

STATE OF EXCEPTION

By Giorgio Agamben

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Review by Matt Owens

How are law and legal norm related to life? What was the genesis of “emergency powers” and how are they relevant today? Why do some democratic countries develop into totalitarian states and how may such development be prevented? These are all questions that Giorgio Agamben attempts to answer in his most recent book *State of Exception* (2005), which builds on the theory of sovereignty that he first established in his seminal work *Homo Sacer: Sovereign Power and Bare Life* (1995). As with *Homo Sacer*, the book’s argument is grounded in Agamben’s extensive knowledge of Roman law and traces a contemporary position through a considerable amount of historical research. Indeed, this historical background is crucial to Agamben’s theory, for it is the foundation on which he explains sovereignty’s initial emergence as a concept and the internal contradictions that materialized with its subsequent development.

Agamben begins by detailing the various nuances of the “state of exception” so that the term might be precisely defined. In a crisis (such as civil war), a state of exception is a temporary situation in which aspects of a nation’s laws and legal norms (the “juridical order”) are suspended for the purpose of safeguarding the existent society. A state of exception, then, ought to be set forth only if pressure from the crisis threatens to collapse the prevailing system. While Agamben notes that the state of exception is a longstanding *feature* of governance, he contends that the exception has become the *paradigm* of government in the 20th century (21). Consequently, he believes that the demarcation between democratic and absolutist states is becoming indiscernible as democratic governments grow increasingly likely to exercise their capacity to circumvent the juridical order (18).

Following his exposition on the state of exception, Agamben turns to the United States for a historical illustration of its expansion. He locates the state of exception in the Congressional battle with the President over supreme authority in an emergency situation. Articles 1 and 2 of the American constitution, Agamben insists, are the original sources of the conflict, since they allow for habeas corpus to be suspended, but do not specify which branch shall have this power (20). Furthermore, they articulate seemingly incongruous roles for the executive branch and Congress in a wartime situation. According to Agamben, Abraham Lincoln was the first to push the limits of his office by appealing to necessity in an emergency, raising an army of

seventy-five thousand (a power that is patently denied to the President by the constitution) and suspending habeas corpus whenever he thought imperative (20). Agamben then delineates the state of exception in subsequent U.S. presidencies, emphasizing President Wilson in WWI, President Franklin Delano Roosevelt in the Great Depression and WWII, and President Bush after September 11 (21-22). The most controversial, although arguably correct, claim that Agamben makes in this section is that President Bush seeks to maximize the power of his office by engendering a state of affairs “where emergency becomes the rule.”

It is at this point that *State of Exception* becomes more complex. Agamben introduces the concept of “lacuna” in the legal system as an analogy for the state of exception. In the juridical system, even if a law is incomplete, a judge is nevertheless required to render a decision: “the law may have lacunae, but the juridical order admits none” (31). Similarly, the state of exception can be considered a lacuna of *public law*, which the executive branch is obliged to rectify. However, this reveals a peculiarity of the state of exception, in that there is no deficient text to remedy, and thus the lacuna is not *within* the law, but rather concerned with the law’s ability to be applied to reality; hence, the juridical order is suspended until it may once again be bridged with reality (31). Agamben reasons that this is actually revelatory of a fundamental disconnect between norm and its application, and that the state of exception is both a space where the disassociation becomes clear *and* a reactionary mechanism that violently preserves this fallacious nexus (36-7; 59-62).

The most prolific investigation in the book involves the state of exception and its relation to the production of totalitarian states. Agamben argues that neither Hitler nor Mussolini can be technically defined as dictators, since they did not abolish the existing democratic constitutions and merely instituted a permanent state of exception in which they could act freely without accountability to the law (48). The assumed bond between life and law enabled them to suspend the norm in a time of crisis and become the authoritarian embodiment of necessity, reconciling law’s failure to be immediately joined with reality (84-85). Agamben poignantly describes the ramifications entailed by this sort of state of exception: “When law and life coincide in a single person, when the state of exception becomes the rule, then the juridico-political system transforms itself into a killing machine...[t]he state of exception is where human action with no relation to law stands before a norm with no relation to life” (86).

Although Agamben’s analysis is thorough and well researched, the short book (88 pages), even when read with *Homo Sacer*, could be more comprehensive. Understandably, Agamben probably chose to be timely rather than exhaustive, but I would have liked a more complex historical account of the conditions that facilitate and encourage the

transition from a democratic to authoritarian government, and the deeper cultural circumstances that validate oppressive regimes. I was also left unsatisfied with his nebulous conclusion to the novel, which attempts to use the state of exception (and awareness of the non-relation between law and life) to reconceptualize the political. Regardless, Agamben's *State of Exception* is an accomplished work of political theory worthy of consideration by any student of the field.

Matt Owens is a third-year student at the University of Michigan, where he studies Political Science, Philosophy, and Art History. He will be studying at Oxford University during the Winter 2007 semester. Mr. Owens intends to pursue a JD/MA in International Affairs.

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