

STATE OF EXCEPTION AS A LEGAL DISPOSITIVE OF MODERN BIOPOLITICS



Article 17. It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Article 18. It is essential to promote the development of friendly relations among nations.

Human Rights

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

STOP
THE
WAR

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ABSTRACT

In recent decades, the problem of biopolitics has occupied one of the central positions in contemporary social and political philosophy. Beginning with the works of M. Foucault, biopolitics has been understood as a specific form of power oriented not so much toward territory or the legal status of the subject as toward the governance of the life of the population in all its biological, social, and cultural dimensions. Within this approach, political power increasingly manifests itself as power over life, corporeality, health, reproduction, and mortality. A phenomenon of particular significance within the structure of biopolitical governance is the state of emergency. Whereas in the classical legal tradition the state of emergency was understood as a temporary and exceptional measure aimed at restoring a disrupted order, under conditions of late modernity and contemporary digital society it gradually loses its temporary character. The state of emergency increasingly functions as a stable paradigm of governance, within which the suspension of legal norms becomes not an exception but a norm of the political practice of modern sovereign power. The theoretical comprehension of this process is associated with the works of G. Agamben, C. Schmitt, R. Esposito, S. Žižek, A. Mbembe, R. Braidotti, W. Watkin, and other scholars, who point to the systemic nature of the interrelation between sovereign power, biopolitics, and the state of emergency. Their works emphasize that contemporary politics increasingly operates within a space of legal indeterminacy, where the boundaries between law and its suspension, between norm and exception, become blurred. An additional factor

in the radicalization of biopolitical mechanisms is the rapid digitalization of social processes. The development of surveillance technologies, big data analytics, algorithmic governance, and artificial intelligence significantly expands the capacities of power to control and regulate the population. Digital society produces new forms of the biopolitical body, in which physical and social corporeality are supplemented by virtual and informational dimensions subject to continuous monitoring and controlling interventions. In this context, the analysis of the relationship between biopolitics and thanatopolitics acquires particular relevance. The governance of life is increasingly intertwined with the institutionalized possibility of exclusion, social annihilation, or physical elimination of individual subjects and entire population groups. The concept of necropolitics proposed by A. Mbembe makes it possible to capture the extreme forms of biopolitical rationality in which power is exercised through the production of «death-worlds» and the transformation of populations into a governable biomaterial.

Keywords

biopolitics, Exception, biopower, individual, thanatopolitics, necropolitics, subjectivity, population, biomass, Digital Camp

INTRODUCTION

The rapid development of globalization processes worldwide, against the backdrop of the continuation of a horrific war on the territory of the Ukrainian state and local military

conflicts in various parts of the world, exacerbates the issue of protecting ordinary citizens from governmental intentions and actions that extend far beyond the legal guarantees and obligations of state power toward civil society. The study of works by renowned philosophers and contemporary scholars reveals deep genealogical origins of the current position of ordinary individuals in societies of not only Western but also Eastern type, which are vividly confirmed by compelling evidence. This fully applies to the unsatisfactory state of ensuring constitutional civil rights and freedoms in contemporary societies; moreover, it is hardly necessary to further emphasize the Ukrainian context, where the dominance of arbitrariness and the excessive expansion of governmental powers are increasingly becoming the norm, leading to a condition of anomie in its pure form. There exists an objective state of affairs that has a long history of emergence and subsequent formation and therefore requires thorough and careful scholarly investigation.

In addressing this complex problem, one of the most influential approaches among scholars is considered to be the biopolitical research strategy. According to the established viewpoint, biopolitics is understood as a mode of governance in which the primary and most fundamental task of the government of any state is the welfare and enrichment of the population as its central concern. It is well known that eighteenth-century Europe marks the beginning of a historical period in which state power prioritizes the role of the population both as a resource of the state and as a homogeneous biomass. In comparison with earlier historical periods, the concept of the population acquires an entirely different meaning. It is precisely at this moment that a mass conception of the human being is accentuated: individuals are no longer individualized but rather massified, which necessitates the development of new technologies for governing this population of individuals at the level of the state. This perspective on society as a biopolitical space was developed in the works, articles, interviews, and lectures of the French philosopher Michel Foucault during the 1970s. In particular, his lectures at the Collège de France are devoted to this problematics, above all the lectures delivered in 1978–1979 under the title *The Birth of Biopolitics*, in which the problem of political and social knowledge is formulated in the context of such a modern European nation-state formation as the population, and the mechanisms of its governance, control, and regulation are elaborated.

This perspective is currently the most influential within the social sciences and humanities scholarly community. Therefore, it is probably not accidental that as early as 2004 in Chicago, the biopolitical analyses of power proposed by Michel Foucault were acknowledged at a meeting of the American Political Science Association (Laurette & Walsh, 2011, p. 2).

However, in the present context there already exist no less influential concepts of biopolitics that expand or transform Michel Foucault's conception of biopolitics. In particular, these include, first and foremost, the concept of biopolitics developed by Giorgio Agamben (Agamben, 2005), as well as the biopolitical concepts of Roberto Esposito (Esposito, 2008), Antonio Negri and Michael Hardt (Hardt & Negri, 2005, 2025) and the concept of necropolitics proposed by Achille Mbembe (Mbembe, 2019). Therefore, within the framework of the topic of this article — namely, states of emergency or situations that suspend or completely deprive ordinary individuals of their rights and freedoms in contemporary society — we shall consider, alongside the conceptual positions of Michel Foucault, the most significant aspects of the concepts advanced by contemporary scholars of biopower.

ANALYSIS OF RECENT RESEARCH

For a considerable period of time, social sciences and humanities research conducted by scholars from various fields has focused its attention on the biopolitical strategy of development both at the level of individual states and at the level of global geopolitical strategy, which is acquiring new content and expanding through the widespread implementation of digitalization. The most acute problem of contemporary biopolitics is the relationship between political power decisions and the legal guarantees afforded to ordinary citizens. This aspect has been addressed in the works of well-known scholars, including, in various forms, the oeuvre of M. Foucault, as well as in the works of G. Agamben, W. Watkin, R. Esposito, M. Hardt and A. Negri, J. Alemán, A. Mbembe, Sh. Zuboff, S. Žižek, G. Cain, and other contemporary scholars and researchers.

METHODS

The examination of the stated topic of the article necessitates the use of a wide range of contemporary social sciences and humanities methods that

fully correspond to the interdisciplinary orientation of the research. Accordingly, the following methods were employed in the analysis of the topic: the genealogical method (genealogy) and philosophical hermeneutics as a method for uncovering latent meanings; the comparative method; the paradigmatic method as a means of revealing the immanent logic of the relationship between political and legal systems; linguistic and etymological methods of analysis, in particular methods of critical analysis of terminology and established concepts; and the critique of the subject as a construct of Power–Knowledge.

PURPOSE

The main theoretical objective of the article is to examine the transformation of the principles of biopower under contemporary conditions. In particular, the state of emergency is analyzed as a partial or complete suspension of legal guarantees, that is, as an already permanently operative norm for ordinary individuals. A preliminary assessment is offered of the prospects for the institutionalization of the state of emergency as a long-term dispositive of contemporary power, not only at the level of individual states but also at the level of the international community.

RESULTS

As a result of the conducted philosophical and theoretical analysis, it has been established that the state of emergency in contemporary Western societies has lost its status as a temporary and exceptional measure and has transformed into a stable, structure-forming paradigm of biopolitical governance. The state of emergency functions not as a legal casus, but as a normalized mechanism of regulating the life of the population, embedded in the logic of modern biopower.

It has been identified that the historical evolution of technologies of power –from practices of exclusion, disciplinary techniques, and panoptic surveillance to technologies of security — is accompanied by a shift in the focus of governance from the individual body to the management of the population as a biomass. At the same time, disciplinary and sovereign forms of power do not disappear but are integrated into more complex biopolitical configurations, reinforcing one another under conditions of the state of emergency. It has been established that biopolitics,

in its structural foundation, inevitably contains a thanatopolitical dimension. Control over life presupposes the possibility of making decisions concerning the admissibility of death — both physical and social and political. In this context, the state of emergency functions as a key mechanism for legitimizing the suspension of legal guarantees and transferring the population into a zone of legal indeterminacy or emptiness, where the boundaries between norm and exception lose their clarity.

Under conditions of a permanent state of emergency, a systemic erosion of individual subjectivity takes place. The contemporary individual is increasingly regarded not as a political subject, but as an object of governance and manipulation by neoliberal ideology and the mass media under its control, as a statistical unit and as an element of a biosocial mass. This process is accompanied by the loss of the possibilities of parrhesia, that is, the right to free, responsible, and sufficiently risky truth-telling in relation to power within the framework of the legal order.

It has been identified that digitalization and mediatization radically expand the instrumental repertoire of biopower, ensuring continuous monitoring, prediction, and governance of not only bodily but also cognitive and affective aspects of the life of the population. Digital society forms a new type of biopolitical body — a hybrid of physical, social, and virtual corporeality, fully integrated into circuits of surveillance and control. It has been established that large technological and media corporations become autonomous biopolitical actors, entering into a functional alliance with state and international governing structures. This alliance contributes to the formation of a new digital order in which legal guarantees are replaced by norms of security, digital ethics, and managed risk, thereby intensifying the asymmetry of biopower between governing structures and the population.

It has been identified that contemporary spaces of exclusion and control — camps, security zones, regimes of isolation — are supplemented by virtual and algorithmic spaces created on the basis of the development of artificial intelligence and big data. These spaces lack clear territorial localization, which makes it possible to extend the logic of the biopolitical camp to a global level, transforming the world into a large digital concentration camp. Taken together, the obtained results make it possible to assert that contemporary biopolitics is entering a phase of digital transformation, within which the state of emergency,

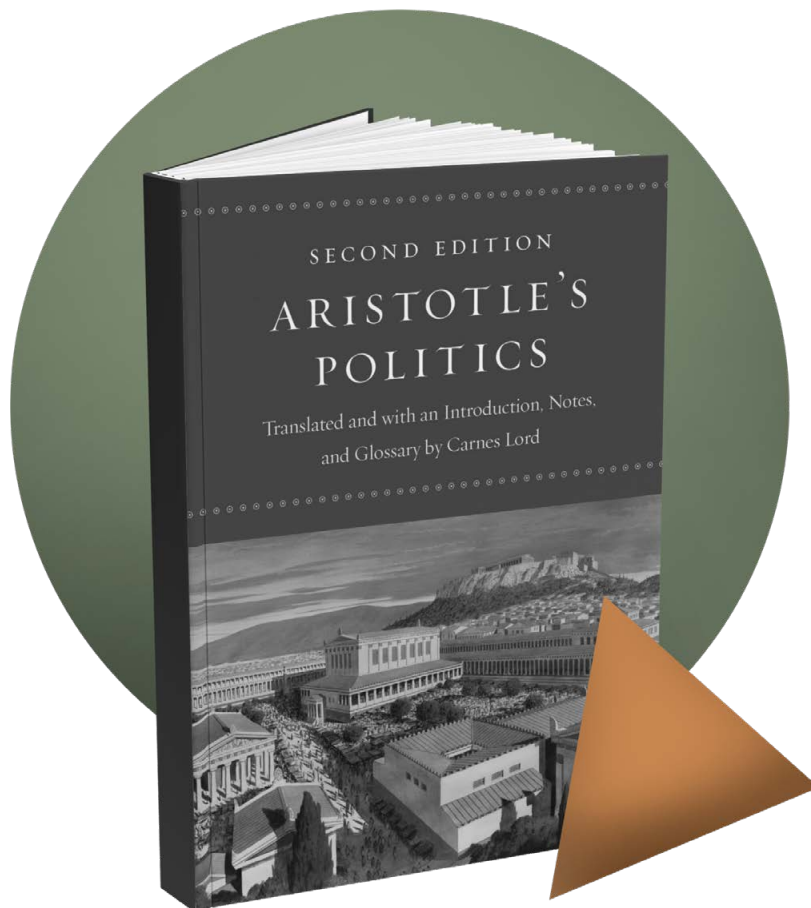
control over life, and the governance of death become interconnected and systemic elements of the global political order.

DISCUSSION

The well-known position of Aristotle regarding the understanding of the human being as a «political animal» (*zoon politikon*), which he defended in his treatises, most notably in the «Politics», deserves particular attention. The emphasis made by the ancient Greek thinker is placed precisely on the political dimension of the human being — on the human need to live together with others within a society (the *polis*) and to experience oneself as free. Will, or freedom, as a civic status was not merely an abstract principle; it also presupposed the possession of *aretē* by a free citizen. *Aretē* constituted freedom for the ancient Greek, insofar as it defined his social status. To be free in a democratic state meant *to be prepared to die for the polis* and to be capable of making decisions in the interests of the city rather than one's own. Freedom presupposed the existence of *isonomia*, that is, equality of all citizens before the law; *isegoria*, that is, the equal right of all citizens to participate in discussion and in the governance

of public affairs; *isangelia*, that is, the possession of the right to defend democracy; and, finally, *parrēsia* as free, frank, and sincere truth-telling, even when such speech entailed a risk to one's own life from those in power.

It is evident that in antiquity there could be no discussion of processes of subjectivation, that is, of the formation of the individual as a subject. This meaning is modern-European in its origin and is directly connected with biopolitics. Politics becomes biopolitics when state political power appropriates care for the lives of citizens: it no longer demands, as it once did, an unconditional readiness to sacrifice life for the *polis*, but instead obliges the citizen to live according to the rules it establishes. In this sense, it acquires the character of power over life — biopower — that regulates the life of the biosocial body of the nation. As Michel Foucault observed, the concept of the subject contains two semantic meanings, both related to «becoming a subject». *Sujet* («subject») also means «subject» in the sense of one who is subjected. *Assujettissement*, or subjectivation, therefore signifies both becoming a subject (a modern European «personality») and, simultaneously, falling into an increasingly total dependence on the mechanisms of biopower. Indeed, it is in the eighteenth century that the biopolitical dispositif



emerges as a mechanism for governing groups of individuals. This form of control transforms society through medicine, economic institutions, and new forms of «governmentality» (Fr. *gouvernementalité*).

At the same time, there exists another, no less influential and widespread version of biopolitics, associated with Giorgio Agamben, a student of Martin Heidegger. According to the position of the now widely discussed Italian philosopher, biopolitical problematics have existed since the most ancient periods, particularly since antiquity; however, in the present they have undergone a substantial transformation. Nevertheless, the conceptual framework has remained unchanged — the problem of the individual's subjectivity as shaped by external forces, that is, by relations of power, has remained virtually the same. Indeed, as another prominent researcher of biopolitics, Roberto Esposito, has noted, the meanings embedded directly in the prefix «bio-» transform the conventional understanding of the political, constituting the «original core of biopolitical semantics» (Esposito, 2006, p. 15).

Within the framework of the stated topic, we are concerned with the complex of techniques for controlling both individual bodies and the social body of the population, as well as with the mechanisms through which regimes of power exercise control over individuals — most notably regimes of the state of emergency and their contemporary digital variants.

Biopolitics as a strategy of governance in Europe emerged largely as a result of the continuous improvement of technologies for controlling individuals. According to the studies of the French philosopher Michel Foucault, there was a certain evolution of these technologies as a response to persistent epidemic diseases affecting the population. Thus, as a result of the leprosy epidemic, a technology of control such as the exclusion of particular groups of the population emerged, the essence of which consisted in the direct isolation of an entire group of individuals. As Foucault writes, this disease «gave rise to sufficiently rigid forms of exclusion ... which to a certain extent predetermined the scheme and the general principles of the Great Confinement» (Foucault, 1975, p. 289).

Undoubtedly, this technology of power had been applied earlier as well, in particular during the times of the Roman Empire; however, its specific feature in Europe lies in the fact that it formed an effective technology of exclusion oriented toward the discrimination of an entire group of «undesirable» individuals.

Subsequently, plague epidemics initiated the search for and the testing by power of a disciplinary technology of governing and controlling individuals, which came to be known as the «all-seeing eye» or the principle of panopticism formulated by Jeremy Bentham (Bentham, 1977). It was precisely the application of disciplinary techniques of panopticism during the period of the «Great Confinement» that made it possible to isolate not only «dangerous» individuals in spaces of strict isolation, but also to bring into being diverse forms of disciplinary techniques in other closed spaces (schools, hospitals, barracks, manufactories, workhouses, etc.). These techniques provided unlimited possibilities for power at any level, as an anonymous, invisible, and omniscient observer, not only to monitor but also to instill obedience and dependence in the individuals subjected to observation. It should be noted that this technology of control opens up broad prospects for power in the twenty-first century due to the development of modern digital technologies. At the same time, in one of his interviews from 1978 with the characteristic title «The Crisis of the Disciplinary Society», Foucault states that at a certain moment in the history of modern society «there appear more and more different categories of people who do not submit to discipline, and therefore we are forced to think about the development of a society without discipline» (Foucault, *The société disciplinaire en crise* // *Asahi Jaanaru*. 20th anné, n° 19, 12 mai 1978 (Lecture at the Franco-Japanese Institute of Kansai in Kyoto on 18 April 1978)).

It is precisely at this time, in the lecture course delivered at the College de France entitled *Security, Territory, Population*, that he develops this idea and arrives at the conclusion that in the eighteenth century classical discipline ceases to be the dominant technique of power relations and a new technology of power emerges, one that is oriented toward the security of the population. Security, as a national strategy, begins to employ a new statistical technique for describing various parameters of the vital activity of the population with the aim of its preservation. Indeed, the fight against smallpox required a fundamentally different descriptive technique: physicians accumulated and generalized data on the age of patients, sex, place of residence, occupation, climate, and so on. This technique made it possible to calculate comparatively the risk of contracting smallpox and to understand how living conditions needed to be changed in order to reduce this risk.



And if disciplinary techniques normalize, order, and spatially distribute individuals on the basis of pragmatic tasks aimed at their individual production as individuals through techniques of drill, training, examination, and so forth, then all these disciplinary techniques at the end of the eighteenth and the beginning of the nineteenth century are supplemented by entirely new technologies, the totality of which constitutes the essence of biopolitics. Unlike individualizing disciplinary power, oriented toward human corporeality, the «massifying» biopolitics is directed toward the human species, toward the multiplicity of people constituting a «global mass subjected to general processes of life, such as birth, death, reproduction, illness, and so on» (Foucault, 1997, p.156)

As a new technology of power, security achieves significant effectiveness through the anticipation of the course of social processes, where the modal categories of the possible, the necessary, the accidental, and their derivatives –the impossible and the undesirable — are established as the most important ontological operators for political technologies of govern-

ing individuals as a population. It is precisely this technology that formed the basis for the creation of the strategy of biopolitics and its components — biopower and biomasses — which are also connected with anti-epidemic measures, this time aimed at countering small-pox as the «reigning disease» of the eighteenth century (Foucault, 1997, p. 91). Thus, epidemics become a kind of catalyst for social and political transformations. The basic principle of the technology of governance through security is the classical liberal *laissez aller* (French: «to let go»); unlike disciplinary techniques of control, it does not attempt to regulate even the most insignificant aspects of individual and social life, but instead proposes, wherever possible, to follow the «natural course of things», primarily in the economy, which formed the foundation for the development of the strategic concept of biopolitics.

However, despite all the positive aspects of security technology for the development of liberal society, there exists an antinomy that is virtually impossible to circumvent. It was precisely this antinomy that later drew the atten-

tion of the French philosopher. Thus, security technologies rely on *raison d'État* (*State Mind*), which presupposes state interest as «something that exists for itself» (Foucault, 1988) In turn, state interest is grounded in political rationality. From Foucault's perspective, «this type of rationality represents one of the most essential features of modern politics, which developed beginning in the seventeenth and eighteenth centuries» (Foucault, 1988). One of the imperatives of the state's political rationality with regard to the population is expressed in the phrase: we promise you a long and prosperous life, yet the safeguarding of your life goes hand in hand with the command to die in the name of state interest. Thus, the coexistence within the depths of political structures of enormous machines of destruction and institutions designed to protect individual life is implicitly presupposed. Foucault considers this to be «one of the principal antinomies of our political reason» (Foucault, 1988)

Equally important is another observation by M. Foucault, who suggested that the state and its state interest in themselves constitute a certain order of things, and that political knowledge distinguishes this order from juridical reflection (Foucault, 1988)

In which legal guarantees for the individual are secondary to state interest. The population is powerless in the face of the intentions of biopower. Moreover, within such an approach, the individual is of interest to the state only insofar as he or she can do something for its survival or its power (Foucault, 1988). This is why the population always turns out to be merely that which the state cares for for the sake of its own good, and therefore, in case of necessity, the state can, of course, also annihilate it. Thus, the reverse side of biopolitics is thanatopolitics (Foucault, 1988).

At the same time, if we return to the contemporary understanding of the subject, we find that the process of subjectivation among ordinary citizens has almost entirely disappeared, while they are viewed by power predominantly as a biological mass. Undoubtedly, at the level of state law within civil society, authority is obliged to continuously safeguard the interests of its subjects, to bear responsibility before them for its actions, and to remain an object of observation and control on their part. However, executive power inverts this responsibility to its own advantage and demands from ordinary citizens the unconditional execution of govern-

mental decisions, regardless of how irrational they may be — not only from the standpoint of legal norms but also from that of common sense. As the well-known contemporary Slovenian philosopher Slavoj Žižek writes in this context, a message addressed by power at all levels to ordinary citizens can be formulated as follows: «In fact, the laws do not constrain me; I can do anything I want with you, I can treat you as guilty if I decide to do so, I can destroy you at my own whim» (Žižek, 2005, p.126). This eloquent interpellation of power addressed to each ordinary citizen constitutes an integral component of contemporary unlimited, that is, sovereign power. In other words, it is a telling gesture of power that indicates that state laws can sustain the legitimacy of authority insofar as subjects clearly recognize in them the echo of its absolute self-assertion.

If we recall the traditional sociocultural definition of the human being as a «bio-socio-cultural being», in which the «bio-» component is generally situated within a complex system of interactions with sociocultural and psychic components, it becomes clear that beyond the abstract divisions already embedded in this definition, it is impossible to describe the unity and mutual influence of the body, the soul, and the various forms of human action and activity as such. However, it is well known that the most important source of this understanding is ancient philosophy, which did not operate with a single concept of life but instead distinguished between two notions that were simultaneously interconnected and separate: *zoē*, understood as «life as such», inherent in all living beings without exception, including gods; and *bíos*, that is, life organized in a particular, proper way, which pertains only to the human being as a political creature. This distinction found its logical grounding in the works of Aristotle, particularly in his «*Politics*», as noted above. Indeed, for a long time it was precisely *bíos* that remained the form of life upon which political — that is, state — interests were focused, tightly binding ordinary citizens, power, and the state. It should be noted that subsequently a decisive shift occurred, whereby the unity of human lived experience — in which the corporeal and the spiritual were always inseparable — was split into a purely biological essence, on the one hand, and social, cultural, and political existence, on the other. Undoubtedly, this imagined rupture is an abstraction; nevertheless, it proved to be of enormous significance

for subsequent developments. The analysis of the origins of this extremely abstract division is repeatedly undertaken in the works of the renowned Italian philosopher Giorgio Agamben, who links it to sovereign power, which does not disappear. Moreover, as the Italian philosopher emphasizes, such a conditional division becomes possible only by virtue of the existence of complex biopolitical mechanisms aimed at the production of the biopolitical body, which constitutes the true activity of sovereign power (Agamben, 1998).

Later, in one of his recent interviews, Agamben states that «the concept of citizenship, which from Athens through the modern era occupied the center of the political life of the city, has in recent decades gradually been deprived of its real political content. Under the influence of biopolitics, and subsequently with the establishment of the security paradigm, citizens have come to express an increasingly passive condition, becoming objects of expanding and all-pervasive control» (Agamben, 2021).

However, as Michel Foucault demonstrates in his research, in the modern era the situation changed in a radical manner, and it is *zoē* that becomes the object of incessant governmental control, being incorporated as a constituent element into *bíos* and ultimately fully merging with it — an operation that constitutes the strategy of contemporary biopolitics. According to the concept of biopolitics developed by the French philosopher in his works of the 1970s and in his annual lectures devoted to biopolitics at the Collège de France between 1975 and 1979, the state not only manifests care and protection but also seeks to supervise people as a population, as a biomass, thereby transforming politics into biopolitics.

In an article published posthumously, Michel Foucault analyzes the political technology of individuals and notes that «the population always appears merely as that which the state takes care of for its own benefit, and therefore, if necessary, it is evident that the state may also destroy it. Thus, the reverse side of biopolitics is *thanatopolitics*» (Foucault, 1988, pp. 145–162). Toward the end of this article, closely examining the relationship between legal guarantees for citizens and *the state interest* of biopolitics, Foucault arrives at the following important conclusion: «It is impossible to reconcile law and order, because when we attempt to do so, we do so exclusively in the form of the inclusion of law within the order of the state» (Foucault, 1988, pp. 145–162).

Thus, the very possibility of distinguishing the priority of politics over law is conditioned by the continuous, centuries-long involvement of ordinary individuals in biopolitical technologies and the operation of their mechanisms, which, according to Foucault, has led to the uninterrupted etatization of power relations. This process represents obedience, complete consent, and trust in power, which, in turn, determines its unlimited capacity for expansion.

For this reason, various forms of states of emergency appear entirely natural as a temporary suspension of the operation of existing laws in connection with certain circumstances, the purpose of which is to restore a disrupted order and, paradoxically, to preserve the operation of the law itself.

Yet the entire Jesuitical subtlety lies in the fact that the generalization of the state of emergency renders it not a juridical exception — a kind of *casus belli* — but a rule, universally applied to the ordering of contemporary society, which fully corresponds to the biopolitical strategy.

Accordingly, the sovereign establishment of a temporary legal order of society draws ordinary citizens into an empty legal space in which the norm consists of illegitimate rules and commands.

Hence, we may observe a refined contemporary form of dictatorship that, while formally relying on legal norms, in fact transgresses them, rendering anomie practically inseparable from *nomos*. Moreover, the decision to introduce a state of emergency is taken by the sovereign or by «governments». In this case, however, a paradoxical situation arises: the sovereign — the guarantor of the law — who decides to suspend the operation of the law in the name of preserving the law, by this very act places himself outside the law.

In considering the theme of the state of emergency as a paradigm of contemporary Western society, it should be noted that modern biopolitics is no longer oriented toward the open violence characteristic of the sovereign power of premodern societies. Nor is it oriented toward the relatively rigid disciplinary power of enclosed spaces (prisons, hospitals — including psychiatric hospitals — military barracks, factories, workshops, schools, and the like). In his research, the French philosopher Michel Foucault argued that the sovereign power of premodern society was replaced by the biopower of modern societies immediately following the conclusion

of the Peace of Westphalia in 1648. Undoubtedly, this moment became the point of departure for the formation of European nation-states, a process that unfolded rapidly from the second half of the seventeenth century to the second half of the nineteenth century.

According to Michel Foucault's analyses, biopower is present wherever there are social relations and social communication — that is, wherever not only disciplinary practices directed at individual bodies within enclosed spaces are operative, but also diverse forms of biopolitical practices addressing large segments of the population. These practices permeate everyday life and continuously shape the corporeality and psyche of individuals in specific ways. In other words, such diverse practices of power are present not only in instances of crude, direct violence exercised by disciplinary power (which has by no means disappeared today), but also in the concealed coerciveness of a multiplicity of biopolitical practices. A defining feature of biopower, according to Foucault, is that «this power is everywhere, not because it embraces everything, but because it comes from everywhere»

(Foucault, 1976). Thus, biopower permeates all strata of society and affects every individual to one degree or another.

At the same time, sovereign power has by no means disappeared within the contemporary biopolitical strategy of power, as Foucault once assumed. Rather, it has undergone a substantial transformation, one of whose defining features is the permanent existence of various forms of the state of emergency, instituted for the preservation of social order within the state and beyond it. Nevertheless, a number of highly problematic questions arise, to which certain scholars have drawn attention, in particular the well-known French philosopher Alain de Benoist. De Benoist identifies specific features of the contemporary state of emergency through an analysis of this phenomenon based on the views of the renowned German theorist Carl Schmitt (de Benoist, 2022).

Thus, reflecting on the state of emergency or the exceptional situation in the (neo)liberal state, the German scholar paid particular attention to the fact that «the exception reveals most clearly the essence of state authority.



Here the decision separates itself from the legal norm, and authority proves that in order to create law it does not need to have law» (Schmitt, 2021).

In this sense, for example, within the state-legal doctrine of John Locke the state of emergency was something incommensurable with the normal condition, just as for Immanuel Kant the right of necessity in a state of emergency was, strictly speaking, no right at all. Moreover, reflecting on liberal politics, Carl Schmitt wrote: «The tendency of the constitutional state to regulate the state of emergency in the most detailed manner possible signifies only an attempt to describe precisely the case in which law suspends the operation of itself» (Schmitt, 2021, p. 18).

A logical consequence of this line of reasoning is Schmitt's claim that when the operation of a legal norm is suspended, the exception allows one to better grasp the nature of politics itself by revealing where sovereignty is located — namely, in the concrete capacity to decide upon a particular situation. An additional and significant clarification offered by Schmitt is that the political sovereign instance does not necessarily coincide with the state: «*Souverän ist, wer über den Ausnahmezustand entscheidet*» — «Sovereign is he who decides on the state of exception» (Schmitt, 2021, p. 20).

Proceeding from these key theses concerning the state of emergency, Alain de Benoist concludes that neoliberalism is incapable of understanding the nature of the exception, just



as it is incapable of responding to it without betraying its own nature. This is because neo-liberalism adheres to a purely procedural or formal-legal neo-Kantian conception of social order, which presupposes that a pre-established rule or norm must be applied to «any situation whatsoever» (de Benoist, 2022).

Furthermore, whereas in the «classical» exceptional case, as defined by Carl Schmitt, the measures adopted in an emergency situation were typically short-term and allowed for a gradual return to normality, in the case of the measures adopted after the terrorist attacks of September 11, 2001, one observes, on the contrary, the permanent establishment of a regime of exception that is continuously extended (de Benoist, 2022).

Although anti-terrorist legislation is directed primarily at suspects and «persons of concern», it has increasingly come to be applied to the entire population, thereby producing a genuine upheaval in criminal law.

In this sense, Giorgio Agamben is entirely justified when he observes that the true state of exception has now become the situation «in which we live», and which is in no way distinguishable from the rule. Here there is no longer any essential difference between «the citizen in a state of emergency, the Jew in the concentration camp, the comatose patient in intensive care, and the body preserved for organ extraction» (Agamben, 2021, p. 64).

Earlier, the Italian philosopher had already addressed this problem by outlining the principles of the state of exception. Thus, within Agamben's development of the concept of «bare life», according to which, for those who hold power, so-called *homines sacri* — that is, individuals with respect to whom, within the contemporary constitutional state, the detailed regulation of an imposed state of emergency is entirely permissible — emerge as the key object of political governance. This, however, signifies an attempt to describe precisely those cases in which law suspends the operation of itself (Agamben, 2005).

Elaborating this position, Agamben arrives at several fundamental conclusions: the existing totality of the state of exception — whether permanent or explicit — renders it not a juridical exception but a rule applied in the ordering of contemporary society. This opens the possibility for a topological description of the space of the state of exception, within which the emptiness of the content of the juridical norm is affirmed (Agamben, 2005).

Accordingly, it may be argued that in Agamben's work one finds not only an account of the establishment by sovereign power of a temporary order for various legal institutions within society, but also the coercive inclusion of human lives into an empty legal space. Equally important is the fact that the operation of this empty space is no longer determined by someone's good or evil will within a specific spatio-temporal interval, but is endlessly reproduced, continuously expanding its boundaries and its coercive impact on individuals.

In this context, Slavoj Žižek has ironically remarked that human rights are acceptable only insofar as they are «reinterpreted» to such an extent that they are capable of encompassing torture and a permanent state of emergency (Žižek, 2005, p. 122).

Finally, it should be noted that the permanent state of exception consists in the appropriation of the logic of war, which under normal circumstances operates only externally, but upon its official introduction penetrates into society itself, leading to the suspension of legal norms. The state henceforth legitimizes, in order to consolidate its own power, the maximal restriction of the freedoms of the population, which is regarded exclusively as a biomass.

It is therefore entirely unsurprising that the thesis of the legitimation of the state of exception has gained currency, according to which, in the struggle against terrorism as a global threat at the international level, it is necessary to consolidate the authority of the dominant American state, which is purportedly best able to ensure «global security» (de Benoist, 2022).

As a contemporary continuation of biopolitics and its extreme expression, necropolitics has now emerged, a phenomenon examined in detail by the Cameroonian scholar Achille Mbembe (Mbembe, 2019).

In his analysis, Mbembe considers contemporary biopower through the prism of two additional concepts: the state of exception as a condition of hostility toward a particular group of individuals, and the state of emergency. Biopower actively works to produce such exceptions, emergency situations, and to a significant extent fabricated representations of «enemies». According to the Cameroonian thinker, the conjunction of biopower with these coercive trajectories creates the normative foundation for the right to kill.

If contemporary biopolitics is understood as necropolitics, it becomes entirely evident —

and this is convincingly demonstrated by Mbembe's research — that «the ultimate expression of sovereignty resides, above all, in the power and the capacity to dictate who may live and who must die. To kill or to allow to live constitutes the limits of sovereignty, its fundamental attributes. To be sovereign is to exercise control over mortality and to define life as the deployment and manifestation of power» (Mbembe, 2019, pp. 129–130).

In concluding these theses concerning the study of the problems of contemporary biopolitics, it may be stated that sovereign power, as its most important component, exists at the very limits of its capacities and at times transgresses those limits. It coexists alongside disciplinary and control power, while the latter continually enhance their capacities through processes of digitalization and medialization.

The digital society, as a modernization of the information society, becomes an object of biopolitical governance. Advanced digital technologies make it possible to implement all forms of governance, ranging from various modes of surveillance to diverse forms of control. Their functioning is ensured by the fact that the corporeality of individuals is extended from the physical body to numerous social forms. The individual becomes a set of data — from fingerprints, the digitization of facial contours, iris scanning, and electronic signatures in biometric passports to social media logins. Thus, both the physical and social corporeality of the individual acquire their virtual copy, which fully characterizes the individual as a biopolitical body that is entirely subject to biopower. This enables biopower to exercise any form of control over individuals, up to and including criminal punishment for a comment on a social network, practices that have already become fairly routine. Moreover, the constant surveillance of the physical bodies of individuals who act as representatives of a confrontational political opposition to the authorities, the placing of these bodies under unremitting control up to and including subsequent political or physical elimination, is becoming the norm for contemporary biopower.

If the concentration camp, as a biopolitical paradigm, is a European creation — as discussed by G. Agamben (see Agamben, 2000; idem, 2002) and by R. Braidotti, who argued that «the proliferation of detention camps, security camps, and prisons within the formerly civic infrastructure of European cities is an

example of the inhuman expression of the face of the fortress called Europe» (Braidotti, 2013, p.87) — then the digital biopolitical camp has spread across the entire world, including China. As the American journalist Geoffrey Cain writes: «In China's Xinjiang province, where new technologies for surveillance and control of the population are being introduced, a program of 'predictive policing' was created using large data sets, within which a suspect could be detained if artificial intelligence predicted that he would commit a crime in the future» (Cain, 2021, p.15). Notably, individuals are forcibly placed there even without being accused of committing any crimes; the main determining factor is their religious affiliation with Islam.

By 2017, the number of detainees in digital concentration camps had grown to 1.5 million people out of an Uyghur population of 11 million. China's goal is to erase the identity, culture, and history of a people and to achieve the complete assimilation of millions of individuals (Cain, 2021, p.16).

This example fully illustrates a profound understanding of biopolitics and its further extrapolation as predicted by Giorgio Agamben (see Agamben, 2021) and Slavoj Žižek (see Žižek, 2020a; idem, Žižek, 2020b). Contemporary systems of video surveillance, social monitoring, and other forms of control make it possible to effectively apply this deliberate tactic of biopower through all modern digital innovations in order to address a wide range of tasks — from political and social governance and control to the harsh suppression of dissent.

Contemporary digitalization and the rapid development of artificial intelligence create new opportunities for the influence of giant technological corporations on biopolitics, such as Google and Facebook, which control the most popular social networks — Amazon, Instagram, YouTube, and others. They acquire an ever-greater degree of power, which cannot but cause concern on the part of state authorities themselves.

Moreover, these corporations gain broad opportunities to govern individuals at the level of their unconscious perception, shaping their needs and desires, and imposing a particular worldview or ideological concept of a given state in the pursuit of its goals and objectives in international politics, while receiving unprecedented preferences from dominant states. Contemporary digitalization creates a peculiar form of digital and media imperialism of giant infor-

mation corporations, characterized not only by an all-pervasive capacity to rapidly transmit the biopolitical position, that is, not merely to disseminate information but also to subordinate it, to create specific images that constitute reality for ordinary individuals (see Han, 2022).

The alliance of state authorities in the leading countries of the world with the power of media corporations has led to the formation of a new digital order, defined not so much by legal rights guaranteed to the individual by the state as by the emergence of a specific digital ethics of a «safe digital world». This digital order becomes yet another fairly effective means of manipulating individuals on the part of biopolitical power. It is precisely the use of new media technologies and social networks that leaves an indelible mark on the struggle not only for control over the individual bodies of the population but also for control over their consciousness and unconscious, a danger against which the American scholar Shoshana Zuboff warns us (see Zuboff, 2019).

Thus, digital biopolitics accumulates within itself a profound thanatopolitical core, in which the state of emergency is simultaneously immanent — that is, internally and essentially inherent to it — and implicit, that is, concealed and not immediately perceptible.

CONCLUSIONS

Contemporary biopolitics demonstrates the secondary status of legal guarantees for individuals under the dominance of absolute or sovereign power in modern society — that is, the complete subordination of law and all its institutions to the voluntarism of political leaders, which ultimately leads to necropolitics. This, to a significant extent, explains the passivity and distrust of the population toward the existing authorities and their bureaucratic apparatus, which in certain cases may give rise to subversive actions and practices; however, this constitutes a subject for separate analysis.

The article examined the specificity of the state of emergency as a permanent condition of contemporary biopolitics.

Various technologies of governing individuals by power were analyzed, ranging from technologies of total exclusion and the disciplinary panopticon to the technology of security. The latter is applied no longer to individual persons but to populations of individuals.

It is shown that the reverse side of biopolitics is always thanatopolitics. This was demonstrated with particular clarity by the coronavirus pandemic, which was deliberately used by global political elites to legitimize new biopolitical techniques of population control. The application of these techniques is already incompatible with the political rights and freedoms of individuals. The contemporary world has witnessed the real state of affairs firsthand: any state of emergency — whether epidemiological, military, or anti-terrorist — effectively deprives ordinary individuals of the state's legal protection.

It is shown that the contemporary individual is practically losing subjectivity and losing the possibility of parrhesia, that is, the right to autonomous, responsible, and truthful speech and judgment in criticizing power and resisting it within the framework of laws established by the constitution. It is demonstrated that theoretical principles, as the basis of citizens' legal guarantees, are only partially ensured or are practically unenforceable, not so much because of the voluntaristic actions of political actors vested with power, but because of the archaeology (*archē*) of the relationship between politics and law, in which the latter is always secondary.

The article emphasizes that the state of emergency has a permanent and systemic character. It is established that, in contemporary conditions, biopolitics acquires new forms. Thus, a number of contemporary researchers, in particular A. Mbembe, show that the state of emergency becomes the norm for vast categories of the population in so-called death-worlds. These so-called spaces of death signify not only the physical death of individuals but also social and political death, which effectively transfers biopolitics into the plane of thanatopolitics. It affects entire populations, granting them the status of the living dead.

It is shown how contemporary digitalization and medialization open unprecedented possibilities for biopower to observe, control, and govern modern populations. The role of giant media corporations is analyzed as an effective factor in the exercise of biopower and universal politicization, which in effect deprives contemporary individuals of real possibilities for private existence. In this regard, it is noteworthy that current social spaces of exclusion, isolation, and extensive spaces of «security» with their technologies of governance are being supplemented by virtual spaces created on the basis of the rapid development of artificial intelligence.

This will create new opportunities in the near future for the intensification of biopolitical practices, which is fraught with the creation of a digital concentration camp on a global scale.

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REFERENCES

- Agamben, G. (2021). *Where Are We Now? The Epidemic as Politics*. Rowman & Littlefield Publishers. 104 p.
- Agamben, G. (2019). What is a command? In *Creation and Anarchy: The Work of Art and the Religion of Capitalism* (pp. 51–65). Stanford University Press. <https://doi.org/10.1515/9781503609273-005>
- Agamben, G. (2017). *What Is a People?* (L. Chiesa & M. Mandarini, Trans.). Stanford University Press. 64 p.
- Agamben, G. (2005). *State of Exception* (K. Atwell, Trans.). Chicago, IL: University of Chicago Press. 104 p.
- Agamben, G. (2002). *Remnants of Auschwitz: The Witness and the Archive*. Zone Books. 176 p.
- Agamben, G. (2000). What is a Camp? In *Means Without End: Notes on Politics* (V. Binetti & C. Casarino, Trans., pp. 37–45). Minneapolis, MN: University of Minnesota Press. 153 pp.
- Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press. 216 p.
- Alemán, J. (2023). *Lacan and Capitalist Discourse: Neoliberalism and Ideology*. Routledge. 128 p.
- Benjamin, W. (1999) *Zur Kritik der Gewalt // Gesammelte Schriften*, Hg. von Rolf Tiedemann und Hermann Schweppenhäuser. Bd. II (1), Suhrkamp. Frankfurt a. M., S.179–204.
- Bentham, J. (1977). *Le panoptique*. In *Le Panoptique* (pp. 9–31). Paris, France: Belfond.
- Braidotti, R. (2013). *The Posthuman*. Cambridge: Polity Press. 180 p.
- Butler, J. (2012). *Parting Ways: Jewishness and the Critique of Zionism*. New York: Columbia University Press. pp. 68–98.
- Butler, J. (2015). *Notes Toward a Performative Theory of Assembly*. Harvard University Press. 248 p.
- Butler, J. (2020). *The Force of Nonviolence: An Ethico-Political Bind*. Verso Books. 224 p.
- Cain, G. (2021). *The perfect police state: An undercover odyssey into China's terrifying surveillance dystopia*. New York, NY: PublicAffairs. 304 p.
- Dean, M. (2010). *Governmentality: Power and Rule in Modern Society* (2nd ed.). London, UK: SAGE Publications. 294 p.
- de Benoist, A. (2024). *Against Liberalism: Society Is Not a Market*. Middle Europe Books, 320 p.
- de Benoist, A. (2022). *Carl Schmitt actuel: guerre juste, terrorisme, État d'urgence, «Nomos de la Terre»*. Paris, France: Dualpha. 170 p.
- Esposito, R. (2008). *Bíos: Biopolitics and Philosophy*. Minneapolis: University of Minnesota Press. 304 p.
- Foucault, M. (1975). *Surveiller et punir: Naissance de la prison*. Paris: Gallimard. 352 p.
- Foucault, M. (1976). *La Volonté de savoir. Histoire de la sexualité, Tome 1*. Paris, France: Éditions Gallimard. 211 p.
- Foucault, M. (1994). 'La Philosophie analytique du pouvoir', in M. Foucault, *Dits et Écrits*, tome III: 1976–1979, Paris: Gallimard. 588 p.
- Foucault, M. (1997). *Il faut défendre la société: Cours au Collège de France (1975–1976)*. Eds. Bertani, M. & Fontana, A. Gallimard; Paris: Seuil. 304 p.
- Foucault, M. (2004a). *Sécurité, Territoire, Population. Cours au Collège de France (1977–1978)*. Eds. Bertani, M. & Fontana, A. Gallimard; Paris: Seuil. 456 p.
- Foucault, M. (2004b). *La Naissance de la biopolitique. Cours au Collège de France (1978–1979)*. Eds. Bertani, M. & Fontana, A. Gallimard; Paris: Seuil. 368 p.
- Foucault, M. (1988). *Technologies of The Self. A Seminar with Michel Foucault. The Political Technology of Individuais*. Amherst: The University of Massachusetts. P. 145–162.
- Foucault, M. (1982). *The Subject and Power («Le sujet et le pouvoir»*, trad. E Durand-Bogaert), in Dreyfus H. and Rabinow P, Michel Foucault: *Beyond Structuralism and Hermeneutics*, Chicago, The University of Chicago Press, pp. 208–226.
- Han, B-Ch. (2022). *Infocracy: Digitization and the Crisis of Democracy* (D. Steuer, Trans.). Cambridge, UK: Polity Press. 80 p.
- Han, B.- Ch. (2018). *Topology of Violence*. Cambridge, MA: MIT Press. 168 p.
- Han, B-Ch. (2015). *The Burnout Society*. Stanford Briefs, 2015. 72 p.
- Hardt, M., & Negri, A. (2025). *Empire* (Rev. ed.). Cambridge, MA: Harvard University Press. 478 p.
- Hardt, M., & Negri, A. (2005). *Multitude: War and democracy in the age of empire*. New York, NY: Penguin Books. 448 p.

- Killbom, B. (2004). Superego Dilemmas. *Psychoanalytic Inquiry*. № 2, vol. 24, p. 175–182.
- Laurette T., Walsh M. (2011) Elmhurst College, Elmhurst, IL The Competing Meanings of "Biopolitics" in Political Science: Biological and Post-modern Approaches to Politics. To be presented at the American Political Science Association's Annual Meeting, Seattle, WA, September 1, 2011. P.2, p. 1–30
- Mbembe, A. (2019). *Necropolitics* (S. Corcoran, Trans.). Durham, NC: Duke University Press. 224 p.
- Mills, C. (2017). *Biopolitics*. NY: Routledge. 186 p.
- Negri, A. (2008). The labour of the multitude and the fabric of biopolitics. *Globalization Working Papers*, 08/3. <https://prod-ms-be.lib.mcmaster.ca/server/api/core/bitstreams/c19389d6-4ee0-4c10-b23f-96a8b48b3cb6/content>
- Palahuta, V.I. (2025). Neoliberalism as Ideological Infrastructure of Modern Society: A Critical Perspective *Newsletter on the Results of Scholarly Work in Sociology, Criminology, Philosophy and Political Science*. Vol. 6. No.1. P. 16–29 DOI: <https://sci-result.de/journal/issue/view/15>
- Rancière, J. (2004). «Who is the Subject of the Rights of Man?», *South* «Atlantic Quarterly», vol. 103, no. 2–3, pp. 307–309.
- Rancière, J. (1995). *La mésentente: Politique et philosophie*. Paris, France: Galilée. 200 p.
- Schmitt, C. (2021). *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*. Berlin: Duncker & Humblot. 72 p.
- Watkin, W. (2014). *Agamben and indifference*. London, UK: Rowman & Littlefield International. 316 p.
- Watkin W. (2015) *Agamben, Benjamin and the Indifference of Violence // Towards the Critique of Violence: Walter Benjamin and Giorgio Agamben*. — Bloomsbury, 2015. P. 139–152.
- Zuboff, Sh. (2019). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. Public Affairs, 704 p.
- Žižek, S. (2005). Against Human Rights. *New Left Review*, 34, July-August 2005, pp. 115–131.
- Žižek, S. (2020). *Hegel in A Wired Brain*. Bloomsbury Academic. 208 p.
- Žižek, S. (2020). *PAN(dem)IC!: COVID-19 shakes the world*. New York, NY: OR Books. 140 p.
- Žižek, S. (2008). *Violence: Six sideways reflections*. New York, NY: Picador. 272 p.

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