

An Interview with Giorgio Agamben

By Ulrich Raulff*

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Raulff: Your latest book *The State of Exception* has recently been published in German. It is an historical and legal-historical analysis of a concept that we, at first blush, associate with Carl Schmitt. What does this concept mean for your *Homo Sacer*¹ project?

Agamben: *The State of Exception* belongs to a series of genealogical essays that follow on from *Homo Sacer* and which should form a tetralogy. Regarding the content, it deals with two points. The first is a historical matter: the state of exception or state of emergency has become a paradigm of government today. Originally understood as something extraordinary, an exception, which should have validity only for a limited period of time, but a historical transformation has made it the normal form of governance. I wanted to show the consequence of this change for the state of the democracies in which we live. The second is of a philosophical nature and deals with the strange relationship of law and lawlessness, law and anomy. The state of exception establishes a hidden but fundamental relationship between law and the absence of law. It is a void, a blank and this empty space is constitutive of the legal system.

Raulff: You wrote already in the first volume of *Homo Sacer* that the paradigm of

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¹ See, e.g., GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans., Stanford University Press 1998). *Homo Sacer* is, according to ancient Roman law, a human being that could not be ritually sacrificed but whom one could kill without being guilty of committing murder. Agamben uses the concept as the underpinning for a fresh decoding of the major political difficulty in our century: the rise of the worst sort of totalitarianisms, with Nazism at its apex.

the state of exception came into being in the concentration camps, or corresponds to the camps. The indignant outcry of last year as you applied this concept to the United States, to American politics, was predictably loud. Do you still consider your critique to be correct?

Agamben: Regarding such an application, the publication of my Auschwitz book² brought similar remonstrance. But I am not an historian. I work with paradigms. A paradigm is something like an example, an exemplar, a historically singular phenomenon. As it was with the panopticon for Foucault,³ so is the *Homo Sacer* or the Muselmann or the state of exception for me. And then I use this paradigm to construct a large group of phenomena and in order to understand an historical structure, again analogous with Foucault, who developed his “panopticism” from the panopticon.⁴ But this kind of analysis should not be confused with a sociological investigation.

Raulff: Nevertheless, people were shocked by your comparison because it seemed to equate American and Nazi policies.

Agamben: But I spoke rather of the prisoners in Guantánamo, and their situation is legally-speaking actually comparable with those in the Nazi camps. The detainees of Guantanamo do not have the status of Prisoners of War, they have absolutely no legal status.⁵ They are subject now only to raw power; they have no legal existence. In the Nazi camps, the Jews had to be first fully “denationalised” and stripped of all the citizenship rights remaining after Nuremberg,⁶ after which they were also erased as legal subjects.

² GIORGIO AGAMBEN, *REMNANTS OF AUSCHWITZ: THE WITNESS AND THE ARCHIVE* (reprint, Zone Books 2002).

³ See, e.g., MICHEL FOUCAULT, *THE FOUCAULT READER* 217 (Pantheon 1984) (“[It was only] in the penitentiary institutions that Bentham’s utopia could be fully expressed in a material form. In the 1830s, the panopticon became the architectural program of most prison projects. It was the most direct way of expressing ‘the intelligence of discipline ...’”). The panopticon consisted of a large courtyard, with a tower in the center, surrounded by a series of buildings divided into levels.

⁴ *Id.* at 212. (“... And, although the universal juridicism of modern society seems to fix limits on the exercise of power, its universally widespread panopticism enables it to operate, on the underside of the law, a machinery that is both immense and minute, ...”).

⁵ On 20 April 2004 the U.S. Supreme Court heard argument in cases seeking the determination of the legal status and judicial access of the Guantánamo detainees. See, e.g., *Rasul v. Bush*, No. 03-334 (D.C. Cir filed 2 Sept. 2003), *cert. granted* 124 S.Ct. 534 (2003).

⁶ The Nuremberg Laws, decreed at the 1934 Nazi “Party Conference on Freedom” included a law on citizenship, “which deprived all those ‘not of German blood’ of their rights as citizens.” INGO MÜLLER, *HITLER’S JUSTICE* 96-97 (Deborah Lucas Schneider trans., Harvard University Press 1991).

Raulff: What do you understand the connection to be to America's security policy? Does Guantánamo belong to the transition you have previously described from governance through law to governance through the administration of the absence of order?

Agamben: This is the problem behind every security policy, ruling through management, through administration. In the 1968 course at the Collège de France, Michel Foucault showed how security becomes in the 18th century a paradigm of government. For Quesnay, Targot and the other physiocratic politicians, security did not mean the prevention of famines and catastrophes, but meant allowing them to happen and then being able to orientate them in a profitable direction. Thus is Foucault able to oppose security, discipline and law as a model of government. Now I think to have discovered that both elements – law and the absence of law – and the corresponding forms of governance – governance through law and governance through management – are part of a double-structure or a system. I try to understand how this system operates. You see, there is a French word that Carl Schmitt often quotes and that means: *Le Roi reigns but he does not govern*. That is the *termini* of the double-structure: to reign and to govern. Benjamin brought the conceptual pairing of *schalten* and *walten* (command and administer) to this categorization. In order to understand their historical dissociation one must then first grasp their structural interrelation.

Raulff: Again, is the time of law over? Do we live now in an era of rule by decree (*Schaltung*), of cybernetic regulation and of the pure administration of mankind?

Agamben: At first glance it really does seem that governance through administration, through management, is in the ascendancy, while rule by law appears to be in decline. We are experiencing the triumph of the management, the administration of the absence of order.

Raulff: But do we not also observe, at the same time, the enlargement of the whole legal system and a tremendous increase in legal regulation? More laws are created on a daily basis and the Germans, for example, regularly feel that they are governed far more by Karlsruhe than Berlin.⁷

Agamben: Also there you see that both elements of the system coexist with one

⁷ Karlsruhe is the seat of the *Bundesverfassungsgericht* (BVerfG – German Federal Constitutional Court) and the *Bundesgerichtshof* (BGH – German Federal Court of Justice). For a sense of the judicializing-political meaning of Karlsruhe, see Gerhard Casper, *The "Karlsruhe Republic" – Keynote Address at the State Ceremony Celebrating the 50th Anniversary of the Federal Constitutional Court*, 2 GERMAN LAW JOURNAL NO. 18 (01 December 2001), at <http://www.germanlawjournal.com/article.php?id=111>.

another, and that they both are driven to the extreme, so much so, that they seem at the end to fall apart. Today we see how a maximum of anomy and disorder can perfectly coexist with a maximum of legislation.

Raulff: From the way you have just described it, I see a rift that leads to an ever-starker polarization. Elsewhere, however, you say that the classical realm of the political will become ever narrower – and that sounds somewhat critical and decadently theoretical.

Agamben: Allow me to reply with Benjamin: there is no such thing as decline. Perhaps this is because the age is always already understood as being in decline. When you take a classical distinction of the political-philosophical tradition such as public/private, then I find it much less interesting to insist on the distinction and to bemoan the diminution of one of the terms, than to question the interweaving. I want to understand how the system operates. And the system is always double; it works always by means of opposition. Not only as private/public, but also the house and the city, the exception and the rule, to reign and to govern, etc. But in order to understand what is really at stake here, we must learn to see these oppositions not as “di-chotomies” but as “di-polarities,” not substantial, but tensional. I mean that we need a logic of the field, as in physics, where it is impossible to draw a line clearly and separate two different substances. The polarity is present and acts at each point of the field. Then you may suddenly have zones of indecidability or indifference. The state of exception is one of those zones.

Raulff: Does the endpoint – and therewith the reality – of the private still have a meaning, in the sense of your systematic examination too? Is there something there that is worth defending?

Agamben: It is firstly obvious that we frequently can no longer differentiate between what is private and what public, and that both sides of the classical opposition appear to be losing their reality. And the detention camp at Guantánamo is the *locus par excellence* of this impossibility. The state of exception consists, not least, in the neutralization of this distinction. Nonetheless, I think that the concept is still interesting. Think only of the multitude of organizations and activities in the United States that, at present, are devoted to the protection and defense of “privacy” and attempt to define what belongs within this realm and what does not.

Raulff: How does this then involve your work?

Agamben: *Homo Sacer* is supposed to, as I said at the beginning, comprise four volumes in total. The last and most interesting for me will not be dedicated to an

historical discussion. I would like to work on the concepts of forms-of-life and lifestyles. What I call a form-of-life is a life that can never be separated from its form, a life in which it is never possible to separate something such as bare life. And here too the concept of “privacy” comes in to play.

Raulff: At this point you clearly link up again with Foucault, perhaps with Roland Barthes as well, who held one of his later lectures on the topic of *Vivre ensemble*.

Agamben: Yes, but Foucault went back in history to the Greeks and the Romans when he had this idea. When you work on this topic, you suddenly no longer have a floor under your feet. And here you see clearly that we seem not to have any access to the present and to the immediate, except through what Foucault called an archaeology.⁸ But what an archaeology could be, whose object is a form-of-life, that is to say an immediate life experience, this is not easy to say.

Raulff: As I understand it, almost every philosopher has had a vision of the good and the right or of a philosophical life as well. What does yours look like?

Agamben: The idea that one should make his life a work of art is attributed mostly today to Foucault and to his idea of the care of the self. Pierre Hadot, the great historian of ancient philosophy, reproached Foucault that the care of the self of the ancient philosophers did not mean the construction of life as a work of art, but on the contrary a sort of dispossession of the self.⁹ What Hadot could not understand is that for Foucault, the two things coincide. You must remember Foucault’s criticism of the notion of author, his radical dismissal of authorship. In this sense, a philosophical life, a good and beautiful life, is something else: when your life becomes a work of art, you are not the cause of it. I mean that at this point you feel your own life and yourself as something “thought,” but the subject, the author, is no longer there. The construction of life coincides with what Foucault referred to as “*se deprendre de soi*.” And this is also Nietzsche’s idea of a work of art without the artist.

Raulff: For all those who have tried over the last thirty years to forge a non-exclusive form of politics, Nietzsche was the decisive reference. Why is he not that for you?

⁸ See, e.g., MICHEL FOUCAULT, *ARCHEOLOGY OF KNOWLEDGE* (Pantheon 1982).

⁹ See, e.g., PIERRE HADOT, *WHAT IS ANCIENT PHILOSOPHY* (Michael Chase trans., Belknap 2004); *PHILOSOPHY AS A WAY OF LIFE: SPIRITUAL EXERCISES FROM SOCRATES TO FOUCAULT* (Pierre Hadot and Arnold Davidson eds., Michael Chase trans., Blackwell 1995).

Agamben: Oh, Nietzsche was important for me also. But I stand rather more with Benjamin, who said, the eternal return is like the punishment of detention, the sentence in school in which one had to copy the same sentence a thousand times....

Raulff: But the work of the Italian Philological School around and after Montinari has precisely shown us that Nietzsche is not a hard, despotic author, as one wanted us to believe for so long, but rather an open, traversed and criss-crossed system of readings and ideas – a work of art without author, like you just now called for.

Agamben: If that is so, then we need to learn to forget the presence of the subject. We must protect the work against the author.