

Taking exception to the exception – On Schmitt, Agamben and the absence of political society.

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The idiom of exception is again central to the politics of insecurity in Europe, the US, and Australia. Detention camps, the reinforcement of executive power in counter-terrorism legislation, and the debates about balancing or reconciling liberty and security are among the most visible. All raise questions about the import and legitimacy of politically transgressing the rule of law and/or reducing life to its mere biological existence (e.g. the statement that the right to live has priority over liberty rights). As Fleur Johns observes in her analysis of Guantanamo Bay, events taking on the affect of exceptionalism soak up critical energies with considerable effect in liberal societies. '[I]t is the exception that rings liberal alarm bells.' (Johns, 2005)

This paper seeks to send out a distress signal about this development. When exceptionalism soaks up critical energies in liberal societies, it risks suppressing a political reading of the societal. By reading the concept of exception through two of the most 'popular' political theorists of exceptionalism, Schmitt and Agamben, the paper argues that structuring politics around exceptionalist readings of the tension between rule of law and arbitrary political power tends to politically neutralize the societal as a realm of multi-faceted, historically structured political mobilisations. Or, in other words, deploying exceptionalism as a diagram of the political marginalizes the societal as a political realm.

In doing so it eliminates one of the constituting categories of modern and democratic politics, hence producing an impoverished and ultimately illusionary understanding of the processes of political contestation and domination. The value of the diagram of exceptionalism for international political sociology is therefore fundamentally limited. It writes one of its central and necessary analytical interests out of politics. Interpretations of the political nature of societal relations and their transformation are a central entry point for political sociological understanding of contemporary developments. The argument is not one for simply reproducing traditional sociological visions of society, but rather for being cautious about translating Schmittian and Agambenian exceptionalisms into analytical sociological frameworks and for re-visiting political conceptions of the societal in relation to biopolitics.

Two exceptionalisms

The resurgence of the idiom of exception applies to a range of developments. Among the most important are the 'return of the camps', counter-terrorism legislation and policy, and the increase in military interventions legitimated by humanitarian ethics and/or international law. The return of the camps refers to an increasing re-emergence of administrative internment of mainly foreigners. The camps can operate differently and for different purposes but they share that they intern mainly foreigners on administrative grounds, who are therefore excluded from normal juridical protection. Detention centres for illegal immigrants and asylum seekers like in Woomera (Australia), Lampedusa (Italy) and Sangatte (France) are one example. Waiting zones in airports are another. Besides immigrants and asylum seekers, suspected foreign terrorists are another target group. The camp at Guantanamo is the central reference point here.

The politics of exception are also central to accounts and political contestation of political transgressions of rule of law and the intensification of tensions between the executive and juridical and parliamentary scrutiny in counter-terrorist policies and legislation. One of its most common forms is the debate about the reconciliation of and balance between liberty and security.

The surge in military interventions for humanitarian reasons (Somalia, Kosovo), to protect key principles of international law (intervention in Iraq in 1991), and/or for reasons of international security and national defence (intervention in Afghanistan (2001) and Iraq (2003)) have gone hand in hand with a re-visiting of the status and limits of international law as well as a politicisation of the use of military force in terms of tensions between law and morality, and between international law and the interest or demands of the people of another state.

But the exception has become more than simply an idiom. Especially in analyses of the return of camps, the relation between liberty and security, and tensions between juridical and political institutions and reasoning it has turned into an analytical framework. It formulates analytical and political puzzles and stakes in terms of a dialectic – and its limits – between law and the arbitrary exercise of political power and/or in terms of the direct exercise of sovereign power on bodies, which are placed outside the mediation of legal instruments and political status (i.e. citizenship).

Interpreting administrative detentions, contemporary rights debates in the security sector, externalizations of asylum policies, among others, through the framework of exceptional politics often throws interesting light on the specific mechanisms, the political stakes and historical continuities and transformations of these policies. Drawing on this analytical framework for a more general understanding of the nature of politics, however, tends to reproduce peculiar conceptions of the political. This paper analyses the latter. The concept ‘exceptionalism’ is used to refer to knowledge and politics that makes the idiom of exception to signify a conception of the nature of politics itself rather than merely a statement about the nature of administrative detention, the limits of law in securitized situations, etc. For that reason, the paper does not directly engage with the histories, sociologies and juridical arguments of manifestations of exceptional rule. Its interest lies with imaginaries of the political – of what counts as politics and political stakes – that are embedded in the idiom of exception.

Carl Schmitt and Giorgio Agamben are key authors through which exceptionalism is currently introduced in political and international studies. Analyses of exceptional forms of rule often draw on them. But their work is also used to formulate particular conceptions of the general nature of politics. This is not surprising given that their analysis of the nature of instances of exceptional rule underpins a general conceptualization of the political.

While Schmitt and Agamben are often quoted together and while Agamben heavily draws on Schmitt’s work they develop a quite different understanding of exceptionalism. As a matter of fact, Agamben’s work declares the bankruptcy of the Schmittian diagram of exception. Schmitt works largely within legal constitutionalist interpretations of the exception. Drawing on Benjamin’s critique of these readings and Foucault’s work on biopolitics, Agamben tries to conceptualize what politics means when these constitutionalist conceptions have completely broken down.

In particular Agamben challenges two presumptions. First, for Agamben the dialectic relation between law and politics which is central to Schmittian framings of the exception has collapsed. Law and politics have become self-contained systems or are united in one ‘person’. In both cases law is still referred to in politics but does not have any significant bearing on it. Schmitt, similar to many of his liberal contemporaries, retains that the dialectic relation between law constituting power and legally constituted power is central to defining the political, i.e. sovereignty. Some

make a case for the contemporary relevance of his work for international studies, for example, precisely because it opens up a political reading of (international) law within a realist world view.

Secondly, Agamben displaces the societal with life. The political nature of the societal was an important stake in Schmitt's work. The question of how societal forces could enter and bear upon the political realm was central to political thinking and practice at the time. Pluralist understandings of interest representation, Marxist understandings of class struggle and nationalist understandings of popular identification animated a struggle over the political nature of societal relation, often but not exclusively conceptualized in terms of state/society relations. A key defining problem for Schmitt was how to constitute the unity of the state when the societal was risking fragmenting it. Agamben's work displaces this focus on the societal with a focus on life as such. For him the defining problem of politics is the relation between sovereign powers and biological life. Agamben's central question is not the unity of the state in the face of societal pressures but the political nature of biological life when the sovereign powers directly act upon life without being mediated through law. Hence, his paradigmatic case is camps and the holocaust rather than the status of presidential power and the democratic problem of retaining unity when the masses and private interests gain in political presence.

Reading Agamben and Schmitt in this way introduces two different conceptions of exceptionalism. While Schmitt's work grounds the political in a conception of the exception, Agamben seeks to ground it in a conception of the exception-as-the-rule.¹ The following sections unpack both forms of exceptionalism. A main thrust of the argument is that both forms marginalize the political nature of the societal. However, while Agamben's contra-societal move is partly a response to the need to rethink sovereignty in biopolitical terms and a critical reflection on the current state of political affairs, the effect is a much more radical, because ontological, erasure of the political conception of the societal than Schmitt's.

Schmitt, the exception, and the spectre of dictatorship

Contestations of exceptional rule, whether in relation to deportations, administrative internment, or the executive emergency powers, bear upon and re-iterate conceptions of the nature of politics in the first instance when they structure political debate around the limits of liberal-democratic government, and more specifically the legitimacy of executive government and the limits of the rule of law². A spectre of dictatorship – the possibility of democracy slipping into authoritarian government because executive power radically dilutes the rule of law – animates the debate. The central political stake revolves around the question: When does liberal-democratic governance exceed its legal and popular constraints to such a degree that it collapses into dictatorship? The spectre, thus, does not refer to a categorisation of regime types but to a form of exceptionalism, i.e. specific rendition of political struggle around the question of the exception as the possibility of dictatorship.

¹ Arguably so far Agamben has not really transferred his diagnostics of the exception in contemporary politics into an explicit and elaborate conception of the political. Nevertheless, his work is clear on the difference (as well as similarities) with Schmitt and it is elaborate enough to highlight some important implications of what the exception-as-the-rule can mean as the basis for a concept of the political.

² In a second instance they bear on concepts of the political when they structure political debate around the limits of the right to live, which is central to Agamben's work (see next section).

Schmitt's work is important in this respect, not as a sociological analysis of the contestation, but as a political theory that articulates exceptionalism through a dictatorial concept of the political. His was not the only one. Marxist debates about the dictatorship of the proletariat, the nature of class struggle and revisionist endorsements of democracy versus communism are among the important alternative literature. As an inroad into understanding the rationale of exceptionalism defined by the spectre of dictatorship as it plays out today with its strong references to the power and limits of the rule of law, Schmitt's work is more immediately relevant, however. His constitutional orientation locates the question of dictatorship in a legalistic framing of politics, which is characteristic of many of the current debates on exceptional politics, rather than a revolutionary class struggle³.

Schmitt's exceptionalism consists of two key elements:

- first, the formulation of the political within a legal constitutional *problematique* that demands a choice between decisionism and normativism
- secondly, the neutralization of the societal as part of the political realm.

The next sub-section looks at the former, the one after focuses on the latter.

Between law and politics

When Schmitt in *Political Theology* defined sovereign 'he who decides on the exception,' he framed political power dominantly in a legal *problematique*. Under the concept of exception he raises the question of what is the proper legal form in a way that allows him to work into one another a key constitutional issue and an issue in everyday legal practice. The starting point is the gap between legal norms and facts. Legal practice consists of applying a normative idea to a factual situation. The idea cannot realize itself. Therefore it requires a decision (e.g. a humanitarian intervention) that crosses the distance between the idea (e.g. law of war) and the facts (e.g. the violent break-up of a state). This guarantee that a decision is made, ultimately irrespective of its substantive content, is the essential characteristic of the legal form for Schmitt.

In everyday legal practice the 'decision' refers to the discretion of judges and juries. Constitutionally it refers to the extra-judicial exercise of political power, and more importantly, the discretion of political executives to decide that the factual condition one faces necessitates transgressing the legally instituted norms and procedures of decision-making.

In both political and legal practice the defining question is 'who decides' rather than 'how to decide.' Schmitt establishes here a critique of liberal normative approaches that seek to enclose sovereign, legally underived decisions within predefined normative procedures. The latter approach limits subjective decisions as much as possible by instituting objective formal and rational processes.

Schmitt's decisionist position partly builds on the critique that normativist approaches cannot deal with situations in which the legally highest authority does not have the actual capacity to make a decision and impose it according to the established procedures. In such a case the gap between fact and law cannot be closed which

³ Schmitt's spectre of dictatorship is primarily a constitutional spectre which is different from what he himself calls the philosophy of history framing of dictatorship, that he associates among others with Marxist approaches. (Die Diktatur, p. III-VII)

means that the normative system comes under critical strain. The relation between actual power and legally highest power, which Schmitt calls 'the problem of sovereignty' (Schmitt, 1985 [1922]:18) then becomes an intense legal problem. In these conditions, for Schmitt the one who holds the actual power to impose a decision must prevail over the objectified normative processes and the legally highest authority so as to rescue the essence of the legal form, i.e. the certainty that a decision is being made. This decisionist perspective thus makes the existence and effective functioning of the normative order depend on the presence of an actual, legally un-derived power that can decide on whether one is in a situation in which the formal and rational processes fail and on what needs to be done in response.

The politics of exception draws a battle line between positivist legal approaches endorsing the legal procedural circumscription of political power and decisionist approaches endorsing the necessity to retain the capacity to politically decide when and how to transgress these procedures 'when the circumstances demand it.' In this rendition politics is primarily structured at the interstice of law and executive government. A tension between rule of law and dictatorship and a debate about the nature of law and political discretion characterises the political contestation.

Schmitt's exceptionalism thus makes a double move. It structures the political question in terms of this particular legal constitutionalist choice organized around the issue of the legal exception and takes position within it in favour of decisionism.

The political elimination of 'the people' and the spectre of dictatorship

Besides taking the decisionist line in the dialectic between law and politics, Schmitt's understanding of the political also seeks to delete the political conceptualization and status of society from the politics of exception. This is the second crucial characteristic of his exceptionalism.

The relation between state and society was a key issue of political debate in the late 19th and early 20th century. Schmitt's *The Concept of the Political* is an intervention in this debate that seeks to 'purify' politics from state-society relations and thus displace politics to a realm where society can no longer be part of the political.

In the opening pages of *The Concept of the Political* Schmitt identifies its main purpose as separating the concept of the political from the concept of state. He argues that mixing concepts of state and the political worked as long as the state existed as an entity that confronted non-political groups and affairs without recognizing society as an antithetical force or as long as the state stood above society as a stable and distinct force.

The equation state=politics becomes erroneous and deceptive at exactly the moment when state and society penetrate each other. What had been up to that point affairs of state become thereby social matters, and, vice versa, what had been purely social matters become affairs of state – as must necessarily occur in a democratically organized unit. (Schmitt, 1996 [1932]:22)

The remainder of the book is a proposal to define the political on the basis of more specific political categories that are not tied to the historical form of the state.

Defining the essential characteristic of the political is thus a 'purification' of politics from the historical form of the state. Placing the need for this at the historical conjuncture when societal forces become political by bearing directly and forcefully on state practice makes this a conceptual strategy de-politicizing society and state-society relations. *The Concept of the Political* thus nicely illustrates how defining what is political and non-political is part of the political struggle in modern democratised politics (Bartelson, 1997) and how the political status of the societal has been an important issue in these struggles.

A 'pure' concept of the political seeks to politically neutralize both liberal and Marxist notions of state-society relations. Throughout his work Schmitt has argued against pluralist notions of interest representation in politics, parliamentarism as an expression of private interests into politics, and more generally against any political significance of the private sphere (Schmitt, 1996 [1932], Schmitt, 1985 [1923], Schmitt, 1996 [1938], Schmitt, 1986 [1925]). Liberalism has often been his most explicit target. He deals less extensively with Marxist notions of state-society relations which tie both the state and politics into socio-economic structure and practice by means of the class struggle. However, they are an equally important target, and one that is more difficult for him to deal with. The most radical Marxist understandings define the political as a class war which brings them close to his concept of the political but nevertheless locate it fundamentally in the socio-economic sphere. It is not far-fetched to argue that while he argued extensively against liberalism, his argument against Marxist notions was largely one by implication and thus a more subversive one of silencing.

At the time two other, sometimes related understandings of state-society relations were politically very prominent: nationalist and fascist notions of politics, the state and the people. Although he criticized romantic expressions of nationalism (Schmitt, 1986 [1925]), collective expressions of nationalism and fascism ultimately proved to be less problematic for Schmitt (e.g. Schmitt, 1985 [1922]), both in his political and intellectual practice in the late 1920s and the 1930s.

This elimination of society from the political is a key component of the spectre of dictatorship. What does this 'purer' concept of the political consist of and what a spectre of dictatorship does it define? Schmitt makes two central moves. The first consists in making fear of the enemy the organizing principle of the political. The second consists in eliminating the political autonomy of the people through a radical top-down interpretation of representation.

First, he makes fear of the enemy the organizing principle of the political. The political is separated from the state by defining the friend/enemy distinction the essence of the political.⁴

⁴ This definition is not as simple as it is sometimes presented. It is linked to distinguishing private from public enemies and civil war from interstate war, to an intensification of inimical relations, and to identifying which are the politically defining friend/enemy distinctions in particular historical periods (e.g. religious groupings, state alliances, etc.). But these finer aspects of how Schmitt defines the political, and which do tend to mess up the neat general definition – leading Derrida to conclude that ultimately the political remains locked in with the concept of State in Schmitt – are not immediately important here.

In one sense the friend/enemy distinction is a formal scheme that identifies the proper political moment as the one of exception. The essential political moment is when the friend/enemy relation intensifies and structures a situation in which the normative procedural constraints upon political power have to give way to the necessity to face the enemy. This reading formalizes the distinction into a code through which Schmitt asserts the autonomy of the political from law and the primacy of the exception over the norm. The authentic nature of the political act is a decision that cannot be constrained by any normative foundations. The exceptionalist concept of the political is an expression of the primacy of the exception over the norm in the constitution of political order. Order emerges not primarily from interpreting norms and deriving specialised norms from central principles. Rather order emerges in the first place from definitions of the definition of exceptions (Prozorov, 2005). The factual pure act of deciding what to do when normative frameworks do not provide the answer is the moment of authentic political creation.

But such formalistic reading misses an important point. What is implied by choosing the enemy/friend distinction to insert this exceptionalist conception of the political? The works by Neumann, Kirchheimer and Heller indicate that using the friend/enemy distinction to make this move has particular substantive consequence. With Schmitt, they share the idea that political practice cannot be reduced to law and legal procedures. However, for them law transgressing politics is grounded in the need to institute greater equality rather than the need to face a mortal enemy. Against some liberal legal positivist they argue that the people need to be able to question the supremacy of law if a progressive politics is to be possible. But against Schmitt they ground this transgression not in an existential enemy but in freedom and the progressive reduction of inequalities.

By choosing the 'enemy' as the organizing principle of the political, Schmitt does politically something very substantive, indeed. He renders politics into a politics of fear, which for Montesquieu was the defining principle of despotism. As Neumann argued in two seminal essays *The concept of political freedom* and *Angst und Politik* structuring politics through the principle of fear of the enemy fundamentally undermines democracy, first by displacing the principles of freedom and justice (Neumann, 1996 [1953]), and secondly by reinforcing caesaristic political identification (Neumann, 1954). Caesaristic identification structures relations between the people and leaders in such a way that the former transfer their political autonomy absolutely to the leaders. The psychological and sociological detail and adequacy of this process, is not essential for the argument here. What matters is that integrating a political system around fear of the enemy is a dictatorial principle of governance that reinforces executive authority and that organizes politics around the idea that people out of fear of the enemy surrender their individual capacity to interpret and act in the world to the leadership. The political leadership absorbs all political agency. The dialectic relation between a people that are a quasi autonomous political force and the leadership that acts in their name, which is central to democratic governance, gives way to unity through a process of radical identification with the leadership, consequently shifting democratic politics into dictatorship.

Schmitt conceptually reinforces this collapse of the distinction between the people and political leaders through a particular interpretation of representation. The people do not exist as a multi-faceted and autonomous political dynamic that forcefully bears

upon political leaders. Rather, as political entity, they only exist by being called into existence by the ruler. Representation is here not a question of mediating between political leaders and the various political dynamics that exist in society. Rather it becomes a technique of a decisive political authority who asserts a mystic or organic unity between a sovereign leadership and the people. The leader is the only one capable of expressing the people's interests and desires politically.

The latter is one manifestation of a more general characteristic of Schmitt's work. He radically discredits all conceptions that allow autonomous political expression and mobilization of societal interests and identities. In *The Concept of the Political* this move takes the form of asserting a *Volkisch* unity. In *Crisis of Parliamentary Democracy* the move consists in separating liberalism from democracy, whereby the former refers to pluralist interest representation and the primacy of argumentation and compromising to reach political decisions and the latter stands for the unity between the people and the political leadership. In *The Leviathan in the State Theory of Thomas Hobbes* the move is visible in the one critique of Hobbes Schmitt introduces. For Schmitt Hobbes' main weakness was to allow private freedom of opinion. Retaining some form of autonomous opinion formation risked to spill over into the public realm, thereby fragmenting it into a plurality of interests.

Society as a realm of political struggle

A number of important points come out of this reading of Schmitt's work. The spectre of dictatorship, that defines this form of exceptionalism, is not simply the danger of decisionism in a constitutional structuration of politics as a choice between legal positivist normativism and constitutional decisionism. It also concerns the imposition of a pure concept of the political that institutes fear of the enemy as its essential, organizing principle and that more generally seeks to delete the democratic dialectic between the people and the political leadership. At stake in this exceptionalism is not simply the capacity of the rule of law to restrain arbitrary exercise of political power but also the political capacity of the people.

The 'people' is not exactly the same as 'society' and 'societal forces'. The latter refers to a range of specific renditions of the former, especially the societal articulation of interests expressed in liberal pluralism and polarization and mobilization around class relations as expressed in Marxist revolutionary thinking. But it is precisely this rendition of the political capacity of the people in terms of the societal as a realm of political struggle that I want to retain as the central political stake from the Schmittian form of exceptionalism⁵.

What I mean by 'society as a realm of political struggle' is that social forces and conditions have to be conceived of simultaneously as objects of politics that are positioned and constituted within a multiplicity of socio-economic structures and strategies and as subjects of politics which gain from their structural position and strategies a capacity to change a collective predicament. [Lukacs] This political capacity of 'the people' was a key political stake in the 19th and early 20th century. It stood for the political significance of struggles within society, rather than the political significance of limiting executive government and the limit of rule of law. This is the

⁵ It also means that the focus of debate is not on the constitutional or extra-constitutional practice of the citizenry. Leonard C. Feldman's paper 'Judging necessity: democracy and extra-legalism' offers an excellent discussion of this constitutionalist reading of 'the people'.

question that exceptionalist structurations of politics always risks squeezing out of the political.

In this reading the spectre of dictatorship identifies the marginalization of the political significance of societal struggles as that what is at stake in exceptionalist renditions of the political. This form of exceptionalism locks politics into a question of the relation between law and the transgressing exercise of political power and integrates political relations on the basis of fear and the curtailment of societal interest articulation in the political realm.

Illustration: liberty security debates

The current liberty-security debates are an example of how this form of exceptionalism can structure contemporary political practice. The spectre of dictatorship defines both competing problem definitions and competing solutions. What is LSD but a structuring of political positions at the interstice between rule of law and its governmental transgressions in which exchanges of fear play a key role?

A concern with the limits of liberal-democracy integrates the different positions into a political field. The issue is not so much if liberal-democracy will be displaced by a dictatorial regime. Not regime change, but the acceptable forms of liberal-democratic government define LSD. That is why the key language in LSD is balancing, reconciliation and trade off and not revolution, *coup d'état*, etc. Dictatorship remains largely a spectre; whatever form of reconciliation, balancing or trade off is defended the dispositions in the field take shape around the extent to which one can undermine liberal-democratic form of politics without it collapsing into its other –dictatorship.

LSD endorses primarily a legalistic conception of politics. The tension between liberty and security that it defines as the central political challenge is nothing more or less than the challenge of how to organize the rule of law and its governmental transgressions. The key struggle is between a liberal defence of continuing to strongly circumscribe governmental power by legal procedures and the protection of civil rights, even in conditions of insecurity and a decisionist position that emphasises the necessity for extended governmental powers to protect the rule of law and rights by transgressing them. This scheme operates both in domestic relations and international relations.

LSD integrates this legalized political field further through a politics of fear. Fear is a central motive in the way the different positions account for their interventions. The people are bound into a reinforcement of executive government by being reified as fearful of the enemy. The important point here is not whether or not 'the people' are afraid but rather that security measures inscribe fear of the enemy as an emotion or motive that needs addressing into the political field. We can call this politics of fear that politically endorses executive power and its capacity to secure a territory and population against internal and external enemies and assure a fearful people a political realism of fear.

The politics of fear is not limited to politically circulating the immanence of violence, crime and the enemy and reifying a fearful population, however. Another form of fear also circulates in the political field: fear of the state. The argument for the protection of civil liberties is based on a distrust of the state, the need to protect the people from

the arbitrary violence and decisions that the state can impose. Rule of law and civil liberties protect citizens from the volatility and violent power of their own state. It mobilizes against the institutionalisation of 'arbitrary, unexpected, unnecessary and unlicensed acts of force' by public institutions and 'habitual and pervasive acts of cruelty and torture performed by military, paramilitary and police agents.' (Shklar, 1989:29) Constitutional rights and more generally a proper institutionalization and maintenance of rule of law are the key mechanism for protecting citizens. This liberalism of fear is equally important in the constitution of LSD.

Security arguments open up to inscribing fear as an organization principle in the political domain. Liberty arguments fight this move in the name of a liberalism of fear.

LSD appears here as a traditional choice between procedural liberal and realist decisionist understandings of law and a related choice between liberal and what we could call realist constitutions of fear. Programmatically speaking, i.e. in term of the means and ends, they are on the opposite end of the debate. Diagrammatically, i.e. the rationality of their interaction – that what is articulate in the relation between them – they structure politics similarly in the interstice between law and government and as a question of fear.

One can detail each of these programmatic choices extensively but for the purpose of this illustration a diagrammatic reading of the function of constituting politics in terms of this choice is more relevant. The diagrammatic reading tries to understand what happens by constituting politics as a choice between these positions. In other words, it focuses on the function and form of the drawing of the line rather than the detail of the characteristics of the programmes that exist on each side of the line.

When reading the relation between the key positions diagrammatically we can see that societal forces are fundamentally depoliticized. LSD squeezes society as a realm of political struggle largely from the conception of politics it enacts. The societal only enter the realm of LSD as 'citizens needing protection from the enemy and/or the state,' 'citizens as fearful beings that need to be reassured,' and 'a realm that needs to be policed in so far it is a locus of violence.' Society thus exists as a realm of government, something governments will act upon but not as a realm of political struggle. Politics is fundamentally a question of law and executive government. This conception of the political is produced by both the liberals and realists in the liberty security debates. When Fleur Johns observes how exceptionalism soaks up critical energies with considerable effectiveness in liberal societies, she seems to lament the loss of something else, of some other form of critical energies (Johns, 2005:629).

Agamben, the exception-as-the-rule, and the spectre of life

This exceptionalism driven by the spectre of dictatorship plays out intensively in current politics. However, the idiom of exception at times also seems to articulate a concern that the politics of exception are not contesting an exceptional condition but rather have become normal politics. This idea that the exception is now the rule is often an intervention in the politics of exception to emphasise that governments have ever more relied on declaring emergency situations or exceptional crises to justify increasing executive and administrative governance (Scheuerman, 1999). But they

largely leave the terms of the debate, that we read through Schmitt's exceptionalism, intact.

Especially in analyses of the return of camps one finds traces of a different reading of the exception as the rule, however. They emphasise how camps demonstrate the direct exercise of sovereign power upon the physical, bodily life of people in a locale that has no relation to the judicial space. This reading of camps has been heavily criticised, especially for its argument that camps radically detach politics from legal practice. Of interest to this paper, however, is that this idiom of exception as the rule in this particular form articulates a different exceptionalism that displaces the spectre of dictatorship with a spectre of life. The notion of the exception-as-the-rule shifts here from a descriptive, normative term that largely functions within the politics of exception into an alternative conception of the political. It identifies a fundamental shift in what politics means.

This section identifies the characteristics of this exceptionalism through the work of its foremost theorist, Giorgio Agamben. In his work the exception-as-the-rule consists of two central developments:

1. the collapse of the dialectic between law and anomie and by implication the dialectic between law and politics;
2. the displacement of the spectre of dictatorship by the spectre of life.

This form of exceptionalism declares the bankruptcy of the Schmittian exceptionalism but implies a much more radical elimination of the societal as a political realm.

Collapsing the (dialectical) relation between law and politics

In reference to Schmitt, Agamben conceptualizes sovereignty at the threshold between law and anomie. The sovereign is both part of and external to the legal constitutional system (Agamben, 1998). This means that sovereign power is an aporia. While sovereign authority is defined and sanctioned by law it is not fully subsumed with the law. Sovereign power is also an arbitrary, unmediated capacity to impose rule. The dialectic relation between legally mediated political power and unmediated political power characterises sovereignty. The relation between constitutive and constituting power and the tension between sovereign capacity to suspend law and legal capacity to pull the suspension back into law are two conceptions that articulate this constitutional threshold between law and anomie in politics. One of the central political questions here is when the exercise of power that has crossed the threshold and thus lost its legality can nevertheless be legitimate. The discussions about the legitimacy of humanitarian and other military interventions that are not sanctioned by the UN are one example. The military intervention in Iraq in 2003 saw first an attempt to define its legality. When this failed some crossed the threshold in the name of extra-legal prerogatives such as ethics and national security. This move then reinforced the contestation legality as a condition for legitimate interventions in another country.

This reading of sovereignty makes the exception the defining constitutional issue of the political and places Agamben very closely to Schmitt's work. However, the most interesting part of Agamben's work is not this mirroring of the Schmittian constitutional problematique but rather how he declares it bankrupt. For Agamben, the current predicament is not characterised by an intensified politicization of

constitutional matters. At issue is not how to do politics at the interstice between law and anomie but rather the transformation of politics when the threshold has become irrelevant. The political predicament has changed from the exception to the-exception-as-the-rule.

The exception-as-the-rule refers to a condition in which the dialectic relation between anomy and law that constitutes juridico-political order has collapsed. Agamben draws the distinction between the politics of exception and the exception-as-the-rule most clearly when he compares Schmitt and Benjamin. He sides with Benjamin against Schmitt. (Agamben, 2003:89-109) For both Schmitt and Benjamin the stake of the political game is anomie – the failure of the state to reign in undetermined life. Schmitt seeks to bring anomie back into the folds of law by positing a sovereign who simultaneously enacts anomical and legal life and therefore has the capacity to impose rules of right and wrong upon anomical life. Anomie is primarily defined as a normative vacuum that needs to be brought within a normative framework. To do this sovereign power needs to be able to act outside of the legal framework so as to constitute a constitutional order where none is. Therefore the sovereign embodies and articulates in his decisions the very threshold between anomy and law. Working across this threshold is the central constitutive element of juridico-political ordering.

Benjamin on the other hand seeks to free anomie completely from law. He is looking for a concept of violence that is neither constitutive of law nor constituted by law. He calls this 'divine violence' which is a form of violence that has no reference whatsoever to law; it simply is violence that articulates its own existence. Against Schmitt, Benjamin seeks to retain anomie as pure life, empty of any determination. Benjamin's anomie is the emancipation of life from law. In this reading, the state of exception is a zone of absolute indeterminacy between law and anomie. The sphere of creation (life) and the juridical order (law) are both dragged in an eschatology without end where there is no redemption, no transcendence of the factuality of being. It is a catastrophe in which the dialectic relation between law and anomy ceases to structure societal and political practice. The political is not about bringing interventions, camps and revolutionary action back into the folds of a constitutional order. On the contrary the political stake is the enactment of anomie that has completely broken its relation to law. (Agamben, 2003:96-99)

In these conditions suspending rights of due process to address a severe security threat, seeking to reframe the 'balance' between liberty and security, and asserting the necessity of executive decision to tackle a severe crisis speedily are illusory policies. They attempt to reproduce a situation which is full of power and in which power remains conceptualized in its relation to law by pretending politics can enact life through or in reference to law.

Agamben's exception-as-the-rule also radically differs from the idea that law is a political fig leaf. The point is not that law is used to legitimate self-interest but the more radical point that the relation between law and politics has become an historical ontological irrelevance. Under the exception-as-the-rule, politics does not require law to legitimate itself; political history is beyond the legal/political dialectic. When the relation between life as it is factually lived and the judgement of its righteousness in law and legal practice has collapsed the diagram of exception is an illusion that

sustains a political practice that is far beyond the juridico-political order by coating it in a language of exception.⁶

What happens if factual life is running its course without regard for law and legal practice? Under these conditions law becomes a self-referential practice that is no longer defined in its relation to the factual life that is being led. We are in a situation of anomie that is empty of any determination of life. [2003: chapter 4 – pp. 89-109]

By implication, Agamben draws a radical, systemic split between law and politics. Life is not longer politically enacted through a dialectic play between a normative force that seeks to constrain politics by crystallizing a rigid normative system and an anomical political force that seeks to transgress law by applying the force-of-law without norms. Politics and law become both simply living practices that may refer to each other but that are actually not related. [Ag 2003]

This conception of law and anomie erases one of the defining elements of the politics of exception. The transgression of constitutional constraints is not a constitutional political stake but an irrelevance. Suspension of law, which is a move of transgressing the norm so as to retain its applicability, has become meaningless. The spectre of dictatorship dissolves and is displaced by a new framing of politics: the spectre of pure life [Ag 2003 p. 107].

The spectre of life and the dissolution of ‘society’

Despite its critique of Schmitt’s conception of exception, Agamben’s reading of the exception-as-the-rule produces politically a similar effect to Schmitt’s. It squeezes society out of the political diagram. In Agamben’s programme this is not done by focusing sovereignty onto the tension between law and the need for transgressive government and absorbing the people into the political leadership by means of nationalism, but rather by putting the political significance of ‘life’ as the defining political problem.

As argued in the section on the diagram of exception, the political significance of society was the defining element within which the Schmittean politics of exception sought to delete ‘the political capacity of society’ by writing it out of the very concept of the political and by collapsing the sociality of the people by defining it as a *Volk* brought into existence by the *Führer*. However, within the diagram of exception, in which this Schmittean move is one programmatic option, societal mobilization and categories always remained visible as a defining political stake. It was the stake whose politicization and depoliticization was at the heart of the political and intellectual struggle.

In the exception-as-the-rule the category of ‘life’ takes precedence over societal categories, like class, socio-economic exclusions, and pluralism of interests. The latter categories are not deleted but reframed in biopolitical terms in which the distinction between naked, anomical life and mediated life is central. ‘Society’ referred to a multiplicity of categories of human life, each rendered through specific mediations in

⁶ In that sense one can argue that under these conditions constitutional legal theory is of not much help for understanding politics. Agamben’s position is therefore an interesting one. Despite engaging extensively with constitutional legal theory his understanding formulates an anti-theory that relocates politics beyond the grip of constitutional theory.

an attempt to think politics as a relation between State and the people. Mediations like interests, socio-economic property relations, nationality, constituted life into various political societal subjectivities and processes. Anomical life as unmediated life fades out the political importance of these mediations and asserts that under the exception-as-the-rule life as such has become the defining political stake.

For example, when discussing the question ‘What is a people?’ Agamben introduces the people as a split category [Agamben 2000, pp. 30-32] that can refer to both the subjects excluded from politics and the politically included citizens. The former are identified as naked life. The important move here is the specific rendition of the split in biopolitical rather than socio-political or socio-economic terms. Although exclusion is political or socio-economic, for Agamben the key element is that the excluded are identified as naked life. A socio-economic reading of exclusion would read the split in terms of ownership of the means of production (class) or access to market opportunities (liberal economic exclusion) rather than a mere reduction to naked life. The category of life thus does not simply substitute for the category of class but renders the latter in different terms. This example indicates the subtlety of the move Agamben makes but at the same time shows how central the category of life – what he refers to as a biopolitical reading – is for the displacements he establishes in his work⁷.

By being separated from the juridico-political order life gains a self-referential purity, in Agamben’s framework. In the exception-as-the-rule, life emerges that is not mediated by law (legally constituted life) and that itself is not seeking to mediate law (law constituting life). Life is simply factual. Its purity does not depend on an innate, substantive characteristic of life but on the specific relation it establishes to itself. Pure life is a means that presents itself in its own mediality, that is, without deriving its meaning from the ends it seeks to realize (Agamben 2003, p. 103, p. 105 [but also the little book ‘Means without Ends’]).

Agamben refers to the emergence of pure life as a ‘catastrophe’ that completely collapses the juridico-political order, and its conception of sovereignty.⁸ His is a vision of apocalyptic politics. Not fear of the enemy but the collapse of juridico-political order into anomical, self-referential life is the defining principle of this politics. The political struggle is split between governmental renditions of bare life – the sovereign objectification of life as an object of governance without any reference to law – and life as anomy – the fundamentally unmediated, purely contingent, anomical nature of life. It is a choice between camps and embracing anomie. The camp is the matrix of power latching directly onto life. It is ‘a space in which power confronts nothing other than pure biological life without any mediation.’ [Agamben 2000 p. 40] Anomie is the matrix of another politics of life; one in which life is not an object but a subject of power, an agency that flows, changes, exists. ‘Politics is ... the sphere of a pure mediality without end intended as the field of human action and of human thought.’ [Agamben 2000 p. 116]

⁷ Agamben’s emphasis on ‘life’ comes out strongly when reading the two volumes on *Homo Sacer*, *Homo Sacer. Sovereign Power and Bare Life* and *Etat d’Exception. Homo Sacer II*, together.

⁸ I am reading Agamben’s interpretation of Benjamin’s work on pure violence into the focus on anomical life that is central to the book *Etat d’exception. Homo Sacer II*.

Contrasting Agamben's reading of biopolitics with Foucault's is instructive here. It shows how Agamben's vision is a particular rendition of the biopolitical stakes defining the political diagram of the-exception-as-the-rule. Foucault's work on biopolitics, discipline and governmentality similarly to Agamben addresses the emergence and governance of life in its biological rather than legal existence. However, unlike Agamben this life is not an empty, i.e. unmediated space or entity. In Foucault's reading life is rendered not primarily through 'being freed' from the politico-legal order but by being constituted through the mediation of technologies and professional knowledges. Not pure life but life that exists through its mediation by objective forms constituting relations between humans and between humans and their environment on technical and scientific grounds rather than juridico-political grounds. The 'freeing' of life from constitutional juridico-political renditions, as in the politics of exception, can thus be conceptualized in terms of anomical, pure life, as well as life that is highly mediated by technocratic and societal processes.

At this point we can see that the exception-as-the-rule contains a particular politics, a contest over how to conceptualize life that is free of the juridico-political order, of how to constitute this life as both subject and object of politics. Foucault's post-structural vision displaces a juridico-political constitution of practice with life being constituted through science and technology. This vision retains an important role for the political capacity of societal developments and practices.

Agamben's programme tends to reinforce an anti-societal position. His work displaces the struggles over mediating forms constituting both political capacities of life and objects of biopolitical governance with unmediated life. Doing so seeks to erase ontologically the problematic of the political capacity and significance of 'the people' as a multidimensional differentiated sociality. This interpretation of life has its roots strongly enough in Heidegger's thinking for Adorno's critique of the latter to apply. Asserting an undifferentiated factuality of life strips away all socio-economic forms through which their life is constituted into something social. It is more than a depoliticization of the societal as political; it is its ontological erasure.

The Agambean vision of exception-as-the-rule is thus fundamentally different from Schmitt's. Instead of casting politics as a struggle over the relation between law, transgressive rule and the political capacity of the people as a differentiated societal entity, Agamben casts it as a question of the relation between unmediated life and power in which relations between law and politics and politics and the people have no ontological relevance. The politics of exception has shape-shifted into a politics of the exception-as-the-rule.

Inserting 'society' into the diagram of exception-as-the-rule

Having said that, Agamben's category of the exception-as-the-rule is not unproblematic. While giving us an insight in the political metaphysical predicament of our times, Agamben erases 'the societal' out of the diagram of exception-as-the-rule by positing pure life as that what remains when the constitutional-legal diagram collapses. As a result we end up with a choice between camps or anomie. But, has 'society' simply disappeared from the diagram? Is this pure life that anomical, or is it actually extremely mediated? The contrast between Foucault and Agamben at least suggested that there is a possible other answer, one through which the political

capacity of societal practices can be re-inserted into politicisations of current security practices.

Instead of following Agamben's focus on legal mediation of life, the question that needs asking is how relations are mediated when law in its constitutional sense has become less relevant.

Foucaultian work on the genealogy of biopolitical practice offers an alternative view to Agamben's, as already hinted at earlier. Foucault's work is very much about how the constitutional diagram of politics, even in the 18th and 19th century, at best, only presented a slice of the full picture of how power operated. In analysing how power operates through dispersed, fragmented practices that nevertheless weave a diagram of constituting and governing societal relations, the total categories in which politics has been conceptualised in the constitutional diagram of exception – state versus society, law versus politics, sovereignty – collapse into a relational picture of various expert discourses, professional knowledges, and institutional practices governing a biological and economic understanding of life. Instead of a pure life, biopolitical governing constitutes an extremely detailed mediation of social and individual being.

What does this mean for interpreting the politicisation of security practice? The relation between security and freedom is not mediated through its relation with law. But security practice becomes a technique, a method of rendering freedom, that exists in a dispersed, fragmented expansion of the formation of a vast range of social practices through policing and military technology, knowledge, skills, etc. The spaces of contestation are fragmented over a variety of public, quasi-public and private technocratic forums and institutions and localised, infinitesimal forms of resisting these governmental technologies. The grand categories of the diagram of exception do not apply here. It is an administrative, fragmented understanding of social relations that are governed in an extremely penetrating way through various technological and professional mediations. The situation is only anomalous in the sense of 'the law' not being central to how political power works on life. Life is not pure; it is not represented in its own mediativity.

This point of view implies a reformulation of the concept of politics. Obviously, politics is not conceptualised in relation to state sovereignty and rule of law. But neither does it fit the matrix of camps as a direct constitution and enactment of naked life by power. The professional and technological practices are contested both among the professionals and by those practices that they try to mediate or that they have excluded from mediation. These practices and their bearing upon social relations and individual being often are not articulated primarily within the field of professional politicians and the state institutions. In this rendition, politics as the contestation over the collective structuring of relations between human beings and between them and their environment has 'left' the state and has been absorbed by the societal practices. Politics becomes fragmented, dispersed. The travelling and clustering of knowledge, skills and technologies and the formulation of counter-knowledge, skills and technologies is the realm of politics.

Example: not future of international law but the cooperation between intelligence services and the changes in their methods.

This understanding of how power operates in the diagram of exception-as-the-rule, is closer to modern societies but also suffers less from a metaphysical rendition of total categories, i.e. categories that structure fragmented, multiple, multidimensional practice into a few grand oppositions around and through which political struggles are organized and accounted for.

As RBJ Walker argues in relation to Schmitt:

[they grant] little purchase on how these exceptions are in fact made, how they come to seem legitimate, and how they manage to destroy the liberties they are supposed to secure (...) [on] how those limits in turn generate identities, agencies and institutions that work through practices of self-limitation, and transgression. (Walker, *Lines of insecurity: international, imperial, exceptional*. SD 37:1 2006)

Accepting this view as an alternative rendition of what goes on in conditions of the-exception-as-the-rule, implies that the exception-as-the-rule is not simply a condition, but also a politics, a contestation over interpretations of the nature of politics in the collapse of the diagram of exception. Instead of a confirmation of the Agambenian conception of politics, the exception-as-the-rule becomes a proper diagram within which different positions are articulated around the nature of biopolitics. One of the key stakes in this diagram is the assertion or denial of the political capacity of societal relations; whether to assert the camp as the form of politics and anomical life as its other or whether to focus on the travelling and clustering of professional knowledges and technologies and their contestation.

Conclusion

The main argument of the paper has been that Schmitt and Agamben reproduce a marginalization of societal forces.

Why is it important to get a societal reading back into the security-liberty debates? Agamben's concepts are valuable for understanding important changes that have taken place in the 20th century and that are continuing in the 21st. But they also are to a considerable extent depoliticising. Life becomes a factual given and the overall image is an apocalyptic one in which the mediations that differentiate this life and constitute it relationally have collapsed. Such a notion of life may draw attention sharply to particular forms of governing, especially the increasing importance of life sciences in informing governmental concepts and techniques. However, such a concept of life does not identify the lines of force and struggle that are constituted precisely by and constitute themselves social relations. Agamben's work tends to guide the analysis to undifferentiated, factual life. I follow Adorno and other in their critique that such a concept of life is not political, that it misses how this life is turned into relations through various socio-economic, technological, scientific, legal and other mediations. It are these mediations that are the object and structuring devices of political struggle and they are the mechanisms through which security practice renders freedoms.

Drawing analytically on Schmittian and Agambenian frames of reference, and framing politics in terms of a problematique of exceptional politics seriously risks reproducing this anti-societal move -> implications for IPS.

Readings of the current security predicament as structured through the exception therefore tend to produce a political move of marginalizing the societal. This seems particularly problematic since it reproduces the idea that violence and threats are driven by outlaws, by those who are outside of society, those who have no right - and sometimes at best a limited capacity - to enter the legitimate political field. It denies the complex and fragmented nature of contemporary politics and political struggles that are taking place.

To break away from the hold that the spectre of dictatorship currently has over security debates, the concept of society needs to be re-introduced as a realm of political practice. Such a concept includes a normative element of understanding society as a realm in which competing notions of the good life are struggled over. It also includes a sociological element of understanding the defining cleavages around which struggles are organized. Are riots acts of cruelty or vandalism or do they also function as a strategy to politicize issues by those who have no capital to enter the political field?

Re-inserting it in the current debate on the exception is not a simple matter. It raises difficult questions such as which processes to give political status and which not; which forms of violence are political and which are cruelty, ...? Inserting these issues as structuring questions in debates about camps, liberty-security etc. will have a dramatic impact on how the debates are conducted. It will rip open the legalistic notion of politics while bringing the societal back in as the political.

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