
“POSITIVE BIOPOLITICS” IN THE 21. CENTURY? (“BIOPOLÍTICAS POSITIVAS” NO SÉCULO XXI?)

Bogdana Koljević, PhD
Doutora pela New School de Nova York
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RESUMO: Na primeira parte deste artigo a autora reflete sobre as teorias filosóficas biopolíticas nos trabalhos de Michel Foucault e Giorgio Agamben, articulando as ideias biopolíticas como neoliberais, isto é, biopolítica enquanto permanência no estado de exceção. Apesar de diferenças em seus projetos conceituais, em ambos as noções biopolíticas aparecem como últimas condutoras de técnicas contemporâneas de governo, como o poder que situa-se acima da lei, da política, da filosofia e da vida como tal. Na segunda parte, a partir das recentes teorias de Michel Hardt e Antonio Negri, a autora indaga a respeito das potencialidades do repensar a imagem viva de biopolíticas positivas, de multidão e comum, e as possibilidades que estão emergindo nas sociedades do século XXI. Por conclusão, apresenta a ideia de verdadeira democracia em Marx nesse contexto, enquanto o nome político e filosófico que se enxerga à luz da resistência ao império e às novas biopolíticas positivas.

PALAVRAS-CHAVE: Biopolíticas. Neoliberalismo. Estado de Exceção. Multidão. Verdadeira Democracia.

ABSTRACT: In the first part of this article the author reflects on the philosophical theories of biopolitics in works of Michael Foucault and Giorgio Agamben, articulating the ideas of biopolitics as neoliberalism i.e. of biopolitics as permanency of the state of exception. In spite significant differences in their conceptual projects, in both cases biopolitics appears as the ultimate carrier of contemporary techniques of governing, as the power which rules over law, politics, philosophy and life as such. In the second part, coming from recent theories of Michael Hardt and Antonio Negri, the author questions the potentialities of rethinking the live image of positive biopolitics, of multitude and the common, and the possibilities which are emerging in societies of the 21st century. In conclusion, Marx's idea of true democracy is presented in this context, as the philosophical and political name which is seen in the light of resistance to the empire and as a new positive biopolitics.

KEYWORDS: Biopolitics. Neoliberalism. State of Exception. Multitude. True Democracy.

BIOPOLITICS AS NEOLIBERALISM AND BIOPOLITICS AS PERMANENCY OF THE "STATE OF EXCEPTION"

The philosophical reflection of biopolitics, and therefore, of biopolitics as a philosophical concept, has its beginnings in Michael Foucault's works, particularly, *The Birth of Biopolitics*, *Society Must be Defended*, *The History of Sexuality* and *Security, Territory and Population*. It is in *The Birth of Biopolitics* that Foucault, analyzing the entire spectrum of functioning of contemporary power, declares that – *biopolitics is neoliberalism*.¹ With the strengthening of liberal structures of power, life became a political object. As such, biopolitics, for Foucault, encompasses the entire field of issues of the market, liberal economy, techniques of governing, and most significantly (besides the prison, madness, sexuality etc.) includes phenomena such as *law*, *sovereignty* and *life* as such. Biopolitics is hence the name for what Foucault calls *practice of truth* or *regime of truth of liberalism*, which manifests itself in and through different aspects of human existence. Moreover, *biopower* (synonym of "biopolitics" for Foucault), appears as the power that rules not only over individuals, in their everyday common undertakings, but governs over complete *populations* – and no doubt that this can be associated with the *theoretical and political tendencies to globalize liberalism in recent decades*. What is distinct for biopolitics, in such respect, is a prevalence of liberal *governmentality* as *antipolitics*, while the ultimate task of *genealogy* refers to articulating multiple forms and presentations of power in the continuity of a single "regime of truth".

However, one needs to keep in mind that, although every genealogy for Foucault is genealogy of power, not every genealogy is genealogy of biopolitics, but only those which articulate how liberalism, as one possibility of Modernity,² prevailed and developed as power over human private and *political life*. Foucault places a strongest possible argument: it is the *specific potentiality of the relation between knowledge and power* through which biopolitics appears as, what he calls, "*the new discourse of the West*". It is in this respect that Foucault's statement that *biopolitics*, in one of its decisive shapes, appears as *the process of fragmentation and dissolution of political sovereignty* (*The Birth of Biopolitics*), gains its full meaning, shedding light on the relation between biopolitics and law, biopolitics and politics, and possibly biopolitics and structure of the political. Furthermore, these elaborations sound prophetic today, if we rethink the fact that neoliberalism in contemporary manifestations of

1 In a similar way, in *The History of Sexuality* Foucault writes that "*biopower has been a necessary element for the development of capitalism...*". Michel Foucault, *The History of Sexuality*, p.157.

2 This has to do with the significant difference Foucault draws between what he calls a "*revolutionary course*" and a "*utilitarian course*", as two distinct potentialities of Modernity, of which the first historically and politically prevailed.

biopolitics, at the end of the 20th and beginning of the 21st century, unveils itself precisely in political actions attempting to either negate, annihilate or substantially redefine both political sovereignty and/or legal sovereignty, as one of key categories of not only domestic and international laws, but of politics and political subjectivities *per se*.

Foucault goes on to say that governmentality needs to be analyzed outside the model of Leviathan, outside the field of legal sovereignty, since it rests on *techniques of domination (Society Must Be Defended)*. Articulating that “new forms of governmentality colonize legal structures and *dissolve the legal system of sovereignty*” (*Society Must Be Defended*), Foucault is attempting to say that biopolitics refers to politization of life of individuals and populations, and in such way has more to do with techniques of domination that develop *beyond the sphere of institutions and law*. Biopolitics is differentiated from power of sovereignty³ and its birth is seen in power of domination, as power over life which happens not only beyond the legal sphere, *but not rarely precisely as the very destruction of law*. The inversion of Clausewitz’s code, namely, that *politics is war continued by other means*, actually points to the transformation in the field of governmentality, where *war becomes the code for peace*. This would be to say that, besides the dismissal of certain key categories of law, most notably sovereignty, biopolitics presents itself no less as *war* and, moreover, as such war which steals the name of (fighting for) *peace*. In this sense, Foucault’s work illuminates what were to appear as major characteristics of neoliberalism, especially in the last two decades. This is explicit in the following statement: “Wars are led in the name of life of all. Governing over life and survival, over human bodies and races, many wars have been led and can be led. Today... an entire nation can be exposed to death in order to enable survival of another nation. The principle to be able to kill in the name of life has now become the dominant principle of international strategy, and survival now is no longer the legal survival of sovereignty but rather the biological survival of a certain population.”⁴

If we, therefore, remember that the justification for numerous wars and so-called “humanitarian interventions” in the last two decades, it becomes clearer that biopolitical “struggle for life” and survival of one nation at the cost of another, appears as the leading trace of such a discourse. If one nation is exposed to death - “*the enemy*” - another nation has “the right to life” (“*the friend*”). When such a principle - founded on

3 Sovereignty, for Foucault, is “*the power to kill and let live*”, in difference to biopolitics, as the power “*to live and let die*”.

4 FOUCAULT, Michael. *Society Must Be Defended*. p. 154.

the Schmittian difference between “the friend” and “the enemy” – *becomes the principle of international strategy*, entering the field of international relations and international politics, as the constitutive principle – then, moreover, one of the first victims of such a process is *precisely law, and sovereignty*, especially its tradition that comes forth from popular sovereignty.

Racism, for Foucault, appears as a specific and localized episode of *the discourse of war*, but as such marks a significant turn which leads to a *par excellence* manifestation of biopolitics as politization of life and the body. All different forms in which it becomes plausible that the question of governmentality can no longer be comprehended other than along the lines of *slavery – versus*, on the other hand, *freedom* – carry, therefore, the trace of the single process of biopolitical domination. What Foucault calls, for example, “*the movement from the body to population*”, also deals with the same phenomena of contemporary biopolitics, and refers to processes of *nativity and mortality*, as well as to “*the problem of the city*” – and all the features mark the movement from *control to regulation*.⁵

The governmentality of liberalism, therefore, does not unfold as much as the control of the individual, but rather as the total *control over economic processes*, or, more precisely, in foreign politics, as the combination of these models, with the accent on that the final aim of *contemporary political economy* is *regulation of population*, its *economic power, growth, migration, healthcare* etc. This is why *contemporary biopolitics does not govern over the citizen as a legal subject, but over the citizen as a part of biomass, which is called population*. Biopolitics, as regulation of life, is liberal governmentality (*The Birth of Biopolitics, Society Must Be Defended*). It is “*the power without a king*” and “*sexuality without law*”, which constitute the forms of prevalence of biopolitics in the liberal framework. The difference between the so-called “*revolutionary course*” and “*utilitarian course*” in Foucault is emphasized in such a way to present the becoming of biopolitics. While the “*revolutionary course*” moved from the discourse on human rights to the discourse on sovereignty, the “*utilitarian course*”, differently, *is not based on law* but, rather, on state practices, having “*usefulness*” as its final criteria instead of legitimization. Moreover, according to the “*revolutionary course*”, *law* arises from *collective will*, from the very idea of *the social contract*, while in utilitarianism *law* appears as a *result of transactions* that divide

5 However, Foucault says that most contemporary forms of power include in themselves both moments, and brings forth the examples of sexuality, which simultaneously refers to political anatomy of human body and to biopolitics of population, and the example of Nazism, where both power of control and biological regulation are present.

state power and the individual (and such difference corresponds to the difference between “positive” and “negative” *freedom*.) It is from the prevalence of such utilitarian, liberal thinking, techniques of governing developed, together with the biopolitical fracture, since it further enabled categories such as *population* to become *more relevant than legal concepts*.⁶ According to Foucault, therefore, there has never been such a thing as substantial legal theory in liberalism, since liberalism undertook something completely different – the development of power throughout governing, *where legal subjectivity is arbitrary, a relative moment*, a moment which can in certain cases be *used*, and therefore instrumentalized. This is because the key player, and carrier, of liberalism, is the figure of *homo oeconomicus*, and he cannot be reduced to a legal subject. Such movement clearly leaves *sovereignty and law* on one side, and *economy and liberalism* on the other. Moreover, Foucault writes that “*neither democracy nor the legal state were not necessarily liberal, nor was liberalism necessarily democratic, or faithful to legal norms*.”⁷

What is, however, Foucault final *response* to biopolitics? Foucault concludes: “The task today is not to discover who we are, but to *refuse* what we are. *We have to imagine and invent what we could be...We have to promote new forms of subjectivity*, refusing the type of individuality that has been imposed on us...”⁸ Here *refusal* appears as the exemplary, both *political* and *existential* act, refusal of what we are in *difference to what we could be*. The second moment, and second political act, is presented as *imagination*, and reopening the field of *possibilities* and human *creation*, while the third is seen as *invention, political action and realization of such potentialities*. For Foucault, who leaves us with a draft of such a response, this is simultaneously a *political, ethical, social and philosophical* task – it is a *rethinking of birth of politics, ethics and philosophy* in a new discourse of the relation towards the individual, the state, law and institutions; it is a rethinking of new (potentiality of) power, as a revolutionary, and still not manifested, possibility of Modernity. In such sense, Foucault writes that “the problem is not in the attempt to dissolve power relations in a utopia of a perfectly transparent communication, but to provide *the rules of law...as well as ethics, ethos*, which would enable the games to be played *with a minimum of domination*”⁹, and finally, “if to politicize means

6 New “political rationality” of biopolitics is, therefore, significantly related to the development of empirical sciences, as a way of abandoning the idea of power as law, and abandoning, moreover, the language and the arguments of political philosophy and theory.

7 FOUCAULT, Michel. *The Birth of Biopolitics*. p.436-437.

8 FOUCAULT, Michel. “Subjectivity and Power”, in *Beyond Structuralism and Hermeneutics*. p. 209.

9 FOUCAULT, Michel. *The Ethics of Care*. p.18.

to return to standard choices, then it is not worth it. To new power techniques one must oppose *new forms of politization*.¹⁰

II

A different conception of biopolitics – but equally one of a *radical critique* however – is found in key writings of Giorgio Agamben, most exemplary in his works such as *Homo Sacer* and *State of Exception*. In *Homo Sacer*, building a conceptual difference between *bios* and *zoe*, as a difference between *political existence* and *bare life*, Agamben underlines all the diversity between a *legal status* of a human being and its *natural existence*. His argument is that *bios, bare life*, has been excluded throughout the entire history of Western philosophy and Western politics – which is to say that the biopolitical fracture, and its paradigmatic feature, “the camp”, appears within the heart of the political, and *as exclusion of those* who are not granted a *legal status*. This is, for Agamben, the inscription of the biopolitical movement, where *the other* is presented as such in and with his *exclusion from the system*, as *homo sacer* (“*the living dead*”), whose only right is “*the right to die*”. We could particularly take notice today of Agamben’s reflection that *homo sacer* refers to any and *every individual which can be killed with no one being condemned for such a crime – since he or she have already been excluded from the political and legal community*. In the light of, for example, recently adopted National Defense Authorization Act (NDAA) in USA, from December 2011¹¹, which permits American army to capture, imprison and hold for an indefinite period of time, and without the right for defense, *all persons* (US citizens *included*), it seems that contemporary biopolitics has “developed”, and moreover, that the overall diagnosis of present Western politics and societies is coming dangerously close to what Agamben calls “*the state of exception becoming the rule*”. In such way, however, the transformation of biopolitics can be detected and articulated – it has “evolved”, speaking in Foucault’s terms, to the point of becoming *generalized to population* as its *subject*, i.e. not only *the individuals*, and not only *those individuals* in whom Agamben at first saw the ultimate carriers of new (post)subjectivity, namely, *the refugees* (and we might add here, *migrants, asylum seekers, non-workers, the sans papiers, “the excluded”, the unemployed, etc.*). Both moments are

10 FOUCAULT, Michel. Power Affects the Body. in *Foucault Interviews*. p.209.

11 Moreover, this law appears along the lines of continuity of contemporary US law in the last decade, as a specific, and certainly even more radical sequence of the US Patriot Act, voted out in September 2001, and of National Security Strategy of USA, from 2003, which to a major extent, in last instance, presents itself as *Realpolitik* of war.

present and articulated in Agamben, but the second one – that now shows the prevalence of contemporary phenomena of biopolitics – comes from Agamben's insight that *lawlessness* and *the-sphere-beyond-law* now appear as *constitutive of and for law*, and in such sense that *sovereignty* no longer signifies *the rule of law* but its *indefinite suspension*.

Bare life, therefore, would be this situation of, either permanently or partly, being exposed to the biopolitical violence, where, as Agamben writes, “the state of exception signifies the threshold where logic and *praxis* blur with each other, and pure violence without *logos* appears without any true reference.”¹² Emphasizing, as well as Foucault, that Nazism and Stalinism represent two exemplary cases of biopolitics, Agamben goes on to say that “*in modern democracies biopolitics has passed a new threshold...because now it is possible to publicly say what Nazi's biopoliticians have not dared to say.*”¹³ The target of biopolitical domination is no longer specified and localized to certain groups or individuals – it is rather the case that in our epoch *all citizens*, in a peculiar, but radical sense, appear virtually as *homines sacri*.¹⁴ The example of the shift from Modernity to the new paradigm of biopolitics for Agamben are biopolitical events, such as September 11, 2001, and the way in which the US and the West in general, have begun to respond to it, and to constitute the state of exception as the *rule*. And such transformation refers not solely to techniques of control and surveillance, but to a specific reconfiguration of *politics to biopolitics*, where *all citizens are now its subjects i.e. objects*. In difference to Foucault, however, Agamben, in articulating his own proper answer, suggests that philosophical concepts, such as “*sovereignty*”, “*law*”, “*the state*”, “*democracy*”, “*subjectivity*”, “*the people*”, should be abandoned, and speaks of *new postsubjectivity*, ethics and community of “*whatever singularities*” that testify of “*a pure humanity*”. Moreover, for Agamben, the future community, that is to be composed of such singularities, is imagined as a community of *non-citizens* (“*denizens*”)¹⁵, and *beyond the sphere of the state and law*. In this respect, however, it seems that Agamben had not taken much notice of the differences within the tradition – those differences which Foucault calls two distinct possibilities of Modernity – and particularly a rethinking of the potentialities of *popular sovereignty*. This is because Agamben's critique of sovereignty (and then of law and the state), targets a specific interpretation, namely one that goes

12 AGAMBEN, Giorgio. *State of Exception*. p.40.

13 AGAMBEN, Giorgio. *Homo Sacer*. p.165.

14 Ibid. p.111.

15 AGAMBEN, Giorgio. *Means Without End*. p.19.

from Hobbes and reaches to Carl Schmitt, and in doing so forgets the principally egalitarian rethinking of freedom expressed in Rousseau's well-known statement from *The Social Contract* that "*if the people simply promises to obey, it dissolves its character of being a people, as soon as there is a master; there is no longer the sovereign, and the body politic is destroyed forthwith.*"¹⁶ *It is here with popular sovereignty that constitution of the rule of law appears as tied with the democratic principle, referring to the sphere of autonomy and freedom, where sovereignty is presented as a symbol of political legitimacy.* Or, in a more contemporary framework, Andrew Norris notes that Agamben's emphasis that, for example, "the state of exception blurs with the rule of law in Nazism", maybe suggests that "*what is needed is rather legal security than the critique of law – and that fascist imitation of law results in inclusive exclusion of life, and not law itself.*"¹⁷

But these remarks certainly do not undermine Agamben's insight that Schmitt's formula i.e. that "the sovereign is *the one who decides on the state of exception*", is the moment which prevailed in contemporary politics as biopolitics, and with the situation that, in Western societies, *the state of exception is becoming the rule*. This moment has recently been taken up also by Simon Critchley, in his articulation that the US politics demonstrates and practices a specific *cryptoschmittianism*.¹⁸ It is precisely Agamben's discourse on *the police*, and his articulation that the police decides "from case to case", on arbitrary basis, that provides the tool for comprehending how contemporary biopolitics selectively uses law, and operates on the basis of voluntary generalization of the state of exception, both in the domain of domestic and international law. This simultaneously creates, what Agamben calls "*a zone of indistinction*" between the public and the private, and presupposes techniques of governing which have greatly transformed the idea of power and biopower as such.

Life, dignity, freedom and the common – towards a "positive biopolitics"?

With all this said, one might now reasonably ask – how could it possibly be plausible, or even imaginable, to rethink biopolitics as "*positive biopolitics*"? If we have seen how biopolitics appears as liberalism, then how biopolitics is articulated as the prevalence of the state of exception, how can we philosophically conceive a response to biopolitics

16 ROUSSEAU, Jean Jack. *The Social Contract*. p.57.

17 NORRIS, Andrew. "The Exemplary Exception", in *Politics, Metaphysics, Death*. p.272.

18 CRITCHLEY, Simon. *Infinitely Demanding*. p.11.

to be *positive biopolitics*? This attempt, however, has been undertaken by Michael Hardt and Antonio Negri, partly in the second part of their book *Empire*, and most notably in *Multitude*, but one can perhaps say this idea dates as early as in writings of Hannah Arendt (especially *The Origins of Totalitarianism*), and recently has also been taken up by Roberto Esposito, in his work called *Bios*.

We could say, as Miguel Vatter argues, that Hannah Arendt is the example of an *anti-totalitarian thinker of the biopolitical*,¹⁹ and that in such a way her project is one of *positive biopolitics*. Certainly, Arendt's political thinking counters totalitarianism on its own terrain, i.e. it moves towards identifying what in life poses a resistance to the totalitarian project - one of attaining total domination over life. This way, biopolitics in Arendt appears as the positive biopolitics that is *a resistance to domination*.

In his work *Bios* Roberto Esposito, borrowing from Jacques Derrida and then developing the concept of immunization,²⁰ attempts to articulate a radical transformation of biopolitics, and also to argue for a different i.e. *positive biopolitics*. In Esposito's view, such biopolitics, as *politics of life*, is the best contemporary response to *politics of mastery*, which is the negation of life itself. Rethinking the whole relation between the self and the community, Esposito illustrates negative biopolitics through the temptation of "purifying oneself from foreign bodies", as the attack against that which is *the other*. His answer lies in allowing us to think subjectivity outside and beyond liberalism, i.e. in conceiving that *bios* and *nomos* represent two constituent elements of *a single whole*, that assumes meaning from their interrelation. The source of positive biopolitics, therefore, is to a great extent decided in understanding that both the norm and the subject are a flow, as the potentiality of preserverence of one's own normative power in yet unseen ways

Hardt and Negri – and at this occasion we mostly turn to their argument - reintroduce the force of Marx's, let us say, key argument – one about *the capitalistic system producing the basis for its own overcoming* (*Empire*). It is in such sense that these authors argue that *the multitude is an alternative that grows within Empire*²¹, that it is a heterogonous network composed of workers, non-workers, migrants and social movements, i.e. from a diversity of figures of social production. Multitude, therefore,

19 VATTER, Miguel. "Natality and Biopolitics in Hannah Arendt". *Revista De Ciencia Politica*. v.26, n. 2.2006, p. 137-159.

20 ESPOSITO, Roberto. *Bios*.

21 HARDT; NEGRI. *Multitude*. p.XIII.

appear as both a political and social force, structured by actors formed in the globalization processes, which present new potentialities for the rise of the political, the theoretical and the intersubjective space.

In a specific fashion, Hardt and Negri follow up both on Foucault's articulations about war and biopolitics – namely that *the concept of peace becomes the name for a permanent state of war* – and on Agamben's writings that *the state of exception is becoming the rule*. In such sense, they say that “one cannot escape the state of war within the Empire, and the end of this war does not seem near.”²² War has become properly *ontological* i.e. it appears as a universal condition of contemporary society, always and everywhere ready to emerge, because violence is present as a constant potentiality, and this is also why *suspension of democracy has become the rule*. In attempting to reconcile Agamben's concept of biopolitics with Foucault's, in *Multitude* Hardt and Negri present us the thought that biopower is the power of sovereignty, and therefore, power of death (Agamben), but that it appears as power of governing and control over population (Foucault).

What is specific for Hardt and Negri, however, is rethinking biopolitics in terms of *political ontology*. Such ontology is presented as appearing with biopower, and is articulated along the lines of saying that here it is *being itself that is produced and reproduced*. This means that biopower of the contemporary Empire creates and restructures, governs and shapes being in practically all its manifestations, and moreover, that political ontology appears with biopolitics, as well as *vice versa*. It is here now that the decisive difference emerges – one that further enables Hardt and Negri to attempt to develop a *positive concept of biopolitics*. This is the differentiation between *biopower*, as power of ruling over life, as power of discipline and of production and reproduction of a diversity of aspects in governing over human nature – and *biopolitical production*, as a specific relation that is born through economic, cultural and political production, which as such arises as the inner potentiality of resistance to the Empire.

What does this mean? According to the authors, *biopolitical production* refers, first and foremost, to creation of “immaterial goods” i.e. *ideas, pictures, knowledge, forms of intersubjectivities and communication, affects and various types of human relationships* – and all this together appears as creation of *forms of life*. For Hardt and Negri, both *biopower* and *biopolitical production* engage social life in its totality (since both contain the prefix “bio”), but do say in very different ways. *Biopower* stands, as it were, *above society*, as *transcendent*, as a “sovereign authority”, and forces

²² Ibid.p.4.

its order. *Biopolitical production*, in difference, is *immanent* to society and creates social relations through common forms of labor.²³ In such sense, the potentiality of biopolitical production is contained in the moment that “not only are working conditions becoming more and more common in the entire world”, but “the production of common social forms of life”, opens up a new field with a new force of resistance.²⁴ This is related to the so-called “second side” of globalization, for it enables the creation of *the common*, most significantly *common knowledge* and *immaterial goods*, from which, further, a new historical, political and cultural *subjectivity* with the name of *multitude* emerges.

Biopolitical creation, in difference to transcendent sovereignty of the Empire, opens up the possibility of rethinking *global democracy*, and transformation of the imposed *necessity*. In Hardt and Negri’s view, this is the unveiled sense of *biopolitics* as such, the potential of its concept, and its structural possibility. Moreover, this is how biopolitics becomes the ultimate carries of the processes in which multiple spheres of intersubjectivities, otherness and its life, spheres of culture, politics and economy, arise as interrelated. This creates, what the authors call, *bioproperty*, as “property of life forms, which rely on production of codexes that *define life*”.²⁵ In similar fashion, Hardt and Negri write that “every reference to life today, must point to a *constructed life*, to *social life*”²⁶, with the emphasis on the moment of non-naturalness of the concept of “life”, and simultaneously to the potentialities of production of *new life forms*.

The common here appears as the significant mark and value created by and with *the multitude*, and as such does not exclude the concepts of singularity and individuality, but refers to a process in which *new subjectivities* emerge practically on all levels and in different forms of human creation and action. The “*flesh of the multitude*” (Merleau-Ponty’s concept), or “*the life force*”, therefore, arises and is manifested in such movement in which through biopolitical production *new political*, *new cultural*, *new social* and *new economic subjects* overturn and then finally overthrow the power of biopower using the spaces and possibilities it has “collaterally” created. Moreover, such production, consequently, both influences and occurs in the domain of personality and one’s specific life existence and in creating the spaces of the common. And that the appearance of new subjectivities falls with one with creation of

23 HARDT; NEGRI, op.cit., p.94-95.

24 Ibid.p.308.

25 Ibid.p.185.

26 Ibid.p.193.

the common, Hardt and Negri exemplify by saying this is a symbiotic relation of spiral movement – which constitutes *the democratic body as the body of the multitude*.

This “life force” moves from *culture* to *politics* and *vice versa*, in dynamic in which the originality and the unrepeatable character of each singularity interrelates with the common. This way, *the “life force”* of the multitude is *democracy itself* which therefore, for Hardt and Negri, also enables the creation of a *new legal theory*, i.e. of a theory which would be, in the international framework, both *postliberal* and *postsocialist*, a concept yet unseen. Claiming that for the articulation of such a new legal theory the traditional concepts of “the public” and “the private” are insufficient,²⁷ the authors argue that “the public interest” needs to be understood as coexistent with the multiplicity of singularities, and sovereignty articulated as *democratic sovereignty*.

Emphasizing that the theoretical paradigm of the post-world-war II international law has been destroyed in the last two decades, and replaced by the new global order of the Empire, Hardt and Negri argue that in this very movement both “the private” and “the public” have been greatly annihilated. In response, “positive biopolitics” i.e. the biopolitical production, returns back to the dignity and value of the individual, together with recreating the process of *intensification of the common* – which, consequently, leads to *social and political transformations*, and in last instance, appears as the path towards *new humanity*. Such global mobilization of the common, however, does not negate *the local character of each struggle*, which presents itself in *the local character of the multitude*, and *as democratic*, is significantly heterogeneous

How does this work? This is the difference Hardt and Negri draw, and then underline, between *the first multitude* and *the second multitude*. The concept of “the first multitude” refers to *the ontological multiplicity of the multitude as such*. This further means that such primary multitude is marked by atemporality, i.e. it exists *sub speciae aeternitatis*, and thus reveals *the primordial character of the structure of reality as multiplicity and multitude*. This would be to say that “*the many*” is ontological prior to “*the one*”, and that “*the many*”, moreover, is the initial state which, therefore, is the live testimony about how to proceed with articulating, conceptualizing and practicing the social and political *being*. As *the theoretical potential of the very meaning of sociality*, the “first multitude” presents *sociality* as the peculiarity of the human being, and in that way also the condition of appearance of “*the second multitude*”. The “*second multitude*” signifies *the political multitude*, and as such arises in a way

27 HARDT; NEGRI, op.cit., p.204.

of natural continuity of the ontological multitude, opening the space of creation and production.

Hardt's and Negri's project of alterglobal democracy of the multitude, therefore, appears through *the dialectics of selfproduction*, that occupies a significant place in the explanation how the movement from *biopower* to *positive biopolitics* occurs. On the mundane level, the example of the *internet*, together with *the social networks*, is presented as a good starting point i.e. *as the very image of the multitude*²⁸, which enables this self-production, and further, with political forms of, say, disobedience or differentiation, exemplifies the birth of *the political multitude*. Such political multitude, for the authors, is the very birth of new political subjectivity which through creation of forms of democracy arises as the alternative to biopower of the Empire. In difference to the self-sufficient, closed and apsolutized types of knowledge which function in the name of imperial biopower, the political and cultural multitude presupposes also, we could say, a community of critical intellectuals, an open structure of theory and knowledge, as one of the leading traces of *the common*. Moreover, it is precisely through such an undertaking that it becomes possible to articulate a discourse that can break the friend vs. enemy dichotomy, as the basis of contemporary biopower in the Empire.

In their work *Empire*, Hardt and Negri, reaching close to Agamben's articulation about the state of exception and a "police" discourse, emphasize that in the contemporary situation law and legality have become the question of *pure efficiency*, concluding that "perhaps the most significant symptom of such a transformation has been the development of the so-called *right to intervention*."²⁹ In saying that "the juridical transformations function as a symptom of modifications of biopolitical governing"³⁰, the authors once again refer to the need for rethinking the conceptions of both legal frameworks and legal practices as a task for the new political multitude. In this sense, however, the relation to law resembles to a certain extent the relation to culture in biopolitical production, where the authors remind us that "cultural singularities should not be viewed as anachronic survival of the past, but as equal participants in our common present."³¹ The concept of "positive biopolitics", therefore, *as politics of life*, reveals all articulations and

28 HARDT; NEGRI, op.cit., p.XV.

29 HARDT; NEGRI, op.cit., *Empire*. p.13-18.

30 *Multitude*, p.26-29 and p.60.

31 Ibid.p.126.

practices which aim at constituting a new legal, political and cultural setting, first of all, in *new forms-of- life*.

TRUE DEMOCRACY AND POSITIVE BIOPOLITICS – POTENTIALITIES OF THE 21 CENTURY?

It is from such a perspective that our leading question about the potentialities of positive biopolitics in the 21th century can perhaps be appropriately addressed. In my view, *positive biopolitics* in our contemporary situation is closely tied with *rethinking and realization of true democracy*. This is even more so if one keeps in mind that the gap between (1) *the political elites* and *the people* is growing on large scale, and this is especially the case of Western societies today, but includes certain non-Western countries as well. Moreover, such movement falls in one with (2) the deepening of *social and economic inequalities* – which is why *class* has, partly thanks to the “Occupy” movement, become *a name* even in US – but also with (3) the growth of *animosity towards strangers, the others*, as can be seen in certain European countries. To my mind, the concept of “*true democracy*”, which Marx has left us, is suitable to respond to all of these three features which are the *par excellence* examples of the *biopolitical fracture in the 21th century*.

In his 1843. critique of Hegel’s *Rechtsphilosophie*, Marx speaks of “*true democracy*” (*wahre Demokratie*), attempting to articulate as what would be *fidelity* or *loyalty to democracy* (and it is not a matter of chance that here we hear the echo of Alain Badiou’s concept about “*fidelity to the event*”).³² Marx says that “...it is self-evident that all forms of state have democracy as their truth and for that reason are untrue to the extent that they are not democracy”³³ Such rethinking of “*true democracy*”, I think, can become both the theoretical and practical basis for an invention of new positive biopolitics, and much needed different conceptions of sovereignty and law as well, as strictly *egalitarian* in principle. True democracy, for Marx, reveals that democracy inherently is about *democratic self-determination* (what he calls *Selbstbestimmung des Volks*) as the leading trace of politics. Certainly this has to do with Miguel Abensour has called reactivating the moment of the political within Marxism³⁴ i.e. with the moment of articulation of what Alain Badiou calls “the event”. However, if we articulate that *politics is “now” and “many”*, and that “many” comes *before*

32 BADIOU, Badiou. *Being and Event*, Continuum. New York. 2006.

33 MARX; ENGLES. Werke, Band 4. p.464-465. Karl Dietz Verlag, Berlin.p.10.

34 ABENSOUR, Miguel. *La démocratie contre l'Etat. Marx et le moment machiavélien*. Presses Universitaires de France, Paris, 1997.

“the one”, we can begin to see that the concept of “true democracy” does not signify exclusively, as Simon Critchley puts it, “subjective praxis in a situation”³⁵, but that it precisely opens the space for, and leads to forms of *association* which have both *life* and *legitimacy*.

This is to say that if we rethink “true democracy” as working from the space where one speaks and acts, as working towards or within “*the event*” (*of democracy itself*), we think of politics in terms of new political subjectivities, of new political aggregation in specific localities, of new political sequences. It is in such sense that Simon Critchley writes that politics means “...occupying and controlling the terrain upon which one stands, where one lives, works, acts and thinks...politics begins locally, practically and specifically.”³⁶ Moreover, we can argue that it is from a Marxian “true democracy” that both the imagination and invention of singularities, and the - seemingly opposite movement - of building “the spaces of the common”, come together in a specific fashion. The *state*, in this way, and most ultimately *law*, appear in the light of a live sense of “*the common*”, while norms arise as mutually binding and a matter of respect. If, for example - and in difference to the decline of law in contemporary neoliberalism which Foucault and Agamben describe - international law emerged as coming from the concept of “*true democracy*”, all the stakes are that world conflicts, both on “micro” and “macro” levels, would at least cease. Or, on a different level of thinking politics as established on binding *relationships*, if the concepts of “societies of control” (with domination of either the Empire, or “global oligarchy”, or “the market”, or however you wish to call it), were replaced with the concepts of, in words of Hannah Arendt, *politics as the freedom of life itself*, we might be closer to comprehending together positive biopolitics and true democracy.

Such thinking, therefore, refers to *new life forms* which simultaneously present and constitute *new forms of democracy* i.e. enable us to recall that both *the society* and *the state* can become *the live appearance of the self-determination of the people*. This way, the search for the new economic model (“after neoliberalism”), can, and moreover, should, in the wake of a new epoch, be accompanied by a reaffirmation of legal thinking on different grounds. The concept of *politics of life* which replaces the liberal concept of *politics of survival*, celebrates no longer “bare life” - and depolitization which has been undertaken in and through imperial biopolitics - but rather shows the potentialities of life, and realization of its forms in art, culture, philosophy, law, politics and intersubjective relations. (Here we

35 CRITCHLEY, Simon. “The Problem of Hegemony”, *Political Theory Daily Review*.

36 Ibid.

can remember Badiou's idea that four forms of life. i.e. forms of relation to the world, are art, politics, science and love).

The examples of how the EU, with its turbulences, no longer figures as a carrier and representation of democracy, have most recently and notably been taken up and articulated by Habermas (*On Europe's Constitution*), who explains that the EU has entered a *post-democratic era*, and the ultimate reason for this is the *monopolization* of the European project from the side of its *political elites*.³⁷ Similarly, we can recall Badiou's writings on the European constitution, and the reference to *strangers* which contains the so-called "anti-barbaric" statements,³⁸ as well as the entire debate about *equality*, or rather, *inequality* in EU's present development. The second example, namely, of current political and legal trends in the US, can be articulated in reference to the *growing lack of freedom* in this country – it is possible, in such way, to name a few cases, to assassinate, to indefinitely detain, to torture, to control finances, communication and information of people or to otherwise follow citizens.

Last but certainly not least, let me say that, however, the example of places like Brazil today, with the people who have taken politics into their hands – showing that "the excluded" do not in reality need to be excluded from the system – can serve *as one of live contemporary examples* of how it is possible to begin working towards what I have called "*true democracy*".

37 HABERMAS, Jürgen. *Zur Verfassung Europas*, Suhrkamp, 2011.

38 BADIOU. *The European Constitution*. ENS, 2005.

