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The Shooting of Jean Charles de Menezes: On Agamben

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I.

With the bombings in London on 7th July last year and the attempted bombings that followed soon afterwards (on 21st July and the arrest of the young men in connection with these), the figure of the terrorist altered or expanded from that which it had recently become to include not a threat to the nation from outside but also the fear of the 'terrorist within'. The Anti Terrorism, Crime and Security Act 2001 and The Terrorism Act 2000 before it had mainly worked with an image of the 'foreign threat'; but the impact of these events (like the British shoe-bombers and the suicide bombers in Tel Aviv) was such that this image already altering, was firmly established in the public imagination. Our 'own' 'home grown' terrorists are not only those who joined attacks elsewhere, but are prepared to stage attacks on British soil. The language of the home-grown terrorist who has undergone rapid 'radicalisation' is used in the recently published Intelligence and Security Committee's Report into the London Terrorist Attacks on 7 July 2005' (May 2006) The Terrorism Act 2006, which the Home Office is keen to point out was already being planned and is not to be seen as a response to the July attacks (see government website www.ukresilience.info), attempts to address this through the criminalisation of encouragement, glorification and involvement in the preparation of terrorist activity.

After the July 7th attacks, in this period of high security alert - especially around the vulnerability of the London transport system - a young Brazilian man, Jean Charles de Menezes, was shot dead by police in a train in Stockwell underground station. When, through a leak from the investigation by the IPCC, it became clear that Jean Charles de Menezes was not the suspected terrorist around whom the surveillance team and their backup intelligence had been mobilised, it seemed to many that we are living in a time in which as Walter Benjamin had predicted, the state of exception had become the norm. Not because this young man was shot, exactly, but because his killing made clear that the police were operating a policy as part of their response to the threat

of suicide bombers – Operation Kratos – that legally allowed the use of fatal force. In effect it allowed this killing not to be a murder.

While radical groups and commentators quickly called this as a shoot to kill policy, the Metropolitan police issued a report to their members regarding the prevention of suicide terrorism in which the author (Swain) says ‘this is not a shoot to kill policy’ (Suicide terrorism’ 27 October 2005). He then continues to explain that police shooting a suspect is in accordance with the Criminal Law Act and, contrary to public perception, there is no requirement to give warning. To date, no one has been prosecuted about this killing.

Like the foreign suspect who can be incarcerated without need for criminal prosecution under the Terrorism Act (if cannot be deported), the suicide bomber is seemingly considered a threat to the ‘life of the nation’ such that derogation from the European Convention on Human Rights is allowed. (ECHR allows the right to life to be derogated (suspended) in relation to deaths resulting from lawful acts of war.? But this is a presumption since no derogation sought) In this precise sense, this is a war not only in the rhetorical terms of a war on terrorism, but in the sense that the right to life is suspended.

Giorgio Agamben argued that the homo sacer is precisely the one who can be killed without being murdered. What is the relevance of his theory here?

Agamben’s discussion of homo sacer returns us to this archaic figure of Roman law, the traits of which seem contradictory (1998:71). The term sacer means both sacred and damned. The homo sacer was the ‘one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide...this is why it is customary for a bad or impure man to be called sacred.’(quoting Pompeius Festus, 1993:71). This seems contradictory because it confirms the sacredness of a person, while also allowing – or rendering unpunishable – his killing (1993:72). More contradictory still when it is understood that he could not be put to death according to ritual practices (1993:72). The Romans also found it obscure: Macrobius sates that ‘I am not unaware that it appears strange to some people that while it is forbidden to violate any sacred thing whatsoever, it is permitted to kill the sacred man.’(72). The two elements – the unpunishability of his killing and the ban on his sacrifice – are difficult to explain together (72-3). How is it possible to kill the homo sacer without contaminating oneself or committing sacrilege? Agamben argues that the homo sacer is a limit figure, between the juridical realms of the divine and the human and that cannot be explained satisfactorily within only one of these realms. The figure may allow us, he writes ‘to uncover an originary *political* structure located in a zone prior to the distinction between sacred and profane, religious and juridical’(1993:74).

There is a political structure at stake, for Agamben, one that follows on the distinction between life as political (*bios*) and life as the simple fact of living – bare or naked life (*zoe*). The related distinction central to Schmitt's work informs Agamben here, that is, the distinction between the People and the people that haunts modern politics: on the one hand the sovereign's legitimacy rests upon the people's acceptance of his exception (they agree to be a people in the sense that they give the sovereign the monopoly on violence, the right to use the violence which they renounce); on the other, there is the people as mass. The 'remainder' of the first, then, are those who are in the system but not of it, those who are ambiguously placed and who can so easily become understood as a remainder, an impure in relation to the purity of those (good) people who are politically subjected in both senses of the word. Agamben's work on Auschwitz 'Remnants of Auschwitz' is precisely about how bare life can be produced – the Nazis were meticulous about stripping the Jews of their nationality before extermination, removing it so that they became living beings without being People – in the midst of the political.

The *homo sacer* is a limit figure between the human and the divine – he is 'set outside human jurisdiction without being brought into the realm of divine law'(82). He cannot be sacrificed so he is not, Agamben argues, the same as one who is consecrated – the one who is banned and given over to the gods – as anthropological works of late nineteenth and early twentieth century had suggested. If it is licit to kill the sacred man, he is excepted both from the realm of the human and from the realm of the divine. There is 'more than a mere analogy' with the sovereign; because the sovereign is an exceptional case with regard to law – law applies by no longer applying to the sovereign, by withdrawing from it (as in the phrase 'the exception that proves the rule') – so the *homo sacer* belongs to God in his unsacrificability and is included (thereby) in the human community by being able to be killed.

Homo sacer is abandoned therefore – existing somewhere in relation to the law and to God but in neither realm. The *homo sacer* could be seen Agamben argues as connected to the sovereign decision that suspends law in the state of exception and thus implicates bare life within that state. 'Beyond penal law and sacrifice' he writes, '*homo sacer* presents the originary figure of life taken into the sovereign ban and preserves the memory of the originary exclusion through which the political dimension was first constituted.'(p83). That is, the production of political life – the life of the People constituted through their relationship with the sovereign as the exception – rests upon the banning of bare life. The *homo sacer* is the one who has been caught (out, and in!) in this constitution, the 'human victim', the bare life which reveals or reminds us of the 'originary activity of sovereignty'.(1998:83). Only the sovereign can produce bare life because he is the one who produces the limit, the relationship between the People and the people, between their lives as politico-juridical subjects and their lives as living beings, and who thereby defines who is caught

in the 'space' between, ie. the one who may be killed without committing an offence in relation to human or divine law. In the imposition of the sovereign bond, all human (bare) life is exposed or abandoned to an unconditional capacity to be killed. We have established that homo sacer is the one who is not taken into the sovereign bond – who is excepted from it. But the homo sacer has a relation to that bond, of course, not only because he is constituted (or produced) by it but also because he mirrors it and serves as a 'reminder' of it. Homo sacer is the included exclusion of the sovereign decision (1998:85), the one without whom the sovereign bond does not make sense, does not constitute or construct anything.

To return to the killing of Jean Charles de Menezes. On the morning of the killing of this young man, a colleague of mine in the sociology department and I crossed paths in the corridor. We spoke about the news that a man had been shot by police, and my colleague commented that she hoped that they were just shooting any one who looked a bit different. To which I replied something to the effect of 'they'd have a task on their hands in London!' Hers was a response typical of 'us sociologists', a leftist critical remark dismissive of the establishment and not least the police, their actions and their intelligence. We have grown familiar with police racism, their use of violence, and incidents in which the two combine.

Certainly there was horrified recognition at the revelation that the police intelligence still employed the notion of 'mongolian eyes' as they attempted to identify the man they were staking out at the address of flats in Tulse Hill, South London, where Jean Charles de Menezes also happened to be living. Mongolian eyes, the Lombroso reference!

But to understand this event as an example of the continuity of police racism is perhaps to miss something. It is to miss – because it is absolutely impossible to distinguish the example from the exception in terms of their manifestation (Agamben, 1998) – the possibility of considering the relation that the sovereign has to the homo sacer. This is not police racism as we knew it even five years ago. Nor is it best understood as the result of police blunders or stupidity. It is the problem of sovereign practice itself. The sovereign may of course regret the use of violence, may blame it on exceptional times etc. but in name of protecting the People from the people, the right to use such violence is always there, primary and definitional. (Not because the people give up their right to life – the exclusive inclusion of bare life means that life is included not surrendered.) Because the question of how to distinguish the two groups people and People becomes a hermeneutic exercise, it can manifest itself in the world as something akin to racism, a reading of the body or profile – the 'radicalised Muslim will be ...' (that is ridiculous). Incidentally, this problem of distinguishing in order to know how to respond is also apparent in the internet discussions as people tried to decide how to respond affectively to the shooting: was he someone who was in the right 'set' for the British to mourn, or to feel sympathy for (especially in terms of

compensation for his family in Brazil) – discussions turned on questions of membership such as whether his visa valid, etc, and while people confessed to being pleased at first because they had been led to believe that a suicide bomber had been killed, others refused the constitution of populations because he was any one of us, someone's son.

I want to argue that on the one hand Jean Charles de Menezes was not homo sacer – not *any one* could have killed this man – while on the other, and in another sense, he was, precisely because his killing serves as a reminder or the link between sovereign power and violence, the sovereign's ability to produce bare life. Moreover, no where have I seen an attempt by the authorities to present his death as a sacrifice, which one might in a sense have expected from the talk of the difficulties of the 'war on terror' – while at the same time there is a sense in which the path of pursuing the war on terror has not been interrupted by this 'tragic event' (Met police statement), merely intensified the government's insistence that distinguishing the radicalised and potentially radicalisable from the rest is a priority (response to Report on July 7 bombings), alongside the recently announced need to teach the core values more forcefully in schools (May 15th 2006 The Guardian).

Agamben likens the homo sacer (drawing on Jhering , 1998:104) to the wargus (wolf-man) in ancient Germanic law. Scholars have argued that ancient Germanic law was founded on the concept of peace and the exclusion of the wrong-doer from the community. The wrong-doer became the one without peace (friedlos) and the one whom anyone could kill without committing homicide. In medieval law the one who is banned from the community has a liminal status, and Agamben argues that the Germanic and Anglo-Saxon sources underline the bandit's liminal status by defining him as a 'wolf-man'. 'In the collective unconscious as a monstrous hybrid of human and animal, divided between the forest and the city', the werewolf, banned from the city, is neither one nor the other, 'a threshold of indistinction and of passage between animal and man'(1998:105). The sovereign's position is maintained by such a ban, not by a contract; the sovereign's ban of the were-wolf. Tracing this idea, Agamben points out that in legend and medieval narrative poetry one can find the image of the werewolf as a temporary metamorphosis; the temporary nature 'corresponds perfectly to the state of exception during which time the city is dissolved and men enter into a zone in which they are no longer distinct from the beasts.' But his point here is that this also applies to the sovereign – there is an intimate link between the werewolf and the sovereign /king – as the lays/stories Agamben draws upon illustrate eg. in the lay the wolf-man ends up going to live with the sovereign and being transformed back into a man on the king's bed.

The two – the homo sacer or wolf-man and the sovereign – are intimate because both have the potential to turn into beasts. The wolfman reminds us of the potential to revert to the

beast that is not left behind but accompanies the 'political contract'. But so too and correlatively, the sovereign has just this potential (to become the beast) since the originary political act establishes his ability (and protects his right) so to do. The establishment of the political can no longer be seen as leaving the state of nature behind through the establishment of contract. The state of nature is included in as an exclusion. And 'in the person of the sovereign, the werewolf, the wolf-man of man, dwells permanently in the city.'(1998:107).

References

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