



## Biopolitical Sovereignty and Borderlands

AQ1 Martin Deleixhe



Centre de recherche en Sciences politiques (CRSPo), Université Saint-Louis Bruxelles, Bruxelles, Belgium

### ABSTRACT

Lately, it has been suggested in several corners of the “border studies” that **Giorgio** Agamben’s influential description of a new form of sovereignty—what one might call a biopolitical sovereignty—would provide an apt conceptual framework to tackle the ever-evolving nature of contemporary borders. My contention however is that border and borderland studies should approach Agamben’s conceptual framework carefully. For his depiction of a biopolitical sovereignty suffers from a conceptual flaw and could therefore prove misleading as a critical tool of enquiry to apply to borders. The forced pairing of **Michel** Foucault’s biopolitics and **Carl** Schmitt’s state of exception is, I will argue, unsustainable. I will first make that case at a strictly conceptual level. I will then substantiate my claim that Foucault’s and Schmitt’s views on sovereignty have different political implications by presenting two distinct conceptual developments on borders based on their respective work. I’ll show that while Foucauldian political sociology is mostly concerned with a diffuse network of control apparatus that substitute themselves to the physical border, neo-Schmittians rather turn their attention towards coercive materializations of the border. In conclusion, I will contend that, while control apparatus currently operates alongside militarized borders since the beginning of the Syrian refugee crisis in Europe, it is nonetheless wrong to assume that those two border regimes are mutually reinforcing.

### Introduction

Lately, it has been suggested in several corners of the “borders and borderlands studies” that **Giorgio** Agamben’s influential description of a new form of sovereignty—what one might call a biopolitical sovereignty—would provide an apt conceptual framework to tackle the ever-evolving nature of contemporary borders and their adjacent borderlands (Balibar 1997). In Agamben’s view (1998), modernity would have accomplished the improbable feat of reconciling the authoritarian decisionism (associated with the reactionary reading of sovereignty) with the diffusion of power relationships in each and every aspect of social life (that came to be known as biopolitics), subsequently creating an inescapable and all-powerful form of political control. This gloomy forecast would be vindicated by the proliferation (particularly acute in borderlands) of “camps,” e.g.

**CONTACT** Martin Deleixhe  [martin\\_deleixhe@hotmail.com](mailto:martin_deleixhe@hotmail.com)  Centre de recherche en Sciences politiques (CRSPo), Université Saint-Louis Bruxelles, 34, rue Timmermans, 1190 Bruxelles, Belgium

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spaces in which an absolute and all-invasive authority strips individuals from all possibilities of resistance in the name of security.

William Vaughn-Williams (2009), for instance, suggested that Agamben's critical philosophy had laid promising foundations for a new theoretical agenda in border studies. And one does not need to agree with such a programmatic statement to notice that the idea of a biopolitical sovereignty has indeed enjoyed a stellar academic success (Norris 2005). Camps, that Agamben provocatively raised to the status of the "paradigm of modernity" (1998, 73), attracted a renewed (and well deserved with regards to their burgeoning in the borderlands of the EU) critical interest (Caloz-Tschopp 2004; Bietlot 2005; Le Cour Grandmaison, Lhuillier, and Valluy 2007; Agier 2008). Michael Hardt and Antonio Negri's *Multitude* elaborated at length on Agamben polemical thesis to eventually claim that borders and borderlands were subjected to a regime of permanent exception that turned them into the tools of a "global apartheid" meant to facilitate transnational exploitation (2004, 166) while Didier Bigo's redefinition of the Foucauldian panopticon in the guise of a *Banopticon* is no stranger to Agamben's influence (Bigo 2001).

My contention however is that border and borderlands studies should approach Agamben's conceptual framework carefully. For his depiction of a biopolitical sovereignty suffers from a conceptual flaw and could therefore prove misleading as a critical tool of enquiry to apply to borders and their borderlands. Doubtlessly, one cannot help but be impressed by Agamben's philosophical erudition and the depth of some of his conceptual insights. But no matter how elegant and daunting Agamben's political theory appears, it will nonetheless be argued that it rests on a misguided attempt to combine two views on sovereignty that cannot be reconciled. The forced pairing of Michel Foucault's biopolitics and Carl Schmitt's state of exception is, I will argue, unsustainable. Worse, it sheds a misleading light on the social dynamics to be found in borderlands, and instills the false impression that any attempt to resist the current state of affairs is doomed to fail. To put it in the terms that frame this special issue, the concept of biopolitical sovereignty—once applied to borders and their borderlands—grants so much weight to an omnipotent process of securitization that, as result, no cross-border social interactions are expected to subsist in borderlands. However, we observe that cross-borders relations, though they are deeply affected and transformed by the securitization of borderlands, prove to be more resilient empirically than Agamben would have us believe. I will first make that case at a strictly conceptual level, taking issue with the conflation of the Schmittian and Foucauldian views on sovereignty achieved by Agamben. I will then substantiate my claim that Foucault's and Schmitt's views on sovereignty have different political implications by presenting two distinct conceptual developments on contemporary border practices and border regimes based on their respective work. I'll show that while Foucauldian political sociology is mostly concerned with a diffuse network of control apparatus that substitute themselves to the physical border, neo-Schmittians rather turn their attention towards coercive materializations of the border. In conclusion, I will call for a decoupling of Schmitt's and Foucault's views on sovereignty that would allow us to make sense of forms of resistance to border controls and of the exceptionally lively social environments that are the borderlands.

## The Impossibility of a Biopolitical Sovereignty

### The Triangle of the Sovereign, the Bare Life and the Camp

In his book *Homo Sacer: Sovereign Power and Bare Life*, the Italian philosopher Giorgio Agamben commends Michel Foucault for having coined the neologism *biopolitics* to capture a series of new developments in the modern political world. Biopolitics marks, according to Foucault, an important political shift from the *territorial* State to the *population* State (Fassin 2006). This new form of State, that emerges around the very end of the 17<sup>th</sup> century, differs from its predecessor in that it cares about the health of the nation as a whole, that is as a comprehensive population. States from the modern era show an increasing interest for the ratio of births to deaths, public hygiene measures, endemic medical issues, etc. (Foucault 1997, 213–35)

This new emphasis in the exercise of power is a small revolution in itself. While the State previously asserted its sovereignty through its recourse to some disciplinary measures meant to individualize and discipline its subjects (Foucault 1975), it now adopts a holistic approach of its population, in which its subjects are no longer considered in their individuality but rather as part of a larger body. From the viewpoint of political sociology, the State no longer relies on disciplinary institutions such as the prison, the hospital or the asylum but now turns to the development of new sciences such as demography, and provides security and assistance through previously unknown institutions such as statistical bureaus and insurance patterns to establish its authority. This historical shift might appear to tame state sovereignty, or at least to blunt its edges, insofar as it transforms the archetypical sovereign power of the Old Regime to “let live and make die” into the attempt to “make live and let die” (Foucault 1976, 177–91). But it also tremendously expanded the scope of the State’s prerogatives. For the life of its citizens is no longer of interest to the State in its political dimension alone, the biological dimension of life now also falls under the yoke of State practices. From now on, power is plugged into life and has as its goal to make it prosper.

While Agamben lauds Foucault for having highlighted this previously overlooked dimension of the political, he also laments the fact that the latter would have underestimated the juridical dimension of biopolitics. Too focused on unearthing a new diagram of power made of an original constellation of institutions and knowledge that bypass the disciplinary logics and rather favor a discreet form of regulation, Foucault would have missed its juridical repercussions. And this seems to be the challenge that Agamben sets for himself in his book *Homo Sacer*, to fill the legal gap Foucault left in his theory of biopolitics: “The present inquiry concerns precisely this hidden point of intersection between the juridico-institutional and the biopolitical models of power. What this work has had to record amongst its likely conclusions is precisely that these two analyses cannot be separated” (Agamben 1998, 11).

Agamben’s argument then takes an unexpected—and rather risky (Zarka 2005; Balibar AQ3 2010; Kervégan 2011)—turn. He argues that to provide a legal addition to Foucault’s biopolitics, one should look into to the work of Schmitt on sovereignty. And what justifies this apparently bizarre gathering is the importance Schmitt granted to the juridical category of the exception (Agamben 1998, 13). One of the most often quoted claims of Schmitt is the opening sentence of his *Political Theology*: “Sovereign is he who decides on the exception” (2005, 5). This claim could be unpacked in the following way. Sovereignty is a borderline

concept in the sense that it only applies in extreme cases. Hence the difficulty to provide a proper conceptualization and the debate the notion generated throughout its history. Capitalizing on the work of absolutist authors such as Thomas Hobbes and Jean Bodin, Schmitt paints the sovereign as the legal person whose power must be prevalent and consequently cannot be challenged or contested without losing its sovereign attribute (Schmitt 2005, 53–66). And the decisive moment to establish this sovereign capacity is the moment of the exception, when the positive legal system falls short on regulating the unexpected and is brought to the brink of dissolution. In such cases of emergency, the legal order cannot be hindered by itself if it wishes to ensure its sustainability. In other words, the sovereign has to act undeterred by checks and balances. In exceptional circumstances, the sovereign is the legal person whose authoritative decision will suspend the rule of law in order to restore it. The sovereign will paradoxically exempt himself from the norms embedded in the legal order to better uphold them. In Schmitt's words:

He [the sovereign] decides whether there is an extreme emergency as well as what must be done to eliminate it. Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety. (2005, 7)

Now this seems to put the sovereign in an impossible situation. For he appears simultaneously to belong to the legal order and to exceed it, to be both inside and outside the scope of law. He sits on top of the pyramid of norms but nevertheless is directly connected to the exception. How can Schmitt make sense of this? While acknowledging that the sovereign is a somewhat paradoxical figure, Schmitt breaks down its relation to the exception into a chronological sequence. When the legal order is thrown into grave danger, the sovereign is he who is in position to declare a state of exception and to temporarily allow himself to overlook the constitution with the aim to restore it later (Schmitt 2014). The moment of exception is then crucial because it reveals the sovereign. But, despite this importance, it is meant to be fleeting. The exception is, in Schmitt's view, no more than an interlude.

While Agamben shares Schmitt's argument on the necessary link between sovereignty and exception, he nevertheless adds a further twist to it. Walter Benjamin (who had carefully read Schmitt though he found himself at the other opposite end of the political spectrum) was the first to contest that the authoritative moment of the decision on the exception could be instrumental in restoring juridical order. He rather contended that, under such an understanding of sovereignty, "the state of exception in which we now live has become the rule" (Benjamin 2013, 433). Agamben further elaborated on this assumption. Under the Agamben-Benjamin's hypothesis, the exception cannot be neatly contained (Agamben 1998, 14). It is not simply one stage in the sequence to restore constitutional order. Since the sovereign remains partly alien to the legal system and therefore embodies the exception, the state of exception remains an ever-present possibility (Agamben 1998, 17). The legal system always depends on what negates it; the norm rests on its suspension. Logically, this means that beyond a certain threshold the exception and the day-to-day functioning of the legal order can no longer be distinguished. Thus, the exception is not a moment, it is a permanent feature of the legal system that reveals its concealed nature (Agamben 1998, 19). In fact, the legal system presents itself like a Möbius strip. What it shows to be external to itself, ends up being at its

very core, and vice versa (Agamben 1998, 28). As a consequence, the rule of law and the exception can no longer be neatly separated (Agamben 2003, 89–109). For, beyond a certain threshold, the arbitrary decision and the norm become too intertwined to be separated.

185 According to Agamben, this invasive nature of the exception echoes Foucault's work on biopolitics. For what they would both tend to demonstrate is that the sovereign power produces a very peculiar form of life, a form Agamben calls metaphorically *homo sacer*. In archaic Roman law, the *homo sacer* was an individual that could be killed in perfect impunity but that could not be sacrificed. In other words, the *homo sacer's* life was so worthless  
190 that it could not be offered to the gods and yet could be taken by anyone without legal consequences (Agamben 1998, 48). In Agamben's words, it was a *bare life*, that is a life stripped of all its attributes. Whereas life in traditional political theory had been considered ever since Aristotle as a *bios*, that is a life defined by its inclusion in the *polis*, it would now be pulled towards the *zoé*, that is the life of animal deprived of any social  
195 dimension. A life laid bare and made purposeless. This life, supposedly reminiscent of the biological life being taken in consideration in the Foucauldian biopolitics, would nonetheless be Schmittean to the extent that it mirrors the sovereign. For the *homo sacer* is included in the political community through his exclusion, just as the sovereign is. His banishment from the community would amount to a politicization of its biological life and/or to a degradation of *bios* into an intermediate form of *zoé*. To be sure, the sovereign  
200 is all-mighty and the *homo sacer* is powerless, but their relationship to the political community are nevertheless strikingly similar (Agamben 1998, 11). For they are both paradoxically connected to it by an inclusive exclusion (DeCaroli 2007). They found the community but nonetheless they will never be considered as one of its members. Hence  
205 Agamben's single most important claim: "It can even be said that the production of a biopolitical body is the original activity of sovereign power" (1998, 28). The sovereign and the *homo sacer* are intimately connected since the production of the latter lays the foundation of the power of the former.

210 Elaborating on this, Agamben moves to another, and somewhat infamous, crucial claim:

*The camp is the space that opens up when the state of exception starts to become the rule. In it, the state of exception, which was essentially a temporal suspension of the state of law, acquires a permanent spatial arrangement that, as such, remains constantly outside the normal state of law.* (Agamben 2000, 38)

215 Through this assertion, Agamben weaves together his two previous threads. First, the exception is no longer exceptional. For instead of being a fleeting moment, it turns into a permanent space. An isolated and insular space, but whose fast expanding nature is, according to Agamben, undeniable (1998, 99). The camp, to put it bluntly, is constantly annexing some new territories. Second, this space of exception embodies the biopolitics  
220 *par excellence* (Agamben 1998, 97). In the camp—be it concentration or refugees (and Agamben never shies away from drawing a continuum between those two instances [Agamben 1995, 1999; Kumar Rajaram and Grundy-Warr 2004])—the individuals are stripped of their singularity and reduced to a mass of bodies to be administrated. They  
225 are nothing but a population to be managed (Barder and Debrix 2009). And Agamben to conclude, with a tone oscillating at times between the apocalyptic and the messianic,

that this relation of banishment, tying together the sovereign and the *homo sacer* and constituting the most fundamental political relation (Agamben 1998, 96), has been made ever stronger by modernity. If we allow the exception to become routinized, if we do not resist this worrying trend, the political space will soon turn into a gigantic camp and we will all eventually find ourselves to have all become *homo sacer*.

### Fault Lines in Agamben's Argument

Now Agamben's argument deals with our current political situation in such absolute and dramatic terms that many commentators have been tempted to dismiss it all together as being over the top (Huysmans, 2008; Colatrella, 2011; Traverso, 2011). Though I disagree on many points with Agamben, I nonetheless consider his argument presents a puzzling challenge to the traditional understanding of sovereignty and deserves to be taken seriously. In my view, a critical scrutiny of Agamben's line of thought should start with its most surprising feature, that is his mixing of Foucauldian and Schmittian concepts.

One first element that strikes the reader as incongruous, on which I will not dwell for long since it has already been well documented, is that Agamben redefines biopolitics in ontological terms (Muhle 2002; Genel 2004). While for Foucault biopolitics corresponds to an historical epoch and appears alongside a set of new power practices, for Agamben: "Western politics is a biopolitics from the very beginning" (1998, 102). Biopolitics, instead of being a specific form of sovereign power, clearly delimited in time, is turned into the ever-present matrix of sovereign powers (Norris 2005). By indulging himself to make ahistorical statement, Agamben moves closer to Schmitt's methodology than to Foucault's. He does not investigate its historical evolution, rather he looks for the essence of the political (Agamben 2009, 13). Though this incline to treat political issues in ontological terms is disconcerting and quite unhelpful, it will not be my main concern here. What I would like to argue in this section is that, regarding sovereignty, Agamben cannot have his cake and eat it too. In fact, his hyperbolic criticism of the biopolitical sovereignty conjures two images of political power that cannot be reconciled.

For Schmitt power is always *sovereign* power. And we already saw that Schmitt had defined the sovereign as transcending the legal order through its decision on the exception (Schmitt 2005, 49). Schmitt, who often fancied himself as the Hobbes of the 20<sup>th</sup> century (Balibar 2002), concurred with his illustrious predecessor that the sovereign stands tall over the society he governs. The sovereign has to have the spectacular dimension of the mythical monster known as the Leviathan. Consequently, the sovereign embodies the whole political community but it is nonetheless the only one that concentrates in its hands the power, and the symbols attached to it. For its authority cannot suffer any contradiction when it suspends the constitutional norm in the face of the exception. And since "there exists no norm that is applicable to chaos" (Schmitt 2005, 13), the sovereign is entitled to make an arbitrary decision according to its own personal will. In a true reactionary fashion, Schmitt concludes that *any* decision is good *as long as* it asserts a single authority (2005, 55). In this sense, the ghost of the monarchy haunts Schmitt's figure of the sovereign. As one commentator puts it, Schmitt's sovereign is more a *bare* sovereign than anything like a subtle biopolitical sovereign producing a *bare* life (Fitzpatrick, 2001). To sum up, sovereign power is for Schmitt the legal concept of a

transcendental power that rests on an arbitrary decision whose legitimacy is sustained by its (symbolic) authority.

Foucault's concept of power contrasts sharply with the above. In a few illuminating pages, he suggested a new analysis of power that would no longer take the juridical model of the law as its main reference (Foucault 1976, 119). This emerging power corresponded for him to the rise of biopolitics that only very partially overlapped with the previous figure of the sovereign law he associated with the disciplinary society. First of all, power has for him no focal point. It does **not** revolve around any specific center (such as the State, the King or the Sovereign), it is rather dispersed throughout social relations (Foucault 1976, 121). And since power is multiple and located virtually everywhere, it can no longer be said to be transcendental. Power is in fact immanent to each domain it applies to. It is the strategic situation of each relationship, its embedded structure (Foucault 1976, 123). Consequently, power always implies a resistance. Since the power is relational and never absolute, it will run everywhere into some form of contestation or opposition. And last but not least, power isn't negative. Its main function is not to stop or prevent individuals from doing something. It is quite the opposite. Power invites, suggests, creates incentive to adopt normalized behaviors. His main instrument is not the law that forbids or prohibits but the norm that regulates and homogenizes (Foucault 1976, 189). Power, in short, is not repressive but creative: it prepares and produces consent. As we already said, power no longer "makes die and lets live" but "makes live and lets die" (Foucault 1976, 181).

Once compared side by side, one can wonder how Agamben actually got away with his concept of biopolitical sovereignty. For political power cannot be transcendental and immanent at the same time. It cannot be blamed for being both repressive and creative, or described in a same breath as spectacular and hidden, centralized and dispersed. In short, political power has to be *either* a decisionist sovereignty *or* a biopolitics (Ojakangas AQ7 2005). Biopolitical sovereignty conflates the most anti-liberal elements of the two distinct paradigms of sovereignty. Sovereign power is depicted as transcendental but is also construed as biopolitical in nature and therefore tends to become invasive and to get a hold on each and every aspect of life (Agamben 2008). The sovereign ends up being omnipotent *and* omnipresent. The stage is set for an apocalyptic depiction of modernity. Below, I will argue, using border controls as a case study, that if both paradigms of sovereignty can help us make sense of our empirical world, however they should be neither confused nor conflated.

## Two Incompatible Approaches in Border Studies

In border and borderlands studies, the main objects of enquiry—that is the border and its adjacent territories—are never (or at least, should never be) taken for granted. According to this methodological principle, the border can take many different aspects. And if there is one thing that all commentators seem to agree upon, it is that border regimes and borderlands have been radically transformed over the last decades (Glick Schiller and Salazar 2013). Not only have they moved, vanished or reappeared in surprising places, they have also changed in nature. They adopt new shapes and forms, they are generated by previously unknown bordering practices (Rumford 2006b). They also function according to some innovative logics. In this section, I don't pretend to give an exhaustive overview of

the current debate around border controls and borderlands but more modestly to sketch briefly two representations of border controls, drawn respectively from the perspective of Foucauldian political sociology and from Schmitt-inspired security studies, in order to show that the social and political practices they depict have little in common.

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### *Foucauldian Political Sociology*

The barbed wire was invented in 1874 by J.-F. Glidden, a farmer from Illinois (Razac 2009, 29). Ever since, it has enjoyed an uninterrupted success not only as a farming tool but also as a political instrument. In a thought-provoking book that owes much to Foucault, Olivier Razac reflects on the barbed wire's unique history as a technology of political power (and more specifically on its role as a territorial boundary). Razac organizes his historical narrative around three defining episodes. Barbed wire has first been used to mark and delimit a territory during the conquest of the American West (2009, 29–45). In this context, it proved to have many advantages. It was light, resistant, and cheap. In order to enclose the vast plains located to the West of the American frontier, it quickly appeared to be vastly superior to any form of rock walls or wooden barriers. Barbed wire was thus instrumental in putting an end to the American myth of the cowboy and the culture of the open range associated to it. It helped switch the balance of power in favor of sedentary farmers and against the cattle ranches. And last but not least, it played a pivotal role in making it impossible for Native Americans to perpetuate their way of life. During its second episode, the First World War, barbed wire has also been massively used for the defense of the trenches. Once again, its feather weight, its flexibility and its discretion made it more efficient than other devices when it came to delimiting the military front (Razac 2009, 50–7). Finally, barbed wire is associated with the concentration camps. Because of their lethal function, the architecture of the camps had to obey two imperatives: they did not want to attract any attention and they were never meant to last. For those reasons, barbed wire has always been an integral part of their history. Fences made of barbed wires are incredibly efficient at preventing prisoners from escaping, and yet they do not need to be high or impressive. Moreover, they can be taken down as quickly as they've been built and leave little traces. Inside the camp itself, barbed wire was also a convenient tool to divide the space according to its sophisticated internal hierarchy (Razac 2009, 65–72).

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Though Razac's historical narrative culminates with the episode of the concentration camps, he nevertheless emphasizes that barbed wire is not first and foremost a coercive instrument. Barbed wire lacks the materiality of the wall. Its main attributes, as we saw, are its flexibility, its mobility, its ability to adapt to circumstances (Razac 2009, 144). What makes the barbed wire so efficient is that it virtualizes the border. Its delimitation of space is hardly there, barely visible, and yet it turns out to be incredibly efficient when it comes to dividing up a space. Foucault claimed that, in the era of biopolitics, "One always governs too much—or at least, one has always to suspect that it governs too much" (Foucault 2004, 324). The rationale of the biopolitical governance is indeed that a maximum of effects should be obtained with a minimum of political energy. And this is exactly what barbed wire enables. While virtually invisible, the boundary it creates outperforms any wall. For it can adapt itself to the flows it has to channel and manage (likewise a norm, because of its flexibility, is often more suited to the control of

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a population than the law) (Razac 2009, 154). Rather than a single line at the margins of the territory, the new virtual borders (that include but are certainly not limited to the barbed wire) can then move towards its center and cover its surface (Balibar 2001, 175). The dematerialization of the borders provides them with a newfound elasticity and allows them to build a network of invisible but efficient boundaries that spreads throughout society and space (Rumford 2006a).

Moreover, barbed wire is neither a monumental nor a spectacular device. In most cases, it cannot even stop a person that is really determined to pass through it. But the hindrance it creates is sufficient to make most individuals reconsider their route. Barbed wire is, to use a Foucauldian terminology, a *pastoral* technology of power. It treats its subjects as a herd that needs some guidance. In this regard, barbed wire is far from being the end of the road for the virtualization of the borders. As a matter of fact, barbed wire is in many respects an outdated tool to govern mobilities. Though it is a prime example of the diagram of power associated with biopolitics and it is still widely used nowadays to reinforce borders throughout the world, it nonetheless relies on a linear demarcation of territories. As Paolo Cuttitta aptly showed (2006), linear and static territorial borders are closely associated with the nation-State, whose preeminence on the international scene has been increasingly challenged by supranational and transnational actors over the last three decades. This decline, coupled with a massive increase in mobility brought by globalization, led to a relativization of the importance of territoriality for political communities. As a result, the governance of borders adapted itself and stopped relying solely on partially obsolete territorial lines. They increasingly operate at some specific points, more specifically as a network of “punctual borders” strategically located at key nodes in the net of global mobility, such as airports, harbors, highways, etc. (Guiraudon and Lahav 2000).

Though the shift from lines to points in the geography of borders is a meaningful one, it must be pointed out that much of the recent literature in border studies warns against an excessive focus on the material and territorial aspects of the border. Not only does such a focus run the risk of fetishizing the physical border, but it would also miss the fact that borders are first and foremost social constructs. They are the results of social processes, known in the literature as *bordering*, that create, sustain, or reinforce non-territorial divisions amongst social groups through reiterated interactions (Newman and Paasi 1998; Newman 2006). It is therefore not the borders *per se* but rather the practices of border management and border control that deserve our scrutiny. A bit counter-intuitively perhaps, the challenge faced by traditional borders did not lead to their withering but rather to a proliferation of immaterial borders embodied in exclusive social practices (Mezzadra 2015), that is selective re-bordering practices reproducing throughout the national territory international divisions and inequalities (Sassen 2005). The borders’ functions tend to be reconsidered too. Rather than prove true to their historical military function as a “front” that needs to be defended against a large-scale intrusion, the new governance of borders is tasked with the control, classification, and selective filtering of unwanted flows (Andreas 2003). Innovative technologies, akin to control apparatus in Foucault’s terminology, such as the creation of security and migration databanks, suggest that this biopolitical diagram of power, more concerned with a general governance of flows than with the discipline of each individual, could still be taken a step further. For instance, the Schengen-visa system allows the member-States of the Schengen area to cross

the information of various databanks in order to identify unwanted profiles amongst incoming migrants and therefore to prevent their emigration from their origin country by refusing them a visa (Bigo and Guild 2003). Another example of this virtualization of the border is provided by the plight of undocumented migrants in Europe. Since government administrations work ever more closely together to monitor irregular migrations, something as trivial as a labor control, a minor brush with a law enforcement officer, a meeting with a social worker or a driving incident can have dramatic consequences and potentially result in a deportation from the country (Fassin 2010). For irregular migrants, crossing the State's physical borders is thus not synonymous with leaving the border behind, it is rather experienced as being entangled in a net of intangible borders, providing extremely strong incentives for the migrants to adopt a normalized behavior.

Deleuze had suggested that Foucault had with his later work on biopolitics announced the dawn of a new era. Instead of a disciplinary society, the world we live in would look more like a *control* society. Institutions of control, such as the border, would no longer prohibit anything or coerce anyone, they would rather nudge large parts of the population into adopting the required behavior (Deleuze 1990). Barbed wire, profiling databanks and intangible boundaries are to the border what the control society is to the disciplinary society, a shift in the technology of power generated by an increasing virtualization of power (Walters 2006). According to this perspective, the border is neither a line, nor a wall, but a network of normalizing institutions.

### *Schmitt and the Security Studies*

In a seminal article of the security studies, Ole Waever invites us to think of security not as a state of affairs that should be maintained or a thing that could be acquired, but rather as a political process. Security is according to him encapsulated in a speech act (Waever 1995; Buzan, Waever, and De Wilde 1998). Or, to put it differently, security is a performative discourse. Indeed, for a state-representative, uttering the word "security" has serious political consequences. For it locates the issue concerned above and beyond the daily routine of the political debates. It turns it into an existential threat that calls for exceptional measure of protection. According to this approach, security actually doesn't exist as such, what one can observe empirically are rather processes of *securitization* that raise the stakes around certain specific political issues and place them under the strict scrutiny of security professionals. As it has been shown by Michael Williams (2003), this framework for the analysis of security owes a lot to Schmitt's doctrine of the exception. The parallel is striking and in no way coincidental. Schmitt presupposes, as we saw above, that the essence of sovereignty is to decide on the exception. Sovereign is he who not only asserts its ability to take the all the necessary measures to restore order to a chaotic situation, that is to a situation that confronts the political community to an existential threat, but also he who decides when the legal order is breached and the assertion of the undisputed power of the sovereign is required. Likewise, in security studies, securitization is the process through which public figures construct discursively some selected issues as likely to bring the political community to the brink of destruction and categorize them as too dangerous to be discussed democratically. Mirroring Schmitt's suggestion, securitization is a decisionist speech act that locates securitized issues under the authority of a single sovereign, more often than not the executive branch of the government, whose

power must remain unmonitored and unchallenged in order to ensure its efficiency. In practical terms, securitization then amounts to a transfer of authority, prompted by fear and anxiety regarding some targeted issues (Eklundh, Zevnik, and Guittet 2017), from the citizens to government officials and security professionals.

455 According to the work of Jef Huysmans or Denis Duez, migration is one of those socio-political phenomena that has been *securitized* in Europe (Huysmans 2006; Duez 2008). Within the EU, the image of the migrant has gradually shifted from the deserving asylum seeker trying to escape tyranny to the welfare-shopping economical migrant, the fundamentalist Muslim unwilling to assimilate or worse, the potential terrorist. As a consequence, migration policies and border controls have in most cases  
460 been placed beyond the grasp of regular citizens. The threat posed by newcomers to our traditional way of life is deemed to be so serious that ethical norms or checks and balances have lost any bearings on the border control policies. Frontex is a prime example of this ability to escape any form of political scrutiny. While it is  
465 **AQ12** endowed with an exponentially growing budget from the EU (Rodier 2012), it claims  to be a purely technical agency and keeps refusing to be held accountable by anyone but the European Commission.

Interestingly, this approach in terms of security paints another image of the border. Since migrants are said to be a threat, the State is expected to respond accordingly. The way to proceed is thus to strengthen and in many cases to militarize its borders.  
470 In some of the margins of its territory, the sovereign suspends the constitutional order and substitutes an exceptional martial regime to it. The liberal regime gives way to a decisionist authoritarianism in which migrant rights are not held in high esteem (Minca and Vaughan-Williams 2012). In the borderlands of Ceuta and Melilla, along the land  
475 border between Greece and Turkey or on the Eastern border of Hungary, massive militarized walls are being built. As Wendy Brown interestingly showed, when transnational flows of migrants are constructed as a threat, the response is to turn borders into spectacular walls that embody the sovereign decision (2010).

## 480 Conclusion

Schmitt and Foucault held two very distinct views on sovereignty. The former emphasized its existential dimension and its intrinsic link to the category of the exception while the latter insisted that sovereignty was now located in a diffuse network of normalizing institutions he called biopolitics. Both views can be (and have been) used critically to unearth  
485 oppressive features of our current political situation, and they can both prove particularly helpful to lay bare some of the issues with the modern border regime (Walters 2011). Nonetheless, we tried to show that Agamben goes a theoretical step too far when he forcefully unites those two perspectives into the single concept of the biopolitical sovereignty. For their political implications and their critical thrusts are going into opposite directions.  
490 Schematically, Schmitt's sovereign power is spectacular, centralized and absolute, while Foucault's biopolitical power is dispersed, discreet and normalizing. Agamben overlooks those analytical oppositions and selectively blends some of those elements together. He then ends up with a conceptual oddity, a single biopolitical sovereign that would create  
495 an ever-growing archipelago of spaces of exception but would nonetheless remain invisible.

One might grant me that, where we have a militarized border, the sovereign ceases indeed to act as a gentle pastor and seemingly loses its ability to softly and subtly normalize a population or that the edification of a network of control apparatus has, as a precondition, a restraint on the use of force. In other words, one might concede to my theoretical argument above, consent that from an analytical viewpoint it is impossible for a sovereign

**AQ13** to be simultaneously spectacular and discreet, centralized and dispersed, (A) and (-A).



And yet, one could justifiably argue that we currently witness in Europe an empirical evolution in our border regime that is eerily familiar with the logics of sovereignty presented by Agamben. Since the Syrian refugee crisis hit the European Union, a diffuse network of increasingly dematerialized borders—located in consulates, humanitarian workers' offices, and local police stations—kept monitoring, channeling, and relocating refugees while kilometers of militarized borders were simultaneously being erected and refugees camp hastily built on the far edges of the European territory. The binary distinction that I attempted to draw above appears to have been reshuffled and would need to be reconsidered in the light of those recent events.

But my argument is not that very distinct border regimes corresponding to diverging understandings of sovereignty cannot coexist or cooperate. As a matter of fact, they currently do in Europe. Databanks and fences have been used in equal measure to manage the Syrian refugee crisis. My argument is rather that *they are not mutually reinforcing*. If we were to agree with Agamben, biopolitics, on the one hand, can turn at any moment into a thanatopolitics because it is backed by the uncontested authority of an absolute sovereign (hence Agamben's recurring parallel between concentration camps and refugee camps). On the other hand, no individual would be out of the reach of the sovereign's absolute

**AQ14** authority since could benefit at will from a thick net of social institutions. It is thus the



articulation of those two principles (biopolitics and a decisionist sovereignty) that makes the biopolitical sovereignty so irresistible and would turn migrants into a bare life unable to oppose any resistance. My contention, however, is that this does not match what we observe empirically. Refugee camps and detention centers are indeed mushrooming across the European Union and those confined institutions resort to severe coercive practices that fail to treat migrants as human beings, not to mention political agents. Nevertheless, against all odds and *pace* Agamben, there are multiple examples of migrants organizing themselves politically in those spaces and contesting their fate (Bailey 2009). Raffaella Puggioni (2014), for instance, takes exception to Agamben's biopolitical sovereign on the basis of what she observed during her own fieldwork in Italian immigration detention centers. Taking cues from the renewal in citizenship studies (Isin and Nielsen 2008; McNevin 2011), she shows that those carceral environments are the stage of near constant protests and condemnations of the border practices by the migrants themselves. Those organized gestures of disobedience are the acts through which migrants seize the chance to reclaim the citizenship rights they had been deprived of. Stemming from the project to sketch an ethnographic study of the new cosmopolitan condition of the contemporary migrants, Michel Agier (2010) reaches some very similar conclusions. Migrants may be subjected to extreme border practices, be it an authoritarian and arbitrary use of violence by representatives of the law or more subtle processes of social exclusion and spatial segregation carried by biopolitical institutions, but they nevertheless retain the ever-present possibility to use their "rights to have rights," following Hannah Arendt's famous play on words (Krause 2008; Beltran 2009), that is their

ability to present themselves as political subjects in spite of being denied that status. Thus, based on those few illustrating examples, the thesis of the biopolitical sovereignty fails to prove entirely compelling. Either those rebellious migrants have not been properly normalized by the biopolitical institutions constitutive of the biopolitical sovereign or the sovereign authority is proven not to be as supreme as it claims. But in either scenarios, the supposedly seamless articulation of biopolitics and decisionist sovereignty is found wanting, leaving the door open to a distinct critical assessment of the current European border regimes. While the latter fails to observe the liberal principles on which the European Union is built, they are not however constitutive of a generalized exception to the rule of law that would reduce migrants and non-migrants alike to a bare life. Borderlands provide a further rebuttal of the thesis of the biopolitical sovereign. Though the borderlands at the outer rim of the EU's territory have been depicted as perilous zones and have consequently been subjected to securitization processes, their transnational social fabric has proven to be extremely resilient. As the following articles in this special issue will illustrate, cross-borders social interactions have not been left unchanged by this evolution, but borderlands nonetheless remain lively transnational social environments.

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