation and use there must correspond a non-representative politics (Agamben 2016: 237).

It is this contact or *thigein* (which Agamben also terms *touching*), when two entities are separated only by their void of representation, that the legal order and 'representative' politics seek to capture and represent in the form of a relation which will always already have a negative ground (Agamben 2016: 237). Form-of-life is without relation. Drawing on Plotinus's description of the happy life of the

philosopher as one of 'exile', Agamben contends that such an exile is akin to being "one alone with one alone", an exile of intimacy (Agamben 2016: 235). Forms-of-life are in contact but this consists in the inoperativity of every representation; this must be signified by a non-representable politics (Agamben 2016: 237). Form-of-life is its own mode of being which is continually generated by its manner of being (Agamben 2016: 224).

To summarise, forms-of-life communicate by contact, in a void of representation that is also a care for the inappropriable – a care for opacity. This contact participates in an ontology of nonrelation and use from which derives, in the final instance, a politics of intimacy in which life is inappropriable and inseparable from its form – a life that actively preserves its sense of nonknowledge and the generative limits of its own mystery (Bordeleau 2017: 490). This intimacy and intimate relation is not expounded upon by Agamben, but there is a clear connection which could be made between the idea of an intimate relation and the relation which exists between the child (both born and unborn) and the mother. As we will see when considering the UK's abortion laws, the intimate child/mother relationship poses questions for form-of-life which it struggles to answer.

4. TOWARD A MODAL ONTOLOGY

Agamben's ontology is a modal ontology. Modal verbs have developed a function in Western philosophy. Modal verbs ("I can", "I want", "I must") are deprived of meaning. Agamben argues that they are *kena*, or 'void', and acquire a meaning only if they are followed by a verb in the infinitive (for example, "I can walk", "I want to eat") (Agamben 2018: 48-49).

Agamben makes clear that mode expresses not 'what' but 'how' being is (Agamben 2016: 164). It is important to specify here that I am not trying to represent form-of-life as a form of life. Agamben is interested in living the 'how' of being itself, which is not the identity or context of a form of life. Modal ontology can only be understood as a 'middle voice', or a medial ontology. Singular existence – the mode – is neither a substance nor a precise fact but an infinite series of modal oscillations, by means of which substance always constitutes and expresses itself (Agamben 2016: 172). Thinking the concept of mode involves conceiving it as a threshold of indifference between ontology and ethics. Agamben sees ethics as not able to be trapped by or through any determined form of life. Agamben explains:

> Just as in ethics character (*ethos*) expresses the irreducible being-thus of an individual, so also in ontology, what is in question in mode is the "as" of being, the mode in which substance is its modifications (Agamben 2016: 174).

The mode (being-thus) in which something is, is a category belonging irreducibly to ontology and to ethics. The claim of modal ontology should be terminologically

integrated: a modal ontology is no longer an ontology but an ethics; an ethics of modes is no longer an ethics but an ontology (Agamben 2016: 174). Living a life as a form is an ethical existence.

The 'mode' and 'modal existence' define the peculiar status of singular existence (Agamben 2016: 152). Agamben sees initiating an ethical life as concerning how we conceive of and experiment with the *how* of a form-of-life. It involves ways of envisaging an absolutely immanent life on the threshold of its political and ethical intensification (Agamben 1998: 5). Agamben desires "to bring the political out of its concealment and, at the same time, return thought to its practical calling" (Agamben 2016: 232).

This form-of-life is a monad. The relationship between monad and monad is complex. The more form-of-life becomes monadic, the more it isolates itself from other monads. However, each monad always already communicates with the others, by representing them in itself, "as in a living mirror" (Agamben 2016: 232). Every body is affected by its form-of-life as by a clinamen. The ethical subject is that subject which constitutes-itself in contact (a void of representation) to this clinamen, and focuses on *how* it lives its life (Agamben 2016: 231). In this sense, the community to come will be akin to a life lived through its mode or manner of being (Agamben 2016: 228).

This clinamen presupposes a capacity for being, and a capacity for realising this 'how'. For Agamben this is where living and life coincide, but what are the limits of this living? The 'how' presupposes a living. To live life as a form, as pure means, indicates that one *must* actively act to bring about this condition, it is not something that can be passively accepted. Crucially, Agamben makes clear that form-of-life is something "that does not yet exist in its fullness" and can only be attested to in places that "necessarily appear unedifying". Form-of-life articulates a zone of irresponsibility, in which the identities and imputations of the juridical order are suspended (Agamben 2016: 248). What needs to be done is apply Walter Benjamin's principle according to which the elements of the final state are hidden in the present, not in progressive tendencies but in insignificant and contemptible areas (Agamben 2016: 227).

5. FORM-OF-LIFE AND THE UNBORN

Agamben's project is one of radical indifference, a radical passivity. This is a taking flight which does not imply evasion: rather a movement on the spot, in the situation itself (Vacarme 2010: 121). This sense of passivity must be differentiated from passivity in the sense that it is ordinarily understood. A foetus or a new-born baby is 'passive' in the sense that they are not able to consciously or actively act but this is not the sense of passivity referred to by Agamben. Rather, Agamben's passivity engages with the 'how'. Form-of-life as a modal existence presupposes an ability

to live one's life in a manner of contemplative use. This passive manner is very different from a passivity which is an 'acceptance of letting something happen to oneself, without an active response or resistance'. However, contemplative use still necessitates some kinds of actions or behaviour which it is not possible for the unborn given their stage of cognitive development. Form-of-life, which renders the sovereign decision inoperative, can only be accessed through a decision, an active stance.

It is in focusing on this 'how' that this article constructs an argument that form-of-life would not be possible or achievable for liminal figures, precisely because they are not fully able to live a life as a 'how'. Form-of-life as a monad always communicates with others. This monad represents other forms of life in itself, as a 'living mirror'. I wish to defend the claim that form-of-life does not encompass the figures of the embryo and foetus, due to Agamben's failure to engage with any form of explicit reproductive politics.

Following Agamben's construction of form-of-life, a pro-choice position would make the foetus the object of a sovereign decision which determines whether it has value or not. The decision can claim that this potential life has no essence which requires protecting or saving. Contrarily, the pro-life position would oppose reproductive choices which would terminate a pregnancy. However, this would (by any measure) severely curtail women's reproductive choice. Furthermore, pro-life positions project onto the unborn an image of an essence and a life to be protected – a sovereign decision has been made to assign a value to the potential life of the unborn even before it can live its life as a how. Under Agamben's schema, both pro-life and pro-choice positions repeat the division of life which is the fundamental activity of sovereign power. Pro-choice politics allow for the sovereign decision over the unborn; pro-life politics have already decided that the unborn are lives that are worth protecting.

Before expounding on this argument, I first turn to the exoteric references in Agamben's thought on the unborn. When Agamben does consider the thresholds between human and inhuman, he tends to stress a consideration of a "new living dead man, a new sacred man" (Agamben 1998: 131), and not the production of the threshold "prelife" or "prior to human life". For example, in *Remnants of Auschwitz*, Agamben contended that:

> The human being is thus always beyond and before the human, the central threshold through which pass currents of the human and the inhuman, subjectification and desubjectification, the living being's becoming speaking and the *logos*' becoming living (Agamben 2002, 135).

However, this formulation is problematic as it appears to presuppose the existence of a 'human' in order for the human/inhuman distinction to operate. This in turn raises questions of how the human is defined. As Andrew Norris has said:

> What, for instance, are we to do when we are dealing with agents or things that have not already been recognised as the bearers of rights? Here the reassertion of rights is simply not an option. We must decide whether a neomort – a body whose only signs of life are that it is 'warm, pulsating and urinating' – is in fact a human being at all, an agent or a thing (Norris 2005: 14).

This is a decision which Agamben has not explicitly engaged with, or attempted to answer directly.

This is not to say that Agamben's thought does not obliquely reference questions of birth, and unborn and the definition of life. Reading Aristotle's *De Anima*, Agamben notes that: "It is important to observe that Aristotle does not at all define what life is", but rather "merely divides it up in isolating the nutritive function and then orders it into a series of distinct and correlated faculties (nutrition, sensation, thought)" (Agamben 1999a: 231). In Aristotle, a generic term – life - is defined first by its minimal substance (plant life, the faculty of nutrition) and progressively complicated by the predication of a series of hierarchical faculties leading from the plant to the animal to the human soul (Cooper 2009: 144). Agamben's philosophy works in the reverse order to Aristotle's. He wants to dwell upon the irreducible substance that underlies all forms of life; the substance without which no organised form of life would be possible. This is where Aristotle locates the absolutely minimal, nutritive or vegetative life of the plant. Agamben reminds us that this minimal vegetative life must also be understood in temporal terms, as the first stage in the generation of human life, foetal life being the human equivalent of the plant within a classification of nature (Agamben 1999a: 231).

Despite relying on this underlying framework for his thought Agamben remains mute on the figure of potential life, and does not develop the connection between the foetus and vegetative life. This is curious at first glance, especially considering that Michel Foucault, whose work Agamben is so influenced by, did not shy away from discussing issues of reproductive rights and abortion (Deutscher 2008: 55-56; Foucault 1980: 56; Foucault 1988: 114). Yet Melinda Cooper argues that this is an entirely logical expression of his politics of witnessing. In *Remnants* he makes clear that the true witness can only ever be mute:

> What cannot be stated, what cannot be archived is the language in which the author succeeds in bearing witness to his incapacity to speak. In this language, a language that survives the subjects who spoke it coincides with a speaker who remains beyond it (Agamben 2002: 162).

The speaker "who remains beyond it" is the unborn. The true testimonial is one that bears witness to the "silent voice" (Agamben 2002: 129), "the "infant" in the etymological sense, a being who cannot speak" (Agamben 2002: 121), who remains in "a position even lower than that of children" (Agamben 2002: 113). To understand what Agamben means here by an infant in a position even lower than that of children, we need to explore the position of children in his writing.

It is true that Agamben makes references to infancy and children who have died without being baptised. On the former point, infancy is understood as a wordless, mute condition that precedes speech; infancy coexists with language and is expropriated by it in the constitution of the subject, which would be the ethical subject which lives its life as a 'how' (Mills 2008: 21). Catherine Mills explains it best – infancy is the experience from which the human subject emerges (Mills 2008: 22). Man constitutes himself as a speaking subject by falling away from the originary, transcendental experience of infancy, a sort of experience prior to linguistic appropriation but related to language (Agamben 2006: 55). Crucially, infancy is a beginning which constitutes the subject of experience and language, but this state does not refer to a biologically or developmentally inclined conception of subject formation:

> In-fancy is not a simple given whose chronological site might be isolated, nor is it like an age or a psychosomatic state which a psychology or a paleoanthropology could construct as a human fact independent of language (Agamben 2006: 4).

Human infancy is linked to the human potentiality which is language (Agamben 2006: 54). Infancy, for Agamben:

> [C]oexists in its origins with language – indeed, is itself constituted through the appropriation of it by language in each instance to produce the individual as subject (Agamben 2006: 55).

Yet if man must constitute himself as a speaking subject, how can this apply to the neomort? Again, Agamben does not answer this point.

On the point of unbaptised children, Agamben makes the point that those children would find their souls in Purgatory (Agamben 1995: 78). These souls would be subject to God's forgetfulness, but because they do not know God has forgotten them, so instead of being punished they are in a state of "natural felicity" (Agamben 1995: 78). Those souls in purgatory are not indicative of the unborn, but are a philosophical argument from Agamben contending that we need to reach that self-same state of grace, through the very 'how' of form-of-life. This could imply that those unbaptised children represent form-of-life, although again this is not a connection which is made. Notwithstanding this, the mention of young children without mentioning reproductive rights is telling.

Elsewhere in writing about infancy, Agamben has held out the child as an exemplary figure, a 'cipher' for form-of-life (Agamben 1995: 95-98). This should not be misunderstood, but nor should it be ignored. This claim does not mean that children necessarily live their lives as a form. Nor could it apply to the figure of the unborn (and it is not intended to apply to the unborn). Rather the idea of a child as a 'cipher' is important. To live one's life like a child is what Agamben sees as setting the stage for the politics to come. It is as if Agamben is channelling the words of Jesus in the Gospel of Matthew:

> Truly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven. Therefore, whoever takes the lowly position of this child is the greatest in the kingdom of heaven. And whoever welcomes one such child in my name welcomes me.[1]

And in turn, Agamben would seem to disagree with Paul's approach:

> When I was a child, I talked like a child, I thought like a child, I reasoned like a child. When I became a man, I put the ways of childhood behind me.[2]

This is notable as Paul's corpus of work has greatly influenced Agamben's own thought. To live a life as a child (which is left undefined in terms of age) is to live one's life as a form. This is a phrase which is full of implied meaning. Agamben places great importance on the lives of children, without mentioning the politics of reproduction which would have played a role in their being born. Agamben also treats the event of birth as a threshold through which the child is not only separated from the unborn, but through which both figures occupy different spaces in his philosophy.

Whereas the child appears as the cipher for form-of-life, Melinda Cooper has cogently argued that there is a consistency across Agamben's work: the 'unborn' appears unequivocally as the 'tragic hero' of an age in which onto-theology is assumed to be irremediably in decline (Agamben 1991: 96). Cooper distinguishes between the born and the unborn. The child is a cipher, the unborn an exemplar. In *Language and Death*, the last volume where Agamben explicitly mentions the unborn, he argues that:

> Only ... not being born ... can overcome language and permit man to free himself from the guilt that is built up in the link ... between life and language. But since this is precisely impossible, since man is *born* (he has a birth and a nature), the best thing for him is to return as soon as possible whence he came, to ascend beyond his birth through the silent experience of death (Agamben 1991: 90).

For Cooper, Agamben's work places him "irresistibly" on the terrain of Roman Catholic debates about the unborn's status, although this is not admitted by Agamben. Cooper argues that Agamben's history and diagnosis of modern state violence is consistent with that of the Catholic Church. He adheres to the standard themes of late twentieth-century Catholic doctrine – the evocation of Auschwitz and state eugenics coupled with a denunciation of biomedicine, medical vegetative states, legal brain death and euthanasia. Agamben only differs in his political and ethical response to the presumed violence of the modern state, which consists in a radical refusal of all politics of rights, dignity or legal personhood, calling for "an ethics of

[1] Matthew 18: 3-5.

[2] 1 Corinthians 13: 11.

a form of life which begins where dignity ends" (Agamben 2002: 69). This would be a non-relational form-of-life.

For Cooper, Agamben renders the language of pure potentiality into the Christian idiom of the *gift of life*, asking what it would mean to conceive of life as the potential not-to-actualise:

> Contrary to the traditional idea of potentiality that is annulled in actuality, here we are confronted with a potentiality that conserves itself and saves in actuality. Here potentiality, so to speak, survives actuality and, in this way, *gives itself to itself* (Agamben 1999b: 184)

His writings on 'potentiality' and 'potential life' are clearly applicable to abortion debates, but Agamben has never acknowledged the potential connections between his writings and those of the Roman Catholic Church. Agamben's philosophy sets itself the 'impossible' task of rendering into language the experience of the 'silent scream':

> Philosophy, in its search for another voice and another death, is presented, precisely, as both a return to and surpassing of tragic knowledge; it seeks to grant a voice to the silent experience of the tragic hero and to constitute this voice as a foundation for man's most proper dimension (Agamben 1991: 90).

The "silent experience of the tragic hero" is the silent experience of the foetus. And for Cooper it is the 'impossible' task of rendering into language the voice of the unborn that leads Agamben to his solution of a theology in suspended animation (Cooper 2009: 155-156). How can we explain Agamben's silence on this question of the unborn?

Despite Agamben's statements and claims, the figure of form-of-life leaves open for debate the questions of when life (or form-of-life) starts, and the mother's relation to, and power over, the unborn child. The monad of form-of-life always communicates with others (Agamben 2016: 232). Forms-of-life are in contact but this consists in the inoperativity of every representation (Agamben 2016: 237). Despite Cooper's arguments, it is arguable as to whether form-of-life would apply to the unborn (although it would, in contrast, apply to the unborn child's mother). Cooper may be read as suggesting that the unborn in Agamben is, like with the Catholic Church, a being in need of protection. There are several arguments that indicate the unborn could not live its life as a form. Firstly, form-of-life is not able to recognize itself or be recognized, as the contact between monads is situated beyond every possible recognition and relation (Agamben 2016: 248). Agamben accepts that it is not possible to think of existence and a community beyond all relation, but the relationality that exists for form-of-life is of a different kind than that produced by apparatuses such as the law. In *Nudities* he claims:

> The desire to be recognised by others is inseparable from being human. Indeed, such recognition is so essential that, according to Hegel, everyone is ready to put his

> or her own life in jeopardy in order to obtain it. This is not merely a question of satisfaction or self-love; rather, it is only through recognition by others that man can constitute himself as a person (Agamben 2010: 46).

By seeking to explain contact as 'beyond' all possible recognition, Agamben can be read as proposing that forms of recognition are not enough to recognise form-of-life. Recognition (which as a cognitive ability is not something available to the unborn) is not beyond form-of-life; rather, the opposite is true. Next, Agamben mentions that a form-of-life is the most idiosyncratic aspect of everyone; their tastes, which safeguards its secret in the most impenetrable and insignificant way: "The subject who bears witness to its tastes, takes responsibility for the mode in which it is affected by its inclinations" (Agamben 2016: 231). Tastes are elements of an individual's personality, choices and being and therefore presuppose a certain level of cognitive development and cognitive ability. An adult could have tastes; a foetus does not.

In addition, the notion of 'others' remains indistinct. Who are these 'others'? Others are necessary for form-of-life to communicate with one another (Agamben 2016: 237). The ethical subject is the subject which constitutes itself in contact with a clinamen, an inclining from one toward another, which focuses on how it lives its life (Agamben 2016: 231). This contact presupposes an existing, thinking being. Agamben clearly states that each form-of-life, or monad, always already communicates with others (Agamben 2016: 232). This position implies that form-of-life must have the ability to communicate with others. It does not preclude a form-of-life which represents itself as a living mirror in a life which is not form-of-life – an example here may be a parent who represents themselves in their newborn child. However, if the 'other' is not able to represent itself as a living mirror in another, or if it is not possible to live a life as a how, then that other cannot be said to live its life as a form. The ethical subject *must* be one who has agency – the patient in a persistent vegetative state, for example, was described by Agamben as an example of *homo sacer* (Agamben 1998: 163-164). There remains an aporia in Agamben's thought on precisely these questions – forms of life which are not able to be forms-of-life. Agamben's silence on the question of reproductive rights and the position in his schema of the unborn means that form-of-life has a problematic construction, which can be illustrated through the lens of the UK's abortion laws.

6. ABORTION AND THE WOMAN AS BARE LIFE

Agamben's writings can lead to foetal life being considered (in anti-abortion contexts) as a form of politicised bare life exposed to sovereign violence (Deutscher 2008: 67). If foetal life is conceived as a form of *homo sacer*, then what has happened to the body of the woman? The woman's relationship with her foetus, and the right to abortion, is very difficult to reconcile with form-of-life. It is not

immediately clear how a woman seeking an abortion is not exercising a sovereign decision over bare life. This is the paradox of figuring the woman as a threatening and competing sovereign power over the foetus that is falsely figured as *homo sacer*: to do so is simultaneously to reduce the woman to a barer, reproductive life exposed to the state's hegemonic intervention as it overrides the woman erroneously figured as a "competing sovereign" exposing life. As she is figured as that which exposes another life, she is herself gripped, exposed, and reduced to barer life (Deutscher 2008: 67).

This is the consequence of what Catherine Mills has termed Agamben's 'gender-blindness' (Mills 2014: 114). This does not mean that there are no references to women in Agamben's work, but women are dealt with superficially, and questions of gender remain absent. Agamben does mention "the woman" as one of many social-juridical entities that supersede "the Marxian scission between man and citizen":

> The Marxian scission between man and citizen is thus superseded by the division between naked life [bare life] ... and the multifarious forms of life abstractly recodified as social-juridical entities (the voter, the worker, the journalist, the student, but also the HIV-positive, the transvestite, the porno star, the elderly, the parent, the woman) that all rest on naked life (Agamben 2000: 6-7).

This naked or bare life involves the separation of life and prevents it from cohering into a form-of-life (Agamben 2000: 6).

Deutscher argues that it is "surely fair" to name the woman's reproductive body as that which Agamben would prefer not to mention in these considerations of life (Deutscher 2008: 67). I suggest this is avoided precisely because such a figure would have to also rest on naked life, and equally would 'prevent' a form-of-life from cohering. The woman appears as a roadblock to the coming politics and form-of-life, rather than any kind of form-of-life in her own right. As a result Agamben's project overlooks sexual difference and questions relevant to a feminist reading (Ziarek 2008: 93), and is inhospitable to an interrogation of gender. In the words of Astrid Deuber-Mankowsky:

> As in all of *Homo Sacer* which turns centrally upon bare life, neither natality nor gender, neither sexuality not the relations of the sexes, neither the heterosexual character of the symbolic order and of political culture nor the interest of women in the reproduction of life is thematised. The entire sphere of the question of sexual difference ... is banned from Agamben's horizon (Deuber-Mankowsky 2002: 103).

In Mills's view, there is a long tradition of casting women as the privileged figures of ephemerality, unable to gain access to the universal, yet nevertheless instrumental in man's access to it. This is a tradition Agamben seems to be a part of. He does not offer an analysis of gender as part of his figurations of sexual fulfilment and happiness (Cavarero 1992: 32-47). This is the case with Agamben's reference to pornography, which has the promise to show "the utopia of a classless society"

(Agamben 1995: 73). The truth content of pornography is its claim to happiness (Agamben 1995: 73-74). In explaining this 'happiness', Agamben invokes the figure of a woman, stating that it is only in representing the pleasure of the woman on her face that pornography shows that the potential for happiness is present in every moment of daily life (Agamben 1995: 74). The woman remains central to our understanding the happy life, but is not a part of it herself.

I argue that this gender blindness is the reason why foetal life is not developed (as it logically should be) in relation to form-of-life. To engage with foetal life and questions of when life begins (and the rights which that life may have), has to involve engagement with the life of the mother. Quite apart from matters of philosophy, as a factual and biological matter the existences of the mother and the unborn are intertwined. As Penelope Deutscher has explained, there is a "conjoined malleability" in the status of pregnancy and of the woman attributed with decision-making. By this Deutscher means that women may be deemed capable of impeding life or revoking life or reversing its status (Deutscher 2017: 121). Women's status in relation to reproductivity means that they have an additional capacity as political beings which men lack. In Agamben's analysis, modern political humans bear the capacity to be reduced to bare life. But women can be exposed to a barer reproductive life, as they can be figured as a competing sovereign power over the foetus, with the latter acquiring the status of a pseudo *homo sacer* (Deutscher 2017: 127).

A paradigmatic example of this is shown through UK law, where the unborn foetus is not a person in law[3]. Despite this, the House of Lords (which before being replaced by the Supreme Court in 2009 was the highest court in the UK) has ruled that the foetus is 'neither a distinct person separate from its mother, nor merely an adjunct of the mother, but was a unique organism to which existing principles could not necessarily be applied'[4]. Neither lacking rights nor a full rights-bearing being, the foetus is nevertheless a *sui generis* form of life, which explains why – in the UK – there are a variety of legal and medical hurdles which need traversing before a woman can exercise her right to choose.

My argument regarding the shortcomings of form-of-life is illustrated even through those defences of Agamben's silence on the matter. Deutscher attempts to construct such an argument by arguing that those examples of bare life in Agamben's work are those which one could identify as having been human and then being stripped of that status – for example the PVS patient (Deutscher 2008: 57-58). Foetal life, as it is not situated at the threshold of depoliticization of previously politicised life, does not 'fit' Agamben's series of figures of bare life. Rather, Deutscher hypothesises, the foetus could represent the "zone of contested and intensified political stakes" surrounding the threshold between 'prelife' and nascent, human, rights-bearing life (Deutscher 2017: 58). Deutscher continues:

[3] *In re MB (Medical Treatment)* [1997] 2 FLR 426, 444 (CA).

[4] *Attorney General's Reference (No 3 of 1994)* [1998] AC 245 (HL).

> Thus the ambiguous politicised life least separable from some women's bodies happens to be a formation least appropriate for Agamben's analysis. An emergent foetus usually is not considered to have had a political, legal, or linguistic status subsequently suspended (Deutscher 2017: 58).

Even if we were to accept this argument on its face, it still means Agamben is silent as to the 'zone of contested political stakes' surrounding prelife and rights-bearing life. The foetus attracts legal protection and attention. Abortion is the zone of contested political stakes par excellence. UK abortion laws illustrate that zone, and key to the legal regimes are the roles of the woman and her doctor.

7. ABORTION IN THE UK

The UK has three separate legal systems – England and Wales, Scotland and Northern Ireland, with three separate legal regimes for regulating abortion. Abortion remains a criminal offence in England and Wales by way of a Victorian statute, the Offences Against the Person Act 1861 (OAPA)[5]. The abortion offences in the OAPA are contained in sections 58 and 59. Section 58 makes it a criminal offence to administer drugs or use instruments to procure an abortion and section 59 makes it a criminal offence to supply or procure drugs or any instrument for the purpose of procuring an abortion. Both offences carry a maximum sentence of life imprisonment, and both would cover actions by the woman and a doctor seeking to end a woman's abortion[6]. The 1861 provisions made no exception for therapeutic abortion and make no distinction between abortions which occur early or late in pregnancy (Sheldon 2016a: 338-39). The OAPA does not apply in Scotland, where abortion remains an offence at common law (Brown 2015: 30). Unlike the OAPA, the Scots common law recognised the lawfulness of therapeutic terminations (Brown 2015: 32, citing Baird 1975).

The OAPA is not the only statute covering abortion in the UK. The Infant Life (Preservation) Act 1929 (ILPA), which applies in England and Wales, prohibits the intentional destruction of 'the life of a child capable of being born alive ... before it has an existence independent of its mother', unless this is done "in good faith for the purpose only of preserving the life of the mother"[7]. There is equivalent legislation in Northern Ireland[8]. Interpreting the 1929 Act, the Court of Appeal made clear that a termination would be permitted if it preserved the life of the mother; and it would be lawful to prevent the woman becoming a mental or physical wreck[9]. The 1929 Act does not apply in Scotland; it is unnecessary in Scotland as the High

[5] See *R (Smeaton) v Secretary of State for Health* [2002] EWHC 610 (Admin) [332] (Munby J).

[6] Offences Against the Person Act 1861, 24 & 25 Vict, ss.58-59 (UK).

[7] Infant Life (Preservation) Act 1929, 19 & 20 Geo.5 c.34, s.1(1).

[8] Criminal Justice (Northern Ireland) Act 1945 c.15, s.25(1) (Northern Ireland).

[9] *R v Bourne* (1939) 1 KB 687, 694 (CA).

Court of Justiciary has 'inherent power to extend the scope of existing crimes to cover unusual situations and, possibly, to create new crimes' (Sheldon 2016a: 340n35; Norrie 1985).

The Abortion Act 1967 created exceptions to the statutory abortion offences in England and Wales, and the common law offences in Scotland. It was not extended to Northern Ireland. There are four such exceptions. Each requires a decision, and agreement between, the woman and her doctors. Section 1(1)(a) states that an abortion can be carried out before the twenty-fourth week if the continuation of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family. Section 1(1)(b) allows abortions where doing so would prevent 'grave permanent injury' to the physical or mental health of the patient. Section 1(1)(c) allows abortions where the pregnancy involves risk to the life of the pregnant woman. Section 1(1)(d) allows abortions where there is a 'substantial risk' that the child would be born seriously handicapped, either physically or mentally[10]. The 1967 Act was never originally intended to allow for "abortion on request"[11]. However today the Act has *de facto* legalised abortion in Great Britain (Sheldon 2016a: 343).

The Abortion Act was crafted in such a way to place medical professionals, rather than the woman, at the centre of the procedure. Two 'medical practitioners' must be of the good faith opinion that an abortion should be carried out, after a woman makes a request for an abortion. A good faith opinion means that the doctors have not been dishonest or negligent in forming that opinion. The Act allows doctors to take account of the pregnant woman's actual or reasonably foreseeable environment when making a decision about the impact of the continuance of a pregnancy on a woman's health. This would include the woman's social and financial circumstances.

The requirement for two medical professionals was intended as a check on rogue doctors (Sheldon 2016b: 289). In practice it means that doctors in Great Britain must endorse and agree with a woman's decision to terminate her pregnancy. The Act deliberately creates a broad area of clinical discretion in this area (Sheldon 2016a: 343); doctors were argued to be in the best position to determine when a termination was appropriate, or if necessary, to persuade and support a woman to maintain a pregnancy[12]. Such discretion in medical matters is not unusual – in

10 Abortion Act 1967, s.1(1), as amended by the Human Fertilisation and Embryology Act 1990 c.37, s.37(1).

11 David Steel MP, HC Deb, 22 July 1966, vol. 732, col. 1075.

12 David Steel MP, HC Deb, 22 July 1966, vol. 732, col. 1076; David Steel MP, HC Deb, 13 July 1967, vol. 750, col. 1348.

previous cases English courts have awarded professionals such as doctors a wide range of discretion to judge the competence of the actions of peers[13].

Northern Ireland was always the polity which had the strictest abortion laws in the UK, being governed by the OAPA and the Criminal Justice (Northern Ireland) Act 1945. In 2018, the UK Supreme Court ruled that the abortion laws in Northern Ireland violated Article 8 of the European Convention on Human Rights, as they did not allow abortion in cases of fatal foetal abnormality, rape and incest[14]. The UK Parliament's response was section 9(2) of the Northern Ireland (Executive Formation etc) Act 2019. This repealed the OAPA offences in Northern Ireland and mandated that the UK Government implement the recommendations found in the UN Committee on the Elimination of Discrimination against Women Report on abortion in Northern Ireland, published in 2018 (UN CEDAW 2018). This Report recommended that the UK adopt legislation to provide for abortion in Northern Ireland in the cases of a threat to the pregnant woman's physical or mental health, rape and incest, and severe and fatal foetal abnormality. The UK Government did not wish to include rape, incest or other sexual crimes as express criteria for abortions to occur as it would require the victim of sexual crimes to provide evidence or prove the connection between the sexual offence and the pregnancy. Such an approach would result in a legal framework which excludes some victims of sexual crime who are unable to evidence that the pregnancy is a result of such a crime. By March 2020, the UK Government will regulate for unconditional abortion in Northern Ireland in the first 12 or 14 weeks of pregnancy, with similar exceptions that exist in the Abortion Act operating after that unconditional period.

Central to the exceptions in the Abortion Act and the new laws in Northern Ireland is a decision to terminate the pregnancy made by the woman. In Northern Ireland this decision is unconditionally the woman's in the first few months of pregnancy. In Great Britain this decision must be endorsed by her doctors. Agamben clearly states that "sovereign is he who decides on the value or nonvalue of life as such" (Agamben 1998: 142).

This statement must be read, in my view, alongside the claim that form-of-life, as a monad, always already communicates with others, insofar as it represents them in

[13] See *Bolam v Friern Health Management Committee* [1957] 1 WLR 582 (QB); *Bolitho v City and Hackney Health Authority* [1998] AC 232 (HL). Most recently in 2015 the Supreme Court modified the *Bolam* and *Bolitho* tests to contend that doctors need to disclose risks which "a reasonable person in the patient's position" would be likely to attach significance to the risk: *Montgomery v Lanarkshire Health Board* [2015] UKSC 11 [87] (Lord Kerr and Lord Reed). Yet it is still a question of medical judgment as to when a doctor judges a reasonable patient would attach significance to any risk.

[14] *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland); Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion)* [2018] UKSC 27 [1]–[3] (Lady Hale); Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5; 213 UNTS 221, art. 8.

itself, as in a living mirror (Agamben 2016: 232). The monad is developed from Leibniz's work, where he referred to them as "perpetual living mirror(s) of the universe". For Leibniz, all matter is connected together, so each body is affected by bodies which are in contact with it, as well as bodies adjoining itself as well (Leibniz 1898: 251). Agamben's monadology is left undeveloped in *The Use of Bodies*. However elsewhere in Agamben we can piece together what this monadic existence involves. We read that form-of-life uses-itself by constituting and expressing itself through an infinite series of modal oscillations (Agamben 2016: 165, 172). These oscillations are generated by the conduct of the singular being itself, through its being in language (Agamben 2016: 167; Agamben 1993: 19).

Therefore forms-of-life as living mirrors will represent themselves in each other through the very acts of being in language. This means that it would not just be a foetus, or the unborn, that would be unable to represent themselves through being in language. The individual lacking capacity or competence, the comatose patient, the infant unable to speak, an individual with dementia, the PVS patient – all lack the ability to represent themselves. This can be supported by Agamben's injunction that form-of-life itself that has sovereign power over its own constitution:

> Potentiality (in its double appearance as potentiality to and as potentiality not to) is that through which Being founds itself *sovereignly*, which is to say, without anything preceding or determining it ... other than its own ability not to be (Agamben 1998: 46).

A being unable to act sovereignly would not be living its life as a form.

We can therefore distinguish between a sovereign decision which determines whether life has value or not, and a sovereignty which founds Being through its own potential to be and not to be. The former decides which life is worth living; the latter is a how, a way to live one's life.

But here we encounter a paradox. A woman realises her form-of-life through living her life as a how. Yet her reproductive decisions over whether to keep or terminate a pregnancy, whether to use contraception, whether to have children or not, appear (under Agamben's schema) to be sovereign decisions over which potential lives are to exist or not. And it should be recalled that Agamben pronounces potentiality's negation 'evil':

> [The] only ethical experience (which, as such, cannot be a task or a subjective decision) is the experience of being (one's own) potentiality, of being (one's own) possibility – exposing, that is, in every form one's own amorphousness and in every act one's own inactuality. The only evil consists instead in the decision to remain in a deficit of existence, to appropriate the power to not-be as a substance and a foundation beyond existence or to regard potentiality itself, which is the most proper mode of human existence, as a fault that must always be repressed (Agamben 1993: 44; Prozorov 2014: 184-185).

Regarding potentiality as a fault that must be repressed – does this not imply that the most paradigmatic example of potential life – the unborn – should not be repressed? Agamben never deals with this issue directly, but it is hinted towards:

> [T]here is in effect something that humans *are and have to be*, but this something is not an essence or properly a thing: it is the simple fact of one's own existence as possibility or potentiality (Agamben 1993: 43).

If the clinamen and potential life of the unborn means that the woman cannot terminate a pregnancy, then Agamben's thought is, like Cooper has argued, definitively pro-life. The woman has another life inside her. Her decisions will impact another being whose organic life is not in question but whose rights are unclear and variable.

If this position is accepted, then it must also be true that it is not possible for a woman to live her life as a form. This is because, in a pro-life reading, a woman would not be able to exercise any reproductive choices which would involve a decision over potential life. Excising reproductive choice from a woman's form of life would severely curtail a woman's freedom. The woman is an ephemeral figure, resting on naked life, unable to live her life as a how because she is unable to exercise a decision over a fundamental part of being a woman – how and whether to reproduce. Her sovereign decision creates bare life. Agamben implies *any* abortion or contraceptive decision other than one which protects the life of the unborn makes the woman the arbiter of the creation of *homo sacer*. The woman becomes equivalent to the concentration camp guard, an abstract figure of oppression.

However, the paradoxes surrounding abortion do not end there. In Great Britain, a woman's decision to seek a termination must be agreed to by doctors. The procedure is, in turn, regulated by the State through legislation. The woman is subject to the decisions of the State and the doctors who can pass judgment on whether she has satisfied the requirements to be allowed an abortion, and what value the life of the foetus has. As Deutscher explained, the State and the woman exercise competing sovereign decisions over the value of life. The woman is both bare life *and* sovereign. Form-of-life simply cannot account for this complex situation.

8. CONCLUSION

This article has attempted to interrogate Agamben's form-of-life with respect to the liminal figure of the unborn. Form-of-life can provide a template for fully formed beings to live their lives. However, it struggles to account for 'liminal' figures – the unborn human is one of them. Living a life as a 'how', and as a form, is not easy to apply to the unborn. A form-of-life has tastes, and constitutes itself in contact with a clinamen, communicating with others, which focuses on how it lives its life. This subject of form-of-life, given how Agamben describes it, must be one who has

agency. The unborn is certainly a form of life, but I have argued it cannot be considered (based on Agamben's own argument) a form-of-life.

What is more, under Agamben's philosophy, the woman is difficult to separate from the figure of the sovereign exercising a decision over the value of life as such. For Agamben, all lives are potentially reducible to bare life after a sovereign decision. Yet following Agamben's thought, women (and not men) also are paradoxically a threatening and competing sovereign power. This is because a woman, in exercising decision-making over her reproductivity, can decide on the value of the life of the foetus as such. I should stress that this conclusion is the logical result of Agamben's overlooking of sexual differences and feminism in his work. The UK's abortion laws show how the pregnant woman, and her doctors, exercise control and a decision over whether a pregnancy is or is not to continue.

Furthermore, Agamben's focus on 'potentiality', language and witnessing place him, as Melinda Cooper has argued, squarely with the Catholic Church in defending life. Agamben adheres to the standard themes of contemporary Catholic doctrine, including the denunciation of biomedicine and euthanasia, and his writings on potentiality are clearly applicable to abortion debates. The woman remains an ephemeral figure in these writings on potentiality, and in failing to engage with reproductive rights on any level, Agamben's form-of-life remains a cornerstone of a pro-life philosophy, but a pro-life philosophy which is not admitted to by the author himself.

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