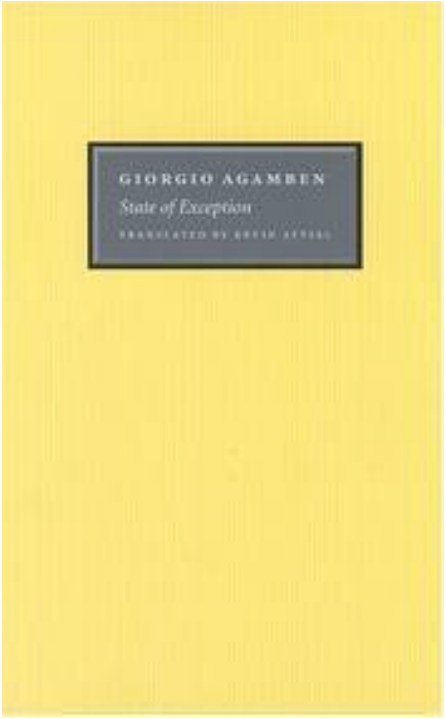

State of Exception

Giorgio Agamben , Kevin Attell (Translator)

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State of Exception Giorgio Agamben , Kevin Attell (Translator)
Two months after the attacks of 9/11, the Bush administration, in the midst of what it perceived to be a state of emergency, authorized the indefinite detention of noncitizens suspected of terrorist activities and their subsequent trials by a military commission. Here, distinguished Italian philosopher Giorgio Agamben uses such circumstances to argue that this unusual extension of power, or "state of exception," has historically been an underexamined and powerful strategy that has the potential to transform democracies into totalitarian states.

The sequel to Agamben's *Homo Sacer: Sovereign Power and Bare Life*, *State of Exception* is the first book to theorize the state of exception in historical and philosophical context. In Agamben's view, the majority of legal scholars and policymakers in Europe as well as the United States have wrongly rejected the necessity of such a theory, claiming instead that the state of exception is a pragmatic question. Agamben argues here that the state of exception, which was meant to be a provisional measure, became in the course of the twentieth century a normal paradigm of government. Writing nothing less than the history of the state of exception in its various national contexts throughout Western Europe and the United States, Agamben uses the work of Carl Schmitt as a foil for his reflections as well as that of Derrida, Benjamin, and Arendt.

In this highly topical book, Agamben ultimately arrives at original ideas about the future of democracy and casts a new light on the hidden relationship that ties law to violence.

State of Exception Details

Date	:	Published January 15th 2005 by University of Chicago Press (first published 2003)
ISBN	:	9780226009254
Author	:	Giorgio Agamben , Kevin Attell (Translator)
Format	:	Paperback 104 pages
Genre	:	Philosophy, Politics, Nonfiction, Theory

From Reader Review State of Exception for online ebook

Alexander says

Giorgio Agamben's *State of Exception* continues down a path laid down by its exceptional precursor, *Homo Sacer*. While *Homo Sacer*'s focus was on the nature of sovereignty and its increasing implication in the sphere of biological life, in *State of Exception*, Agamben turns his gaze directly towards the question of law and its relationship to power. And I really do mean law. Anyone expecting the colorful procession of anthropological discussions that adorned the pages of *Homo Sacer* will instead find themselves knee-deep in some incredibly dense interventions into debates on the nature and limits of law. Thus, although Agamben's usual cast of interlocutors are still present - Benjamin, Schmitt, Derrida, Arendt - more often than not, it's with little-known legal scholars and jurists with whom Agamben engages. In the hands of a lesser stylist, it could come off as vaunting; in the hands of Agamben, one feels the irresistible temptation to head to the library and devour each and every one of his references.

For a philosophile like myself, unused to the arcana of juridical discussion, it's uncharted territory, which makes *State of Exception*'s slim ninety pages anything but a breezy read. For all that though, the effort is worth it. The central axis around which Agamben organizes his investigation is that of the relation between law and its own exception. Which is to ask: what happens when law authorizes its own suspension? Recall - to use of one Agamben's examples - the notorious Article 48 of the Weimar constitution which, when invoked, suspended certain fundamental rights guaranteed by that very constitution itself. Such a situation places the law in a 'state of exception' with itself: law suspends law, all the while nonetheless remaining in force. This paradoxical situation - the history of which is meticulously traced out by Agamben - gives rise to law emptied of any positive content, while nonetheless retaining its form. For Agamben, this zone of indeterminate law renders the entire juridical order into nothing less than a 'killing machine', whose end result can only lead towards "global civil war".

Just how and why this is so is best left to a reading of the book itself, but as with *Homo Sacer*, *State of Exception* implores us to find a way to 'stop the machine', to 'depose' of it, to use the term invoked by Benjamin and taken up by Agamben. In laying out the obscure logic that governs the state of exception (or rather, that the state of exception governs), Agamben's contribution is not so much a way forward as it is an attempt to illuminate what exactly it is we're to find our way forward from. Much of the book is given over to Agamben refuting various attempts to pacify, downplay, or ambiguate the stringent logic of the state of exception, an enterprise he takes up with with both delicacy and ferociousness. Indeed, the crowing jewel of the book is a chapter which finds Agamben playing mediator to a fascinating debate between the works of Walter Benjamin and Carl Schmitt, with Agamben tracing the parries and blows of each in brilliant detail (unsurprisingly for those familiar with Agamben, Benjamin comes out on top). More than just a *tour de force* of intellectual and historical scholarship, it's a debate which elegantly encapsulates all that's at stake in Agamben's overarching project. Of course if you want to see it play out, you'll have to read the book.

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Karim Bazan says

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Kareem Brakat says

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Ahmed Diab says

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Ayleen Julio says

Aunque por momentos es un libro algo complicado de leer -especialmente cuando se manda citas en latín sin traducción que le hacen perder a uno el hilo- es un a buena reflexión sobre cómo la ley en ocasiones no garantiza la vida y el derecho individual. Muy bueno para comenzar a entender lo que es estado de excepción y el lugar de éste en la historia de occidente.

Ahmed M. Gamil says

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Mohamed IBrahim says

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Mohamed Al-fatih says

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Sara says

The machine that will lead to global civil war

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This book can be hardly understood outside the continental tradition of code law, and it makes no attempt at an archaeology of common law - where for example there's no decision-norm cleavage, as Entscheidung

(Schmitt and Benjamin's 'decision') is exactly what generates law. From a common law perspective the essay might thus appear as a sequence of absurdities, but in its painstaking investigation of long forgotten diatribes and lost constitutions it has the merit to unearth the root meaning of a few relevant political phenomena, casting a new, not necessarily depressing light on them.

The book begins asking "what is political action?" and ends answering that "truly political is only that action, which cuts the nexus between violence and law". And violence and war are conceptually - even if sometimes not explicitly - at the center of the complicated to and fro between ancient texts and present times. *Tumultus* (uprising in Latin) is the core archaeological finding on which the whole theory of the state of exception, or suspension of law, hinges. This attention to civil war as the trigger to reactions that hollow out constitutions and institutions without ever abolishing them can be usefully transferred from the study of the borderline device of the state of exception to the heart of what we call democracy (by no means is this word used in the book - I'm referencing it at my own risk).

A generalization of *tumultus* from a democratic perspective is internal conflict. On a continuum from *cosmos* to *chaos* , i.e. from order and harmony to disorder and aggression, democracy is always half-way in its appearence and totally bent over chaos in its substance. There should be nothing surprising to this: a myriad of constituencies advancing their own agendas is just mess. And something to be happy about, if your power ends with your ballot. But if the idea of an "excess of democracy", as Samuel P. Huntington put it, gets traction, then *tumultus* can become the new name of democracy and the state of exception easily invoked and granted. Which is exactly what happens on a regular basis. It has to be clear that the target of all states of exception is democracy itself, or "the enemy within" in the words of Margaret Thatcher, especially when officially specific constituencies are singled out or external enemies and crises blamed. It is through a suspension of the intricacies of democracy that elites can then start thinking of global expansions, focusing their ambitions externally once the internal *tumultus* has been taken care of. This is why the author can conclude that the mechanism of the state of exception will eventually lead to global civil war.

Finally, what does it mean to undo the nexus between violence and law, or to open a space between the two where truly political action can unfold? Law is said to have been established *ne cives ad arma ruant* , i.e. so that the citizens not rush to arms. We should start thinking that there is no mechanism - be it law, or its suspension, whether codified in rites, traditions, religions or modern law codes - that can prevent conflict from playing out in our democratic societies. It is only by playing with conflict - and with law consequently - without fear (which is the opposite of violence) that political action can come of age.

Uuu Ooo Bbb says

Agamben details the concept of the state of exception as the state in which the rule law is not voided or the law itself changed to allow for absolute rule, but rather the law is suspended. He claims it's a way of enacting de-facto dictatorship specific to Western democracies. His examples are Nazi Germany, Fascist Italy as well as France, Switzerland, Great Britain and the USA.

For those who believe in liberal democracy, the numerous examples of it's easily slippage into dictatorship should be eye-opening, and even more so considering that the ongoing economic crisisis certainly speeding up those process right now.

The main weakness, as far as I am concerned, is that both the state or the sovereign and the subjects are treated in the book as completely abstract entities. Subsequently the historical examples are dry lists of legal

acts. There is no analysis of where the agency of the acting entities is coming from, no social forces at play, just history as a list of dates on one hand side, and on the other abstract philosophy.

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sologdin says

Part II of author's Homo Sacer project.

Cute pamphlet in the benjaminian tradition. Probably the best 9/11 book that I've read, even though it only briefly mentions that event.

Point of departure is Schmitt's "definition of the sovereign as 'he who decides on the state of exception'" (1), the state of necessity, like civil war, wherein we find "juridical measures that cannot be understood in legal terms," and which appear "as the legal form of what cannot have legal form" (id.).

Notes that the SoE is like a lawful civil war, and notes the Third Reich as an SoE with a twelve-year duration (2), based on an emergency decree that created a "voluntary state of emergency" alongside the lawful constitutional order—which is a technique that "has become one of the essential practices of contemporary states, including so-called democratic ones" (id).

SoE is not a specialized area of law, but rather "a suspension of the juridical order" (4); SoE is furthermore a "creation of the democratic-revolutionary tradition and not the absolutist one" (5). Will note that "the idea that a suspension of law may be necessary for the common good is foreign to the medieval world" (26), which may, I think, be less about the SoE itself than about how things like "common good" may also be foreign to the medieval world, which may inhabit a kenomatic space (infra) of its own.

Text notes a number of sets of distinctions in wrestling with this: real v. fictive SoE (3); states of peace/war/siege, which escalate the centralization of military authority (5); pleromatic (state has *plenitudo potestatis*, the expansion of state power), v. kenomatic states (an "emptiness of law," a return to a Hobbesian "state of nature") (5-6); Schmitt's "commissarial dictatorship" v. "sovereign dictatorship" (8, and then again in depth 32 ff.). Initially, dude wants to identify the SoE with a kenomatic state.

Wants therefore to trace the development of the concept toward the modern global SoE as manifested in the Patriot Act and 'war on terror.' This section (11-22) covers several states' development. The brief US section is tremendous, noting the origin of the US SoE in the presidency of Lincoln, who "acted as an absolute dictator" (20) and suspended the writ of *habeas corpus*, and thereafter justified his actions to the legislature by stating, whatever their legality, they were based on popular demand and public necessity (id.). Congress dutifully ratified the executive acts. Later, Wilson "assumed even broader powers," but instead of bypassing Congress, he went "each time to have the powers in question delegated," which is apparently *tres* European (21) to the extent it prefers extraordinary statutes over a general declaration of the SoE. Because the Lincoln/Wilson expansions were rooted in two different sorts of war, by the time we get to FDR, all crises become warlike, and the president actually asked "the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe" in 1938 (22).

The function of these processes is apparently to inscribe durkheimian anomie within the juridical order: “The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order” (23). This is traced back to the *Decretum* of Gratian: “If something is done out of necessity, it is done licitly, since what is not licit in law necessity makes licit. Likewise necessity has no law” (24). Greasers take this as an indication that necessity is truly the basis of law after all, which seems to set the SoE as the originary condition. Gross. But it gets worse as we move to the metagross:

> As a figure of necessity, the state of exception therefore appears (alongside revolution and the de facto establishment of a constitutional system) as an ‘illegal’ but perfectly ‘juridical and constitutional’ measure that is realized in the production of new norms (or of a new juridical order): […] ‘There are norms that cannot or should not be written; there are others that cannot be determined except when the circumstances arise for which they must serve’ [internal citation omitted] The gesture of Antigone, which opposed the written law to the *agrapta nomima* [unwritten laws] is here reversed and asserted in defense of the constituted order. (28)

This should appear very familiar to those of us who have faithfully read Benjamin’s ‘Critique of Violence,’ especially as read through Derrida’s beautiful Force de Loi. Le "Fondement mystique de L'autorité". The SoE is with revolution parcel to the *status necessitates* and accordingly in “an ambiguous and uncertain zone in which de facto proceedings, which are in themselves extra- or antijuridical, pass over into law, and juridical norms blur with mere fact—that is, a threshold where fact and law seem to become undecidable” (29).

That’s all kinda kickass—the master figure of *blurriness*, which renders certain thingies undecidable in the normal derridean/godelian sense (it is the most concrete metaphor used for what shall be revealed to be the plotinian *hoion* in volume VI--as the more normal metaphors are zones and thresholds of indistinction or indetermination). This causes a nasty aporia: “If a measure taken out of necessity is already a juridical norm and not simply fact, why must it be ratified and approved by law […]? And if instead if it not law, but simply fact, why do the legal effects of its ratification begin not from the moment it is converted into law, but *ex tunc*?” (29). As though that aporia were not completely disabling, author likewise identifies a worse one: though many writers think of the state of necessity as “an objective situation,” it is contingent upon a naïve assumption of “pure factuality” which the concept has contradicted (blurriness of law/fact, recall!) and is furthermore reliant upon “subjective judgment”—“‘the recourse to necessity entails a moral or political (or in any case, extrajuridical) evaluation, by which the juridical order is judged and is held worthy of preservation or strengthening even at the price of its possible violation,’” which renders it always already a “’revolutionary principle’” (30).

Working through Schmitt’s theory of dictatorship thereafter, author has occasion to observe Schmitt ‘s inscription of the SoE within the juridical order itself:

> ’Because the state of exception is always something different from anarchy and chaos, in a juridical sense, an order still exists in it, even if it is not a juridical order.’ This specific contribution of Schmitt’s theory is precisely to have made such an articulation between state of exception and juridical order possible. (33)

Readers of Bigg D will also note well--

> But precisely because the decision here concerns the very annulment of the norm, that is, because the state of exception represents the inclusion and capture of a space that is neither outside nor inside (the space that corresponds to the annulled and suspended norm), ‘the

> sovereign stands outside of the normally valid juridical order, and yet belongs to it.'(35)

--which is the *triton genus*, the *khora* as described in the *Timaeus* and made infamous by our favorite Francophone Algerian.

Mention is made briefly of Derrida's essay on the 'force de loi' (37), which works as a departure point for a consideration of the significance of "force of law" as a legal term:

> The decisive point, however, is that in both modern and ancient documents the syntagma *force of law* refers in the technical sense not to the law but to those decrees (which, as we indeed say, have the force of law) that the executive power can be authorized to issue in some situations, particularly in the state of exception. That is to say, the concept of 'force of law,' as a technical legal term, defines a separation of the norm's *vis obligandi*, or applicability, from its formal essence, whereby decrees, provisions, and measures that are not formally laws nevertheless acquire their 'force.' (38)

Here, the nebulous 'force of law' "floats as an indeterminate element that can be claimed both" by the state and the revolution, say (id.). SoE is "an anomic space [again] in which what is at stake is a force of law without law" through which "law seeks to annex anomie itself" (39), which is kinda awesome and gross at the same time.

SoE then explained as a modern instance of Roman *iustitium*, an analogy to *solstitium*, wherein something comes to standstill (law or sun, dig?). *Iustitium* was proclaimed as a response to the declaration of a *tumultus*, itself normally the result of the issuance of *senatus consultum ultimum* (41). (Gotta love that chain.) *Iustitium* was conceived by Roman jurists as "an interval and cessation of law," or, as author says, "the production of a juridical void" (41-42). We should carry this in mind with the prior discussion of kenomatic states, states of nature, lacuna that is not anarchy, and so on. The of *senatus consultum ultimum* (SCU) is described by some as a quasi-dictatorship, but author regards that as manifestly erroneous; SCU is not a new office or power, but rather a caesura wherein "every citizen seems to be invested with a floating and anomalous *imperium* that resists definition within the terms of the normal order" (43), but nevertheless allows them to carry out any acts in defense of the state. He will deny that SCU and the *iustitium* can be read as dictatorship, which was a specific magistracy defined by a precise statute for a particular purpose—though it was of course an extraordinary office and statute. Because Schmitt and others confused SoE with dictatorship, they made the same error and fell into the aporias described supra. (Best note in the entire volume argues that fascists tend to be "indifferently presented as dictators," but they normally aren't within the scope of the definition, considering that they historically were duly authorized to take office, and then ruled constitutionally as well as from a parallel SoE (48).)

From the *iustitium*, dude summarizes: SoE is not dictatorship, but a zone of anomie; it is essential to the juridical order; acts committed during the SoE/*iustitium* have not legal definition and are within the *khora* of the law; and 'force of law' is the way we conceive of the undefinability (51).

Text moves on to read the Benjamin/Schmitt debate, wherein we see the already familiar notions, such as SoE is where Schmitt tries to "inscribe anomie within the very body of the *nomos* (54), and so on. This section is mainly to rehabilitate Benjamin, as it has apparently been considered 'scandalous' on the left for Benjamin to have been interested in the ideas of fascist Schmitt; it's cool and interesting, but doesn't really develop the ideas of the first half much further. Final two chapters are also very cool, but seem like coda I and coda II that run specific things inessential to the main argument (still very cool). My notes are littered with 'cf. Griffin,' 'cf. Bakhtin,' 'cf. Adorno,' so it's conceptually worthwhile. Works very well with Neumann's *Behemoth*, insofar as the Third Reich was in that text described as a non-state subject to the

overlapping polycratic authority of various actors who each held their own SoE/SCU bona fides.

Good stuff. Go read. Go read the entire series; the concepts from here and volume I follow through all the rest.

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