

# The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society<sup>1</sup>

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The idiom of exception is again central to the politics of insecurity in Europe, the United States, and Australia. One of the key characteristics of the jargon of exception is its suppression of political renditions of the societal. In doing so, it eliminates one of the constituting categories of modern democratic politics, hence producing an impoverished and ultimately illusionary understanding of the processes of political contestation and domination.

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The idiom of exception is again central to the politics of insecurity in Europe, the United States, and Australia. Its resurgence applies to a range of developments. Among the most visible are the “return of the camps” (for example, Andrijasevic Forthcoming; Cultures et Conflits 1996; Guild 2003; Le Cour Grandmaison, Lhuillier, and Valluy 2007; Neal 2006), counter-terrorism legislation and policy (for example, EU Network of Independent Experts in Fundamental Rights (CFR-CDF) 2003; Steyn 2003; Talbot 2002; The Center for Constitutional Rights 2002; van Munster 2004), increased focus on border controls (for example, Lynn Doty 2007; Salter 2007), and military interventions legitimated by humanitarian ethics and/or international law (for example, Reisman 1990, 1999). This article focuses on conceptions of exceptionalism, that is, the concepts of the political that are invested in the idiom of exception. It draws out how exceptionalist readings of sociopolitical developments frame political problems and solutions in a particular way, excluding the political significance of societal practice.<sup>2</sup>

Fleur Johns observed in her analysis of Guantanamo Bay that 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). The liberal critique of current policy developments tends to define stakes and solutions in terms of exceptionalism, that is, a conflict between rule of law and executive, arbitrary government and/or the direct exercise of governing power over biologically, in contrast to politically, defined life. Johns is uneasy about such a development but does not develop why we should take exception to exceptionalism.

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<sup>2</sup>For a different take on this question, one that develops a longer term history of political ideas, see Jens Bartelson’s article “Making exceptions: some remarks on the concept of coup d’état and its history” (Bartelson 1997).

This article introduces one of the main reasons for sending out a distress signal about the rise in the idiom of exception. 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 the exception, Schmitt and Agamben, the article shows that structuring politics around exceptionalist readings of political power tends to politically neutralize the societal as a realm of multi-faceted, historically structured political mediations and mobilizations. Or, in other words, deploying the exception 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 politics (Balibar 1997; Dyzenhaus 1997), hence producing an impoverished and ultimately illusionary understanding of the processes of political contestation and domination (Neal 2006; Neocleous 2006).

### Two Exceptionalisms

Carl Schmitt and Giorgio Agamben are the key authors through whom the idiom of exception is currently introduced in political and international studies.<sup>3</sup> Analyses of exceptional forms of rule often draw on them. But their work also formulates particular conceptions of the general nature of politics.

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 exceptional 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 rebreak after 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, that is, sovereignty. Some make a case for the contemporary relevance of Schmitt’s work for international studies precisely because it opens up a political reading of international law within a realist world view (Zarmanian 2006).

Second, 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 societal struggles risked 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, that is, without the mediation of law. Hence, his paradigmatic case is camps and the

<sup>3</sup>In international relations, see for example, work by Behnke (2004, 2005) and Odysseos and Petito (2006, 2007).

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. 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 an even more radical ontological erasure of the political conception of the societal.

### Schmitt, the Exception, and the Specter of Dictatorship

One of the defining questions of contestations of exceptional rule is: When does liberal-democratic governance exceed its legal and popular constraints to such a degree that it collapses into dictatorship? A specter of dictatorship—the possibility of democracy slipping into authoritarian government because executive power radically dilutes the rule of law—often organizes the debate. The “specter of dictatorship” refers to a specific rendition of political struggle around the question of the exception as the *possibility* of liberal-democracy slipping into dictatorship. It does not refer to a categorization of regime types.

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 political theory in which the specter of dictatorship played a central role. 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 (Kautsky 1918; Lenin 1946 [1917], 1966; Lukacs 1971 [1968]). As an inroad into understanding the contemporary political contestations of exceptions Schmitt's work is more immediately relevant, however. Rather than a revolutionary class struggle, 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.<sup>4</sup>

Schmitt's exceptionalism consists of the following two key elements:

1. First, the formulation of the political within a legal constitutional *problématique* that demands a choice between decisionism and normativism.
2. Second, writing the societal out of the political realm.

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

#### *Between Law and Politics*

When Schmitt in *Political Theology* defined sovereign “he who decides on the exception,” (Schmitt 1985a [1922]:5) he framed political power in a legal *problématique*. The question driving the second chapter of *Political Theology* is “What is the proper legal form?” (Schmitt 1985a [1922]:16–35) The concept of exception is closely tied in with his reworking of the notion of sovereignty in relation

<sup>4</sup>Schmitt's specter of dictatorship is primarily a constitutional specter which is different from what he himself calls “the philosophy of history framing of dictatorship,” that he associates among others with Marxist approaches (Schmitt 1928, pp. III–IV).

to both 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 in applying a normative idea to a factual situation. The idea cannot realize itself. Therefore, it requires a decision (for example, a humanitarian intervention) that crosses the distance between the idea (for example, law of war) and the facts (for example, the violent break-up of a state). The 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-juridical 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.

Privileging the question “who decides” over “how to decide” is central to Schmitt’s critique of liberal normative approaches that seek to enclose sovereign, legally un-derived decisions within predefined normative procedures. The latter reduce 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.<sup>5</sup> In such a case, the gap between fact and law cannot be closed which 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 1985a [1922]:18) then becomes an intense legal problem. For Schmitt, in these conditions, 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, that is, 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 thus 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 which is structured by the spectral question of when the necessity for legal transgression and political decision in democracies flips into the constitution of dictatorship. A tension between rule of law and “dictatorship” and a debate about the nature of law and political discretion characterizes the political contestation.

#### *The Political Elimination of “Society” and the Specter 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 relevance of society. This is the second characteristic of his exceptionalism.

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<sup>5</sup>His legal and political theory also derives from “a political theology conceived in support of domestic absolutism” (Koskeniemi 2004:499). It informs a search for a monotheistic vision of politics that locates the capacity for ultimate decision and judgment in one single authority and a search for transcendence from the murky realities of life. Heinrich Meier’s comparative reading of Schmitt and Strauss is one of the Schmitt readings that makes a very strong case for the importance of political theology in Schmitt’s work (Meier 1995).

The relation between state and society was a key issue of political debate in the late nineteenth and early twentieth century. Schmitt's *The Concept of the Political* is an intervention in this debate. The main task he sets himself is to separate the concept of the political from its historical form, the state by defining the essence of the political. Mixing concepts of state and the political was largely unproblematic as long as the state remained clearly distinct from societal forces.

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 1996a [1932]:22)

At the historical conjuncture when societal forces become political by bearing directly and forcefully on state practice, a conceptual agenda that seeks to “purify” the political from historical forms of the state is a strategy of de-politicizing society and state-society relations. *The Concept of the Political* is an excellent illustration of how defining what is political and nonpolitical is part of the political struggle in modern democratized politics (Bartelson 1997) and how the political status of the societal has been an important issue in these struggles.

Schmitt's targets are both liberal and Marxist notions of state-society relations. Throughout his work, he 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 1985b [1923], 1986 [1925], 1996a [1932], 1996b [1938]). Liberalism has been his most explicit target. He dealt less extensively with Marxist notions of state-society relations which tie both the state and politics into socioeconomic 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 unlike Schmitt's search for an authentic concept of the political they locate the political fundamentally within the socioeconomic sphere.

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, to some extent, fascism ultimately proved to be less problematic for Schmitt (Schmitt 1985a [1922]), both in his political and intellectual practice in the late 1920s and the 1930s.

This elimination of society from the political is a defining element of Schmitt's exceptionalism and the specter of dictatorship that defines it. What does this “purer” concept of the political consist of and what a specter of dictatorship does it define? Two moves are central. First, he makes fear of the enemy, the organizing principle of the political. Second, he eliminates the political autonomy of the people through a radical top-down interpretation of representation.

For Schmitt, the essence of the political is the friend/enemy distinction.<sup>6</sup> Not the relation to the state but the inimical structuration of practice makes them political: “The specific political distinction to which political action and motives can be reduced is that between friend and enemy” (Schmitt 1996a [1932]:26).

<sup>6</sup>This definition is not as simple as it is sometimes presented. It implies distinguishing private from public enemies and civil war from interstate war, a conception of intensification of inimical relations, and identifying which are the politically defining friend/enemy distinctions in particular historical periods (for example, 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 (Derrida 1997)—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 to such an extent that 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 factual pure act of deciding what to do when normative frameworks do not provide the answer is the moment of authentic political creation. It implies a specific conception of ordering, in which political order derives from defining the exceptional rather than from deducing specific norms from general ones (Prozorov 2005).

But such a formalistic reading of the friend/enemy distinction misses an important point. 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 (Scheuerman 1994, 1996; Dyzenhaus 1997).

Thus, 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 second 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 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 a political entity, the people 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 (McCormick 1997:161).

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 (Schmitt 1996a [1932]).<sup>7</sup> In *Crisis of Parliamentary Democracy*, the move consists in separating liberalism from democracy. In binding liberalism to democracy, the former corrupted the latter. Liberalism refers to pluralist interest representation and the primacy of argumentation and compromising to reach political decisions which undermines the unity between the people and the political leadership which is the kernel of democracy (Schmitt 1985b [1923]). In *The Leviathan in the State Theory of Thomas Hobbes*, the move is visible in the one criticism of Hobbes that Schmitt has. For Schmitt, Hobbes's 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 (Schmitt 1996b [1938]).

This reading of Schmitt's work shows that the defining stake in this form of exceptionalism is not only simply the capacity of the rule of law to restrain arbitrary exercise of political power but also the political capacity of the people. The Schmittian specter of dictatorship organizes politics in terms of (1) a constitutional structuration of a choice between legal normativism and constitutional decisionism, (2) an imposition of a pure concept of the political that institutes fear of the enemy as its essential, organizing principle, and (3) the collapse of the democratic dialectic between the people and the political leadership.

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 thought.<sup>8</sup> They conceptualize the societal as a realm of political struggle in which social forces are both objects of politics that are positioned and constituted within a multiplicity of socioeconomic structures and strategies and subjects of politics which gain from their structural position and strategies a capacity to change a collective predicament (Lukacs 1971 [1968]). This political capacity of "the societal" was a key political stake in the nineteenth and early twentieth century. The Schmittian form of exceptionalism depoliticizes precisely this rendition of the political capacity of the people.

### Agamben, the Exception-As-The-Rule, and the Specter of Life

As argued above, in the Schmittian conception of exceptionalism, the dialectic between norm and exception is a central element of political dynamics. One of the concerns in the current debates is that the exception is no longer exceptional but has become the norm. This idea of the exception-as-the-rule is sometimes simply a shortcut for referring to the increasing use of declaring and enacting emergencies and crises to sustain the dominance of executive and administrative governance (Scheuerman 1999). This reading retains the dialectic between norm and exception. At stake is the relation between instituted norms,

<sup>7</sup>For a detailed analysis of the relation between the notion of *Volk*, the total state and conservative revolutionary thinking in the interwar period in Germany showing how a conservative revolutionary notion of *Volk* becomes integrated in a totalizing state project, thus unifying what is potentially a fundamental distance and tension between the *Volk* and the state, see Jean-Pierre Faye's *Introduction aux langages totalitaires* (Faye 2003:57–86).

<sup>8</sup>As Leonard C. Feldman has shown, the idiom of exception also implies another rendition of "the people": the legal status of the constitutional and extra-constitutional practice of the citizenry (Feldman 2006).

legal and parliamentary practice, and exceptionality claims demanding norm transgressing governance (Humphreys 2006; Scheuerman 2006).

However, a more radical conception of the exception-as-the-rule refers to a political situation in which the dialectic between norm and exception, between constituted and constitutive power, has completely collapsed. This conception of the exception is at the heart of Agamben's work; for him, it is the central characteristic of the contemporary political predicament. His notion of the exception-as-the-rule combines the collapse of the dialectic between norm and exception—or, in his terminology, law and anomie—with a specific reading of the camp as a locale and a matrix of the direct exercise of sovereign power upon the physical, bodily life of people. This reading of camps has been heavily criticized, especially for its argument that detaching life in the camps from normative mediations between sovereign powers and bodies does not give a convincing account of what is going on in the camps and largely ignores the significance of the practice of human rights law (for example, Guild 2003; Johns 2005; Puggioni 2006; Le Cour Grandmaison et al. 2007). Of interest to this article, however, is that this idiom of exception-as-the-rule articulates a conception of exceptionalism that combines a collapse of the defining dialectic between norm and exception with displacing the specter of dictatorship with a specter of life. This section will argue that Agamben's conception not only declares the bankruptcy of Schmittian exceptionalism but also implies a 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 within the law. Sovereign power always retains an arbitrary, unmediated capacity to impose rule. The dialectic relation between legally mediated political power and unmediated political power characterizes 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 about the conditions under which 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 debate about the importance of 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 characterized 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 nature of politics when the threshold has become irrelevant and the political predicament has changed from the exception to the exception-as-the-rule.

Agamben draws the distinction between the politics of exception and the exception-as-the-rule most clearly when he compares Schmitt and Benjamin (Agamben 2003:89–109). In Agamben's reading, for both Schmitt and Benjamin



the stake of the political game is anomie—the failure of the state to reign in undetermined life. The historical reference was the radical polarization of German society by revolutionary movements, economic crisis, and the political weakness of the Weimar republic. Schmitt seeks to bring anomie back into the folds of law by positing a sovereign who simultaneously enacts anomic and legal life and therefore has the capacity to impose rules of right and wrong upon anomic 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 to law; it simply is violence that articulates its own existence (Benjamin 1996). 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 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—in other words, a revolution and violence that are simply means without redeeming ends (Agamben 2003:96–99).

In line with Benjamin’s notion of divine violence, Agamben draws a radical, systemic split between law and politics. Life is no longer politically enacted through a dialectic play between a normative force that seeks to constrain politics by crystallizing a rigid normative system and an anomic 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 (Agamben 2003).

For Agamben, this condition of the exception-as-the-rule makes debates about suspending rights of due process to address a severe security threat, seeking to re-frame the “balance” between liberty and security, and asserting the necessity of executive decision to tackle a severe crisis illusory. They attempt to reproduce a situation in which power remains defined in its relation to law—either constrained by it or transcending it—when in fact the dialectic between anomie and law that makes such references politically significant no longer operates effectively.

These “illusory” debates are not without political significance, however. It has an important ideological function, according to Agamben. They nurture the idea that law has still a grip on politics and life, while the practices that are deployed are radically detached from any legal framework. In hiding this radical change in the nature of political power, debates like the one on reconciling liberty and security become an ideological move that reads a radical transformation in the exercise of power back into a familiar framework as if nothing has really changed. In Agamben’s understanding of the current predicament, such a move sustains the direct exercise of political power on life which manifests itself among others in camps but also in the violent interventionist international politics following 9/11 (Agamben 2003:144–148).

Agamben’s exception-as-the-rule 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 idea 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. The idea of legitimacy retains the idea that the relation between law, as a legitimating practice, and political power is an important stake that structures political debate and practice. Defining the new politics of exception-as-the-rule, however, are the practices that radically separate power—and violence—from law (Agamben 2003:148). In the latter condition, politically significant life runs its course without regard for law or legal practice and law becomes a self-referential practice that operates at a great distance from factual life. It is a condition of anomie that is empty of any determination of life (Agamben 2003:89–109). This leads us to the second difference between Schmittian exceptionalism and Agamben's definition of the exception-as-the-rule.

*The Specter of Pure 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 a similar effect to Schmitt's. It squeezes the societal out of the political diagram. In Agamben's work, 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 and a politics of fear, but rather by putting the political significance of "life" as the defining political question. In the exception-being-the-rule, the specter of dictatorship, that was central to the Schmittian problematique of exception, dissolves and is displaced by a new framing of politics: a specter of pure life (Agamben 2003:107).

As argued above, the political significance of society was a defining element within which the Schmittian 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 into a *Volk* brought into existence by fear of the enemy and the *Führer*. But that also implied that societal categories and mobilizations remained visible in Schmitt's work as a defining political stake whose politicization and depoliticization is at the heart of the political and intellectual struggle.

In Agamben's reading of the exception-as-the-rule, this stake is redefined. The category of "life" takes precedence over societal categories, like class, socioeconomic exclusions, and pluralism of interests. The latter categories are not deleted but reframed in biopolitical terms in which the distinction between "anomic life" and "mediated life" is central. "Society" referred to a multiplicity of categories of human life, each rendered through specific mediations. Mediations like interests, socio-economic property relations, and nationality constituted life into various political societal subjectivities (for example, class, interest group) and processes (for example, interest competition, polarized struggle over property rights). The notion of "naked" or "anomic life" fades out the importance of these mediations for contemporary politics and asserts that under the exception-as-the-rule today "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 2000:30–32) 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 sociopolitical or socioeconomic terms. For Agamben, the key element is that the excluded are identified as naked life. A socioeconomic 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.

For Agamben, politics today centers on conceptions of life that are simply factual. Life in biopolitical times becomes pure life. It is a means that presents itself in its own mediativity, that is, without deriving its meaning from the ends it seeks to realize (Agamben 2000, 2003:103–105). This conception of life can be called “anomic” because it exists purely in relation to itself. It is defined neither through its relation to external legal, economic, and other ends nor through histories of the constitution and contestation of certain forms of life, like for example legal life, that is both mediated by and mediating law, and contests of universal norms, or class life, that is both constituted by and constituting socioeconomic relations and conflict.

To understand the implication of inserting pure life as the defining category of exceptional politics, it is worth recalling Adorno’s critique of Heidegger and other existentialist jargons of authenticity (Adorno 1973 [1964]). The jargon puts the assertion of and search for authentic life at the heart of human being. Authenticity emerges when human being frees itself from the technological, legal, and socioeconomic mediations that alienate human life in the industrialized, modern world. In the “jargon of authenticity,” objective forms, like money, positive law, technology, and instrumental rationality are seen to increasingly dominate individual and social life. These forms “cage” human beings to such an extent that they can only recover their true, natural or original being in exceptional circumstances. The exception is a condition that radically disrupts the instrumental rationality, objective forms, and everyday routine, thus throwing human being onto itself. Life becomes factual rather than mediated. In his *The Jargon of Authenticity*, Adorno critiques this view from a position that recognizes that the objective forms and mediations are central to human history. They constitute human subjectivities and the spaces and times of social struggle and solidarity. Asserting an undifferentiated factuality of life strips away these socioeconomic forms that constitute life into something social. Existentialist assertions of the very facticity of life suppress what Löwith called the traditional content of life (Löwith 1993:174) and what Adorno refers to as historical consciousness (Adorno 1973 [1964]). When authentic being emerges through destroying public, intersubjectively exchanged criteria that define what kind of content of life, what traditions of life are valuable, it empties history into mere being. History becomes an empty plane upon which anything can happen, but nothing can be finally decided (Weber 1992:14–15). This view of history “de-societalizes” subjectivity. Authentic subjects do not know historical determination. They create their own destiny ex nihilo without being able to argue the validity of the choice, except on the basis that they have authentically chosen it. “Since it is denied any objective determination, authenticity is determined by the arbitrariness of the subject, which is authentic to itself” (Adorno 1973 [1964]:103).<sup>9</sup>

In making naked, anomic life the defining specter of politics, the form of exceptionalism that Agamben refers to, produces similar political effects to the jargon of authenticity. It is a move that does not simply depoliticize histories of sociopolitical struggles and the locales of these struggles. The metaphysics of pure life seeks to ontologically erase them. The result is an apocalyptic political vision in which not fear of the enemy but the collapse of order into anomic, self-referential life is the defining principle of politics. Agamben captures this by referring to the emergence of pure life as a “catastrophe” that collapses the juridico-political order and its conception of sovereignty.<sup>10</sup> But, as stated above, anomaly as pure life is not limited to a lack of legal mediations. It is a collapse of

<sup>9</sup>For another analysis of how the idiom of exception is related (but not limited) to an existentialist vision of life, see Morris-Reich (2002). On the link between concepts of exception and authenticity, see Huysmans (2006).

<sup>10</sup>I am reading Agamben’s interpretation of Benjamin’s work on pure violence into his conceptualization of anomic life, which is one of his central moves in *Etat d’exception. Homo Sacer II*.

sociality, of instituted mediations that structure human life into a sociopolitical order. These include among others technological processes, traditional institutions as the family, and market mediations that structure human interaction. For human life to become self-referential—that is, naked—it requires the destruction of the very possibility of order understood in terms of a political sociality structured through various processes that mediate between life and collective ends.

The politics of exception that emerges here is a political struggle between on the one hand governmental renditions of and acting upon bare life—the sovereign objectification of life as an object of governance without any reference to generalized mediations—and on the other the “freedom” of life as anomie—the fundamentally unmediated, purely contingent, anomic nature of life that “throws” itself into the world. Agamben thus introduces a political choice between camps and embracing anomie as the defining stake in modern conceptions of politics. The choice is between two forms of political power. The camp refers to a form of power that renders and directly acts upon bodies as mere physical life. It is “a space in which power confronts nothing other than pure biological life without any mediation” (Agamben 2000:40). Anomie is the revolutionary matrix of a politics of life, reminiscent of Benjamin’s divine violence, 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 2000:116).

To sum up, in his conception of the exception-as-the-rule, Agamben defines the condition which is both the limit of the politics of exception—the condition where the dialectic between the exception (anomie) and the norm (the law) breaks down—and its completion—when the exception autonomously defines the political. What happens here is that the Schmittian politics of exception collapses and at the same time realizes one of its strategic goals, that is, the elimination of the societal as a constitutive part of politics. Agamben’s biopolitical reading of the exception-being-the-rule *ontologically* erases the *problematique* of the political capacity and significance of “the people” as a multidimensional differentiated *sociality*. Schmitt’s ambitions may have been to do something similar by formulating a pure, authentic and autonomous concept of the political but he did not want to let go of the constitutional drive to folding the legal exception ultimately back into a (new) constitutional order. Nor could he escape retaining the societal as a defining stake of the political struggle. In his time, the political significance and constitution of the societal was a defining stake of political battles between conservative and progressive positions in both politics and political theory. As a result, the category of the political significance of the societal could be *contested* but not *ontologically erased* from the framing of politics. In Agamben’s conception of exceptionalism, the dialectic between law and politics collapses and “the problematique of the societal” is no longer visible. It has been displaced by the direct exercise of power upon life and the anomic condition of life that exists in its own mediality, that is, without ends.

By shifting the idiom of exceptionalism away from its constitutional, political framing while at same time reproducing the anti-societal position that is central to Schmittian exceptionalism, Agamben’s work shows how central the move against the societal is to exceptionalism. The reproduction of this common characteristic in conceptions of the exception is why the increasing use of the idiom of exception can be called, in line with Adorno’s critique of the idiom of authenticity, a jargon of exception.

### **Taking Exception to the Jargon of Exception**

Agamben’s analysis of the exception differs from Schmitt’s politically. While Schmitt endorses exceptionalism as a political choice, Agamben’s

exception-as-the-rule reads more like a diagnosis of our times, a provocation of what is wrong with the world and modern conceptions of politics, including Schmitt's. Unlike Schmitt, for Agamben the exception-as-the-rule is not what politics should be about. It is part of the jargon and practice of exception that needs to be overcome. Such a reading of Agamben has recently been strongly argued by Prozorov (Prozorov 2007).

There are grounds for such a reading of Agamben but his work on the exception-as-the-rule is more than a simple diagnosis of a form of biopolitical domination. It also introduces a particular conception of the political; it sets parameters within which the nature of politics and political stakes of the time are to be framed. As indicated earlier, the exception-as-the-rule seems to open up a new political dialectic or at least a tension that animates and constitutes politics for Agamben. The defining relation of modern politics is for Agamben a tension between the power of biopolitical sovereignty—imagined through the matrix of the camp—and the power of anomic life that challenges it—imagined through the matrix of anomie, that is, life that is means without end.

Deploying the jargon of exception and especially Agamben's conception of the exception-being-the-rule for reconfiguring conceptions of politics in a biopolitical age comes at a serious cost, though. It inserts both a diagnosis of our time and a conceptual apparatus for rethinking politics that has no place for the category that has been central to the modern democratic tradition: the political significance of people as a multiplicity of social relations that condition politics and that are constituted by the mediations of various objectified forms and processes (for example, scientific knowledge, technologies, property relations, legal institutions...).

Even if one would argue that Agamben's framing of the current political conditions are valuable for understanding important changes that have taken place in the twentieth century and that are continuing in the twenty first, they also are to a considerable extent depoliticizing. Agamben's work tends to guide the analysis to unmediated, factual life. For example, some draw on Agamben to highlight the importance of bodily strategies of resistance. One of the key examples is individual refugees protesting against their detention by sewing up lips and eyes. They exemplify how individualized naked life resists by deploying their bodily, biological condition against sovereign biopolitical powers (for example, Edkins and Pin-Fat 2004:15–17). I follow Adorno and others, however, that such a conception of bodily, naked life is not political. It ignores how this life only exists and takes on political form through various socioeconomic, technological, scientific, legal, and other mediations. For example, the images of the sewed-up eyelids and lips of the individualized and biologized refugees have no political significance without being mediated by public media, intense mobilizations on refugee and asylum questions, contestations of human rights in the courts, etc. It is these mediations that are the object and structuring devices of political struggle. Reading the politics of exception as the central lens onto modern conceptions of politics, as both Agamben and Schmitt do, erases from the concept of politics a rich and constitutive history of sociopolitical struggles, traditions of thought linked to this history, and key sites and temporalities of politics as well as the central processes through which individualized bodily resistances gain their sociopolitical significance.

Contrasting Agamben's reading of biopolitics with Foucault's is instructive. Similarly to Agamben, Foucault's work on biopolitics, discipline and governmentality addresses the emergence and governance of life in its biological existence as a form of power that considerably differs from legal-constitutional understandings of politics (Foucault 1976, 2004a,b). However, unlike Agamben this life is not an empty, that is, 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, among others, the mediation of technologies and professional knowledges. The invention of political economy, knowledge struggles within psychiatry, the invention of history, etc. defined how modern life, its governance and its politics have been constituted as a biopolitical *dispositifs*.

In analyzing 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 conceptualized in the constitutional framing of exception—state versus society, law versus politics, sovereignty—collapse into a relational picture of various expert discourses, professional knowledges, institutional practices governing a biological and economic understanding of life, and a rich history of sociopolitical struggles (Foucault 1997, 2004a,b). Instead of being naked and anomic life, biopolitical life is constituted through an extremely detailed mediation of social and individual being and is steeped in a multidimensional history of strategic and tactical interactions. Not means without ends but the patching into a *dispositifs* of multiple strategies of connecting means and ends that have been enacted and struggled over in a multiplicity of sites and times. While the central characteristic of Agamben's biopolitics is anomie, Foucault's is extremely detailed and fragmented mediations that produce, reproduce, and shift strategic, governmental practice and resistance to it.

These latter struggles over knowledge, truth and governmental technologies and their bearing upon social relations and individual being often are not articulated primarily within the field of professional politicians and the state institutions. 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 societal practices. Politics becomes fragmented and dispersed within the societal. One of the central realms of Foucaultian biopolitics is the traveling and clustering of professional knowledge, skills and technologies, and the formulation of counter-knowledge, skills and technologies, as the sociological interpretations of Foucault in the so-called governmentality literature have most explicitly brought out (Dean 1991, 1994, 1999; Barry, Osborne, and Rose 1996; Hindess 1996; Rose 1999).

Unlike the jargon of exception, this Foucaultian reading does not interpret the nature of modern politics from the perspective of its ultimate limit. As Marie Mühle's reading of Agamben and Foucault shows, they fundamentally differ in that Foucault reads modern politics from the inside—from the practices that have constituted it—while Agamben interprets the nature of modern politics from its absolute outside (Mühle 2007).<sup>11</sup> The idioms of exception and exception-as-the-rule seek to understand the nature of democratic politics from the perspective of its collapse. For Agamben, the concentration camps, that is, loci where the exception has become the rule, define the matrix of modern politics (Agamben 1998). The concentration camp has been *the* reference point of the absolute limit of modern, democratic government in Europe at least since the middle of the twentieth century. Schmitt defines the nature of politics through the specter of dictatorship. The relation to a total enemy and thus the possibility of total war as well as in the existence of an absolute normative vacuum in which the relation between norms and anomie can no longer be bridged but has to be reconstituted defines the "essence" of modern politics. Both points of view conceptualize the political from the point of view of the absolute limit of democratic governance both in its liberal and social-democratic forms. This thinking of democratic politics through its limit is a central characteristic of the jargon of exception (Bartelson 1997). It is therefore not surprising that the key category of

<sup>11</sup>For a slightly more sympathetic reading of Agamben but making a similar point, see Nasser Hussain and Melissa Ptacek's article: Thresholds: Sovereignty and the sacred. *Law & Society Review* 34 (2), 2000.

democratic politics, “the people” as a political societal multiplicity of relations and political practices, slips out of the jargon of exception. After all, it seeks to understand democratic politics from sites and times where it no longer exists.

Reading Foucault sharply brings out this peculiarity of the jargon of exception. Unlike Schmitt and Agamben, his interpretation draws us into the richness and transformations of biopolitical history through which modern governance and politics has developed (Neal 2006). The question is not what the camps tell us about the nature of modern politics but rather how practices such as camps and therapeutic policies exist within democratic forms of governance that aim to optimize and improve life and constitute freedom as a defining category of subjects and governance (Mühle 2007). These histories, sites of governance and contestations of knowledge and truth always consist of highly relational and heavily mediated practices. As stated above, in Foucault’s work, biopolitics does not enact anomie but its contrary: an extremely detailed governance and self-governance of relations between humans and between humans and their environment. This view of biopolitical relationality is not totalitarian because change and resistance are internally generated within biopolitics and therefore political life is not simply imposition through governance but always also necessarily struggles over knowledge, technologies, living conditions, discriminations, etc. (for example, Foucault 1973, 1978, 1997). Such a reading of biopolitics reintroduces the societal as a history, a multiplicity of places and times, and traditions of thinking the political, thus taking exception to the erasure of the societal and the catastrophic conceptions of the political in the jargon of exception.

Looked at from this perspective, debates about the reconciliation of liberty and security, for example, are not, as Agamben argues, an ideological practice that hides the fundamental break down of the dialectic between law and anomie that has been central to modern politics (Agamben 2003:144–148). Rather these debates insert questions of and challenges to the role of law and generalized norm-setting in highly charged biopolitical governance of insecurities. Instead of collapsing the dialectic between law and anomie, contestation of the protection of civil liberties, demands for re-negotiating balances between liberties and security are neither simply to be taken at face value as a matter of the necessity of balancing and rebalancing nor to be seen as the endgame of the validity of legal mediations of politics and life. Rather they open up a need to revisit the particular kind of work that law does and does not do in specific sites (Neocleous 2006), such as camps, and what the practices possibly tell us about if and how the dialectic between law and anomie operates in biopolitical governance. Fleur Johns’s analysis of the camp in Guantanamo Bay is one such example (Johns 2005). She argues that the camp is penetrated by a form of norm setting, thus implying that a dialectic between norms and anomie, political transgression and law is not absent from the organization and governing practice in the camp. Unlike some other analyses that focus on constitutional transgressions and battles in the constitutional courts, Johns emphasizes the importance for biopolitical governance of the detailed and in a sense banal regulations that seek to structure the everyday practices of the guards, the administrators and the prisoners. The norm setting is thus not primarily constitutional but administrative.

The important point for this essay is that analyses like Fleur John’s unpack the contemporary predicaments and political stakes in a site like Guantanamo Bay by taking the practices and governmental technologies at face value and interpret the specific work they do for making camps possible within democratic politics. The understanding of the camp transfigures from an absolute limit that defines the fundamental nature of modern politics to a phenomenon that is constituted and contested by various banal practices and governmental techniques. The question becomes how these practices and sites we call camps are rendered within and through modern democratic governance in a biopolitical age. Such

an approach does not read the nature of politics off of its limits but through the multiple relations that are shaped by means of objectified mediations and the struggles over them.

### Conclusion

Working through Schmitt's and Agamben's conceptions of politics two related but different idioms of exception emerged. The Schmittian idiom works largely within a legal-constitutional framing of politics and arranges political stakes and dynamics through a specter of dictatorship. Its main characteristics are (1) a dialectic between law and politics, (2) a sovereign guarding the dialectic by deciding on legal transgressions as well as on conditions in which the institutionalized normative processes have become inoperable and demand a decision on a new constitutional order, (3) the structuration of a politics of fear by making enemy/-friend distinctions the organizing principle of politics, and (4) the erasure of the "people" as a political multiplicity by a conception of nationalist politics that amalgamates the people into a unity produced by the leadership.

The other idiom, that Agamben unpacks, works with the total collapse of the dialectic between anomie and law and a biopolitical conception that organizes political stakes and dynamics through a specter of life. Its main characteristics are that (1) the exception has become the rule as there is no relation between law and anomie, law and politics—both exist in completely separate spheres, (2) life is no longer mediated by objective forms such as law and becomes naked biological being, (3) biopolitical power renders and acts directly upon naked life with no legal or other mediation—the concentration camps are the matrix of modern politics, (4) naked, anomic life displaces societal categories of life, such as class, legally mediated interests, and property relations, turning biopolitics into a struggle between the direct enactment of power upon this life and the anomic excesses of life that "resist" the sovereign biopolitical governance.

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). This main thrust of this article has been to show that the idioms of exception indeed produce a categorical absence. They delete from the political the category that is a placeholder for various histories and sites of politically oriented societal practice as structured by objectified mediations. Paraphrasing Adorno, the idiom of exception has been called a jargon precisely because it marginalizes, and in the more radical cases, erases the societal as a realm of multi-faceted, historically structured political mediations and mobilizations. The article has deliberately introduced conceptions of the societal—such as liberal pluralism, Marxist class analysis, Foucaultian analysis of technologies of governance, etc.—only in very general terms, to keep the focus on the more "formal" thrust of the analysis, that is, identifying a "blind spot" and its consequences for how one interprets certain practices such as balancing liberty and security, democracy, and camps.

The main reason here for pointing out this absence has not been the sociological argument that Schmittian and Agambenian concepts miss crucial elements of how current governmental practice work (Bigo 2007). Or, that 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 2006:78–79). The more central reason has been that reading the current political and security predicaments as a question of exceptionalism risks to reproduce a "jargon" that produces concepts of the political that at best marginalize and



at worst eliminate from view the category that in modern political thought and history has been an essential component of democratic political practice.

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