

Nothing Exceptional: Against Agamben

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Abstract

*Giorgio Agamben's work has become widely influential as a guide to explaining the extra-constitutional powers assumed by governments under the rubric of the War on Terror. His formulations, such as *Homo Sacer* and *State of Exception*, have been extended to apply to a wide variety of experiences of repression of liberties or social control, including the repression of Roma in Europe, of undocumented immigrants, and others. This essay argues, however, that Agamben's approach, while insightful and well-meaning, is potentially disastrous for the defense of the very liberties that those utilizing them seek to protect. By demonstrating that Agamben's categories were developed without reference to crucial historical experiences, including slavery and anti-slavery, genocide against indigenous peoples and enclosures of common land and resources, fail to provide either a convincing explanation for the rise of the phenomena he critiques, or a plausible strategy for confronting or reversing them. A re-reading of the history of the development of democracy through the struggles of exploited and marginalized groups, and a use of some of the basic categories of historical materialism is instead proposed as a more successful approach both for explaining, and defending against, the repressions and dangers Agamben warns about.*

Giorgio Agamben is an Italian political philosopher whose work has become influential for theoretically and empirically explaining the threats to civil liberties since 9/11 as being rooted in deeper structures of the modern state, legal system and systems of constitutional and social exclusion. In two key works, *State of Exception* and *Homo Sacer*¹, Agamben has with considerable courage, and theoretical rigor analyzed the relationship between the vulnerability of select groups in society, the sovereign powers of state rulers, and the ultimate lack of real protection for any of us from the sovereign's power to declare a state of emergency (or state of exception) and to turn us into the socially and legally excluded. Agamben deserves credit for having demonstrated that far from an anomaly, the powers and repressions of the USA Patriot Act, Guantanamo, increased state secrecy and extra-constitutional executive powers that emerged after the declaration of the War on Terror have historical antecedents in every liberal democratic country. Even more importantly, he shows that these are rooted in the very concept of sovereignty itself that is at the center of state authority in the modern world. Further, in demonstrating that the repressed and marginalized – the paradigmatic figure being the Jews and other victims of the Nazi Holocaust – are not in a legal or constitutional position that is qualitatively different from that of any other member of modern society or citizen of the modern state, Agamben has presented all of us with a challenge on how best to defend our own security and even survival under conditions of an ever more aggressive modern state power that is not limited by any legal or constitutional force.

As a logical deconstruction of the power of the state in relation to citizens, as a coherent explanation, with empirical evidence drawn from the histories of every Western nation state over the past century or so, Agamben's work has already become classic. Conferences are dedicated to its insights and works by others seek to extend his theories to both new acts of aggrandizement by state powers and new members of society – Roma, or immigrants – who might fit his description of what Hegel might have called the concrete universal of the human condition. This essay intends to show, however, that Agamben's approach to understanding both state power and the condition of the disenfranchised – both extreme poles of political life as understood in the titles of the two books noted above – is deeply flawed and even

¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford 1998; Giorgio Agamben, *State of Exception*, Chicago 2005.

dangerous and counter-productive for those seeking any effective defense against, and counter to the policies and practices that Agamben is warning us about.

After a brief discussion of Agamben's theories of state of exception and of homo sacer – of the sovereign power and of the legally dispossessed that it represses – I will show that the use of traditional categories of Marxism and historical materialism will better enable us to understand the modern state, and its relationship to the political and legal dispossession and even physical destruction of human beings under its authority (or at least its power). Further, I will attempt to show that only by analyzing modern history through the key categories of enclosure and expropriation, and understanding the rise of democracy through class struggle and the response to expropriation and exploitation, can we approach the reasons for the current waves of political repression of civil liberties. By doing so, I hope to show that by following a now decades-long approach of assuming the autonomy of the political and by basing his work on influences that stem from various traditions of seeing politics as autonomous, ranging from the liberal Hannah Arendt to the Nazi Carl Schmitt to the postmodernist Michel Foucault, Agamben fails to explain why the very phenomena he is addressing are occurring in the first place.

Homo Sacer and State of Exception

“The Sovereign” wrote Nazi lawyer and political theorist Carl Schmitt, “is he who decides on a state of exception²”. The state of exception, or state of emergency, is that moment in which all constitutional and legal limits can be superseded or done away with, annulled or set aside, ultimately at the whim or dictate of the sovereign. The latter's power in any case was never really limited by these legal restraints, even if this sovereign for their own reasons abided by such formal limits for a time. In this case Schmitt's sovereign is Hobbes' Leviathan on steroids, though the line of ancestry is clear, since once sovereignty is given over by people in a state of Hobbesian nature (where a war of all against all predominates and life is nasty, brutish and short) Hobbes' Leviathan state power likewise has no limits or legal restraints other than those that it sees fit to impose. Further, the state of exception is the basis of all law in the first place, in that it is only under conditions of a state of exception that law itself can be created and constitutions imposed. In other words, law is not a product of law, for either Schmitt or for Hobbes, but of a state where there is not law. The difference is important

² Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, Cambridge 1985, p.5.

however. For Hobbes it is the lawless state – presumably a one-time affair at least ontologically if not historically – that leads to the creation of law which is the product of the sovereign. For Schmitt, that power is always in a position to set aside all law and create new law. But creating new law is by definition an exceptional moment, one that is an exercise of power and that steps over the bounds of all previously existing (and by implication illusory) legal limits.

What is remarkable is how influential this approach to sovereignty has been on the political left for some time now. Already in the 1980s *Telos* magazine devoted an entire issue to Carl Schmitt. Work by postmodern Marxist Toni Negri has used Schmitt's concept of "constituent power"³ – of that political moment when a force exists able to constitute a new constitutional/social order outside of all previous legal or constitutional structures, the moment in which new structures or institutions or arrangements can be created – as a strategic device to hold open the revolutionary possibilities of transforming society to do away with capitalism. Where Negri is optimistic, largely through philosophical speculation, while as always thin on empirical evidence, Agamben is pessimistic. For him, the state of exception is now not so exceptional. Rather its very imminence, its very existence as a possibility always under the modern state has now led to it becoming the predominant political form in liberal democratic countries as well as authoritarian ones. Agamben traces the roots of states of exception in the historical declarations of states of emergency in every western nation with painstaking and extremely valuable detail, with the intention of showing that these historical antecedents have developed into a monstrous reality that is now poised to be the everyday reality and the political common sense of the relation of human beings to the governments they live under⁴.

It gets worse. For with the aggrandizement of state sovereign power imposing a permanent state of exception, despite the etymological paradox of such a condition, comes the reduction of members of society from citizenship, from legally protected social belonging endowed with human rights or civil rights, to humans stripped of all legal protection, all rights, and dispossessed of societal membership. Thus comes their reduction, leaning on a concept from Hannah Arendt, to "bare life", to mere physical existence whose precariousness is vulnerable

³ Antonio Negri, *Il Potere Costituente: Saggio sulle alternative del moderno*, Carnago 1992.

⁴ Giorgio Agamben, *State of Exception*, Chicago, 2005, pp.10-22.

to the whim of either state power or even the hostility of their neighbors who may decide that their very existence could prove to be inconvenient or undesirable. Given the lack of any restraint on state power's ability to impose a state of exception, various parts of the population now, and in principle potentially all of us, are in danger of being reduced to this condition of bare life, which Agamben calls *Homo Sacer*.

Homo Sacer was a juridical figure in Ancient Rome, someone who could not be sacrificed in religious ceremonies, but who could be killed by anyone with impunity⁵. Someone, in other words, totally stripped of any legal status, cultural or social value, or societal membership that had to be recognized by others. It is Agamben's accomplishment, in juxtaposing these concepts, the sovereign state of exception, and the bare life of Homo Sacer, to show the relationship between the top and bottom of the Schmittian political hierarchy. His purpose is to warn us, to demonstrate that under conditions of the modern state none of us is safe. To do so, he recycles the concept of bare life from Hannah Arendt, who in the *Origins of Totalitarianism* used the phrase "the abstract nakedness of being human"⁶ to refer to the condition of the refugees flooding every country in Central Europe after the Second World War. For Arendt, the challenge posed by this human mass of dispossessed was that their lack of any means to demand anything indicated a lack of "the right to have rights". Refugees by definition have to depend on the kindness of strangers as it were. Even the conventions existing today for Refugees, through the UN High Commission on Refugees have an Achilles Heel, namely that unless there is a state willing to guarantee the needs and rights of the person involved, that person essentially has no rights or guarantees. For Arendt, this gives the lie to one of the conceits that lay at the basis of the modern world and of modern liberalism, the concept of universal human rights. The Rights of Man have no meaning unless one "has" a nation state that one is a recognized citizen of, and that is willing to guarantee these rights through some constitutional relationship of citizen to state. Otherwise the rest is essentially good will, charity and whim on the part of caregivers for helpless and rightless refugees. We might say that Hannah Arendt's formulation demonstrates the flaw in the nineteenth century view that civil rights were to Universal (Inalienable) Human Rights what local currencies were to the gold standard, e.g. merely the local name for a universal currency.

⁵ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford 1998, p.71.

⁶ Hannah Arendt, *The Origins of Totalitarianism*, Cleveland 1951, p.297.

For Agamben, this reality is taken further – into that very relationship of the citizen to the nation state itself. It is not only refugees who are at risk, people politically dispossessed, without a country – the Italian word is *apolide*, lacking membership in a political community or polis, as in the case of Palestinians - rather it is all of us. At any moment the state that we think of ourselves as members of, citizens of, could turn aggressive, declare a state of exception and suspend, annul or throw out all together any or all of our rights and liberties. We are all vulnerable. Certainly some groups find themselves in this condition sooner than, or more fully than the rest of us. But they are the canaries in the coal mine as it were, inasmuch as it is only a matter of fiat or of time before “they come for us”. The concentration camp inmate, the Jew in Nazi Germany, becomes the paradigmatic figure for the modern person, who under the Arendtian conditions whereby human rights don’t exist if a state is not willing to guarantee them, is reduced at least potentially at all times to homo sacer – to bare life as Arendt puts it, to someone stripped of all legal, citizenship, even cultural belonging, a juridically deracinated human awaiting their fate at the hands of those who can, with impunity, do as they will.

Hyperbole can be a useful tool to make a point. But the problem with this approach is not just that it goes over the edge of hyperbole into out and out exaggeration in describing the relationship of the modern citizen to the modern state. After all, there are real Agambenian, and Arendtian personages in the real world, be they death row inmates, Guantanamo prisoners or the Roma in any number of European countries, to name a few. Certainly Agamben deserves credit not only, but especially for drawing our attention to these persons suffering terrible fates even at the hands of supposedly democratic and liberal-constitutional governments, and for providing theoretical insight into their suffering and the dangers their fates, and our indifference to them pose to the rest of us that “they” have not yet come for.

Agamben therefore seeks to explain the present danger to civil liberties, the risk of special powers being taken over by governments declaring states of emergency, the increasingly common turn to “delegated democracy” through authoritarian methods by only formally elected leaders and the risk of physical repression by state power even in liberal democratic countries. Despite its insight, however, I think that this way of understanding is disastrously mistaken. For the test of theories of this sort should be simple and twofold: 1) does the theory tell us why this is happening when it does and where it does? 2) And does it tell us what to do about it? I think Agamben’s analysis fails utterly on both counts and therein lies the

danger in its growing influence as a way of understanding the undoubted rise in political repression and authoritarianism around the world. Part of the appeal of a theory like Agamben's to radical intellectuals is its sophistication. That Agamben is erudite is undoubted, as his extensive knowledge of arcane facts of Roman legal history indicate. But while he has added dimensions that no less talented thinker, certainly myself included, could have come up with, originality, despite its undoubted academic virtues, is not a reason for a theory or explanation to be convincing to others. Rather an explanation of historical or political phenomena must address the first question I pose: why? Why now and not later or before? Why in this place and not the other? Why the differences in degree between places or times? Why is this group under attack and not another one? ⁷

Missing in Agamben's work – and by extension given his influences, in Arendt, Schmitt, Foucault and Nietzsche and their varying approaches to the autonomy of the political – is any understanding of the relationship between politics and economics, or of class forces in historical outcomes, and any link between civil liberties and guarantees to and control over livelihood. This failure leads to the great weakness of any analysis based on the autonomy of politics – its total inability to explain why something is happening rather than to show us that it is. The failure, in other words, to explain the timing of political and social changes, and therefore to explain them in any way that is useful. Why are some people being reduced to homo sacer now? And why those particular people? Why is there a state of exception being declared in this country but not that one, and why now and not later, or why once but not now, or why potentially but not in reality? Why is a discourse of biopolitics, or of changing methods of social discipline and control emerging in a given century instead of in another? If it is the result of modernity or the Enlightenment, how do we explain these in turn?

I believe that asking such questions in what has presented itself over the past few decades as a rich era of theoretical innovation, leads us to see that there has instead been an impoverishment of historical and theoretical imagination and explanatory power. Further, I believe that it can be shown that the idea of the autonomy of politics is at the heart of this impoverishment, stemming from reliance on Nietzsche, Arendt, and worst of all Schmitt as theoretical influences. If democracy and liberation lack appropriate theoreticians and theories it is our job to produce these, not to go looking for the possibility of an intellectual

detournement of the categories of misanthropic, Nazi or even in the more benign case of Arendt liberal elitist approaches to understanding the modern world. One's boredom with the relative superficiality or lack of sophistication of say, Rousseau, Condorcet, or even Jefferson, and one's desperation to escape the straight-jacket of an orthodox Marxism or the stifling dialectic of Hegel does not excuse the damage done when we come to disastrous conclusions through mistaken analysis of the most vital political processes. Instead, we have a responsibility to provide the best explanation we can for why something is happening, in the interests not only of better understanding it, always valuable for its own sake, but also to answer that second question I pose – the one that goes beyond the merely academic or intellectual – what can we do about it? This question, which moves us from theory to practical action in the world, shows us the further value of the first question and the importance of answering it well. It is true that a bad explanation could still result by luck or through our good political experience or common sense individually or collectively in an adequate response in action. But a good explanation is at worst going to do us no harm in enhancing our own understanding of what we are faced with and we ourselves are doing in response, but may in fact help us in formulating strategy together so that we can maximize our effect and even turn the situation to our advantage.

I have taken the time and space here to go through what should be obvious to any political activist and certainly to anyone remotely familiar with Marxist traditions of politics and theory because I think that a theory like Agamben's and for that matter like much of the recent work of Toni Negri and Michael Hardt, or some influential ideas of even a more widely admired thinker like Foucault, seem again to me to have failed significantly in explanatory power despite their often great insight into the events and processes they fail to adequately explain; they seem to lack completely any strategic sense of how their theories are supposed to illuminate or guide our actions politically⁸.

To provide an answer to the first question I pose, and therefore to present a better explanation for the increasing political repression of our times, I will rely on the classic Marxist categories of enclosure and expropriation, or primitive accumulation. To address - I won't

⁸ Despite considerable pretensions shielded by obscure language on the part of Negri and Hardt – just ask yourself, what is the Multitude, which we are presumably a part of, supposed to do to get rid of Empire? And what do Negri and Hardt suggest implicitly or explicitly that we – those of us reading this publication for instance – do to move the Multitude toward accomplishing this?

pretend I can answer it here - but at least to address the second question, I rely on the concept of class struggle and on a historical overview of the state and of democratization. I think that understanding the accomplishments and the limitations of democratization up to now, and the basis of democratization in class struggle by workers, is the surest basis for seeing where to begin in best understanding and addressing the root causes, the material bases of the political repression of civil liberties that threatens us and in rolling it back.

Primitive accumulation, enclosure and expropriation

Three omissions will serve to help us see the limits of Agamben's vision, and why these limitations weaken the very explanatory power of his analysis of even what he so insightfully describes. First, in neither *Homo Sacer* nor in *State of Exception* is there any mention of Native Americans. This may seem either tangential or unfair as a complaint. After all, Agamben is interested in today's political repression and is European. There would seem to be no particular reason for him to privilege, or even to be interested in the history of Native America. And perhaps it is only my own background as an American that leads me to consider this relevant. But I think that neither Agamben's Italian nationality, nor my US nationality are important here. *Homo Sacer* is purported to be a concept that enables us to grasp how and why some members of society, and by implication any of us, can be stripped of any legal protection or community membership, and killed or subjected to any lesser punishment including torture, with impunity. The Native American experience is, arguably, the paradigmatic case of entire populations being dispossessed, killed with impunity, provided no protection legal or otherwise, or, as in the case of the Cherokee and other southern nations, having the formal legal recognition by both the local states and the US Supreme Court, superseded by executive power (by President Andrew Jackson to be precise). Granted, no book can cover every relevant case and Agamben's books discussed here are both short, if dense. But he does, in *State of Exception* go over a very thorough history of states of emergency and the use of exceptional powers by governments all over the world⁹. Tracing the roots of both states of exception and of the construction of homo sacer figures in liberal democratic countries is a part of the exercise that Agamben is engaged in. Thus failing to even refer to Native Americans is significant, both with reference to the historical period when "The only good Indian is a dead Indian" was a practical guide to genocide that

⁹ Giorgio Agamben, *State of Exception*, pp.11-22, especially pp.19-22 on the United States.

more closely approximates homo sacer historically than anything I can imagine – and to the present day when many Native Americans would argue with reason that little has changed.

The second omission, more difficult to explain by Agamben's geographical origins, is any reference at all to the history of colonialism, or to conditions in the ex-colonial world of the Global South. Arendt, despite numerous failings of analysis and history some of which I discuss below, nevertheless to her credit makes the relationship between imperialism and racism in the colonies and “totalitarianism” in Europe a central part of her analysis in the *Origins of Totalitarianism*¹⁰. Yet there is no discussion of this relationship in Agamben. In this sense, Agamben represents an analytical step backwards from Arendt, not a further development of her insights. The rest of the world has dropped off the mental map. This is not just a question of priorities, of the brevity of books that can't cover everything, nor even of Eurocentrism though it certainly is in part that. It is rather a serious failure of analysis and historical imagination that, as we will see below, makes Agamben's theoretical discussion less useful and reduces dramatically its explanatory power.

For many decades, in country after country, continent after continent, European and other colonial powers could act with impunity and without regard to the life of, let alone legally recognized rights of the colonized people. The Belgian Congo, and the horrors of slavery; the repeated experience of mass famine in India (done away with since Independence and the establishment of democratic government); the labeling of resistance against expropriation and foreign rule Mau Mau to define it as an atavistic throwback to savagery to enable the British rulers to destroy it militarily; over a million dead in the Algerian struggle for Independence against the French; the near-genocide in Libya by the Italians, the list could go on for pages. None of it relevant, presumably, either to states of exception, in which sovereigns are unconstrained by any legal or customary limit in their actions, nor in understanding the reduction of person from members of communities with either customary or legal rights to bare life, dependent on the self-restraint at whim of others for their survival.

¹⁰ Though Arendt does so in a very problematic way, troubling even to her work's admirers, as pointed out by Silvia Federici: Silvia Federici, “The God that Never Failed: The Origins and Crises of Western Civilization” in Silvia Federici, ed., *Enduring Western Civilization: The Construction of the Concept of Western Civilization and its “Others”*, Westport 1995, p.79.

Nor does the history of neocolonialism, with its two million dead in Vietnam; its horrifying wars by death squad in El Salvador and Nicaragua, and Guatemala, its horrors in Angola and Mozambique, or apartheid in South Africa, warrant even a mention from presumably the most up to date, innovative thinker of the denial of rights and life by state power writing today. Not to mention Structural Adjustment Programs, the IMF, World Bank or WTO and the policies that continue, after decades, to condemn millions to mere survival and worse, and which have regularly resulted in resistance, repression, and states of emergency by military and civilian powers. Yet, in failing to see the ex-colonial world, Agamben has also missed the part of their population that ended up in the West. I refer of course to the enslaved. In discussing homo sacer as a legal figure with no rights, no standing, no community membership that others were obliged to respect, do we not immediately recall Dred Scott? Is there nothing that the experience of the American slave can teach us about homo sacer? If slavery can tell us something about homo sacer, is it possible that anti-slavery, the struggle for abolition can tell us something about states of exception and how to fight them? Could the movement against the Fugitive Slave Act in the 1850s United States, for instance, be of some help in thinking about our problems today?

Finally, Agamben, in his understanding of homo sacer seems to miss the most obvious point imaginable, at least to anyone familiar with the work of either Karl Marx or Karl Polanyi¹¹, namely, that a human being reduced to bare life, to the mere physical existence without rights or guarantees, far from being a marginal figure, a canary in a coal mine, is instead the human condition of the majority of the population under capitalism. Here is where it is clear why I have stressed the autonomy of the political as a way of understanding the world that is counter-productive: it takes work to describe humanity reduced to bare life and then fail to see it all around one in the form of the proletarian majority of every society, North and South. Political deracination is clearly related to economic deracination, or to use the, in my view clearer Marxian terminology, expropriation and enclosure, or proletarianization. In what way is Agamben's homo sacer any different than the "rightless and free" proletarian that has always existed under capitalism? Hasn't it always been allowable to "live and let die" without remorse those unable to make a living, keep a job or income, provide for themselves or family members, keep up rent or mortgage payments, pay for a meal? Shouldn't we see this

¹¹ See Karl Marx, *Capital: A Critique of Political Economy*, Vol.1, New York 1976, pp.873-930; Karl Polanyi, *The Great Transformation: the Political and Economic Origins of Our Times*, Boston 2001, pp.71-80.

as violence, as Zizek in his book *Violence*¹² argues, the daily, systemic “economic” violence of market relations and the propertylessness of the majority in capitalist society? Isn’t this exactly the non-state of emergency, non-exceptional violence, that kills millions annually, that Agamben, like Arendt before him, ignores? Further, doesn’t his lack of attention to the “normal” process of proletarianization, of expropriation and enclosure, lead to his failure to see these on a grand scale with the maximum possible state violence in the colonial world, in the neocolonial world, in slavery and the slave trade, in the genocide of the Native Americans?

Yet, failing to see these, isn’t it likely that even his understanding of the processes and histories he knows well and does examine in detail, Europe and the US, and the Jewish Holocaust and Nazi regime, are flawed as well? Despite her limitations, wasn’t Arendt closer to the truth with her view that the genocide of Jews and Roma in Nazi Europe, or even the slaughter of the peasantry under forced collectivization and the genocide in the Ukraine under Stalin, that is, the results of the process she identifies, rightly or wrongly, as totalitarianism, had their roots in the colonialist, imperialist and racist experiences? (Although Arendt’s analysis was likewise crippled by her insistence on the autonomy of the political, and by her semi-apologetic discussion of imperialist racism).

In ignoring even the process of expropriation and enclosure, or proletarianization, in Europe itself, Agamben fails again to note crucial historical moments of political repression – of both states of exception and homo sacer. The most important of these moments in the expropriation of the peasantry of Europe was the witch trials of the 16th and 17th centuries, as Silvia Federici has shown in her book *Caliban and the Witch*. Federici indeed shows the limitations of Foucault’s own analysis of the growth of control of the body by state and medical authorities, of biopolitics¹³. Foucault ignores the torturing to death of hundreds of thousands of women across Europe over several centuries, and the role these horrors played in the construction of gender inequalities under capitalism and in dividing the medieval and early modern proletariat. These divisions then made it possible to break up the village community that had been the basis of defending common lands and customary rights and of

¹² Slavoj Zizek, *Violence*, London 2008, especially the first essay, “Violence: Subjective and Objective”.

¹³ Silvia Federici, *Caliban and the Witch: Women, The Body and Primitive Accumulation*, Brooklyn 2004, pp.15-16; 191-2.

advancing both against feudal power. Foucault thus provides a faulty and misleading history of discipline, punishment and of the body. In ignoring the same history, Agamben misses an opportunity to provide an explanation for the scapegoating of part of the population, that is, to divide and conquer under conditions where the expropriation from common rights and property, and commonly used resources and public goods is on the agenda. As Polanyi pointed out long ago, the state was the central actor in the imposition of the self-regulating market¹⁴; as Marx pointed out, it wrote these chapters in the annals of humankind “in letters of blood and fire¹⁵”.

It is to Agamben’s credit, indeed it is a singular triumph of his work to have begun the process of showing us the implications in constitutional law and practice of political and juridical expropriation. His failure is that he does not connect this process to either economic expropriation, as Peter Linebaugh does in his *Magna Carta Manifesto*, or to the imposition of neoliberal economic policies as does Naomi Klein in *Shock Doctrine*¹⁶. Legal rights need an economic basis as Linebaugh shows us, a connection that allows us to see that the re-appropriation of legal and constitutional rights and of land and common property also go together. Democracy, notwithstanding all of its limits under capitalist conditions, puts limits on the neoliberal project of expropriation and exploitation, of privatization and profit, as Klein shows us. Economic possession provides the material base for legal standing, rights both customary and written into formal law and such protections in turn help defend the widespread popular possession of or guarantees to means of subsistence and production, and public goods in general; democracy provides a political tool to either protect people from expropriation, or to respond to enclosure by limiting exploitation and perhaps creating preconditions for reversing the initial dispossession.

Such an approach, and the historical evidence and reading of it, provide us with not just hope, something singularly lacking in any reading of Agamben, but also with a useable strategy for

¹⁴ Polanyi, *The Great Transformation*: “...neither long distance trade nor local trade was the parent of the internal trade of modern times – thus apparently leaving no alternative but to turn for an explanation to the *dues ex machina* of state intervention.”; and, “Internal trade in Western Europe was actually created by the intervention of the state.”, pp.66-67..

¹⁵ Marx, *Capital*, Vol. 1, p.875.

¹⁶ Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All*, Berkeley and Los Angeles 2008; Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, London 2007.

setting things right. The use of theories as tools and guides to real world action with the possibility of overcoming our problems should always be the test of a political or social theory, not the sophistication of its citations and language, or its demonstration of how radical and depressing a critique of the existing but worsening state of things it can provide. Naomi Klein and Peter Linebaugh are able to answer the first question I ask of Agamben explicitly – why is this happening when and where it is. Their answer, with some differences in emphasis and cases examined is similar: the imposition of neoliberalism and the expropriation of land, the privatization of public goods and resources, and enhancing of the structures of exploitation at the expense of workers and their communities who lose both access to resources and political rights for their self-defense, is at the root of the recent attacks on civil liberties and the impositions of states of emergency and expansion of executive powers around the world. Klein traces how this has emerged since at least the Pinochet coup and dictatorship in Chile and the Milton Friedman-advised economic policies that followed. Linebaugh shows how the relationship between expropriation of the commons and expropriation of political and legal liberties has gone together since the Middle Ages and how the struggle against both has similarly gone together. Both see and show some differences in the scale and intensity of such exploitation and expropriation in western countries with democratic institutions and traditions and the same processes in the Global South. Both the global processes and the local differences are important. But for Agamben the lesser intensity of repression in say the US or Europe compared with during the dictatorships in the Southern Cone of Latin America are illusory, since presumably governments from Washington to Rome, Paris, London and Berlin could have done the same as their South American colleagues at anytime, and indeed are moving toward doing so. If they are doing so, or preparing to do so, asking why and what has prevented it until now is worth doing, as it might help us to think about what to do next to avoid the fate of Chileans after Allende for instance.

That fate was both an economic and a political/legal one, as Klein shows. Indeed, she critiques a body not of theory but of practice, one that is benign and has done much to make things better for many people, for an approach and practice consistent with the theory of autonomy of the political, namely Human Rights. Human Rights as a common form of political activism, as Klein shows had its start with the attempt to free political prisoners and end torture in Argentina, Chile, Uruguay and Brazil¹⁷. Klein's criticism is that by ignoring

¹⁷ Klein, *The Shock Doctrine*, pp.116-128.

completely economic and class issues, Human Rights activists and organizations were often able to limit repressive policies and free individuals imprisoned, but were unable to put an end to the repressive practices because they did not address why these were imposed in the first place. Unpopular economic policies, policies that expropriate people, that exploit them or facilitate their expropriation and exploitation, require authoritarian measures.

The range goes from Reagan, Thatcher, Bush-Clinton-Bush-Obama authoritarian free market policies to the ferocious repression of Nigeria during the early 80s and its government's Campaign against Indiscipline when death penalty crimes against property multiplied exponentially, to the horrors of any number of civil wars in Africa, to the US invasion of Iraq. We want to know what accounts for the greater ability to resist the worst cases, whether class power that is intact or the institutionalization of past class struggles limits the options and even the normal everyday set of options imaginable for state rulers and policy makers. What that suggests is that the greater repression in countries where the usual practice is more or less respectful of rights most of the time is an act of desperation. Indeed, an old and to my mind still strong argument on the left was that dictatorships and fascism were responses to acute class struggle against exploitation. That this recourse to violent repression signaled a situation where the ruling classes had little or nothing to lose for gambling everything on an all-or-nothing solution to their problems. Indeed the painstaking historical work of Tim Mason on Nazi Germany suggests that just such a solution to just such a problem was the basis of Nazism¹⁸, a view backed up by the work of David Abraham on the profits squeeze faced by German capital¹⁹.

My argument is that states of exception and the reduction of part or all of the population governed by state power to bare life are based upon attempts to expropriate all or part of a population from their land, their access to resources, subsistence and the means of production; or upon the imposition of neoliberal policies accomplishing analogous acts of

¹⁸ See Tim Mason, *Social Policy in the Third Reich: The Working Class and the "National Community"* Oxford 1993, pp.41-42; and Tim Mason, "The Primacy of Politics: Politics and Economics in National Socialist Germany" in Tim Mason, *Nazism, Fascism and the Working Class: Essays by Tim Mason*, Cambridge 1996, pp.57-58. Mason further elaborates in this same work on page 75: "Under conditions of capitalist production there is always something irrational about the assertion of a primacy of politics...".

¹⁹ David Abraham, *The Collapse of the Weimar Republic*, New York 1987. Whatever one thinks of the controversy over his use of sources, Abraham's main argument that German business was faced with otherwise unsolvable problems holds up.

primitive accumulation (privatization of resources or public goods, elimination of limits on exploitation and market forces, freeing of the power of employers over workers, freeing of capital from regulations or limitations on its actions and movements). The case of Nazi Germany, the paradigmatic case for Agamben and one of the paradigmatic cases for Arendt's study of totalitarianism, far from making the argument for autonomy of the political, instead supports the argument that political repression is based on economic expropriation and exploitation, and that rights and liberties, in turn are based on economic democracy, on either widespread or common ownership of resources, or on economic class organization by workers and the gains made using democracy to sustain economic conditions.

The Nazi regime was about applying the colonial lessons to Europe itself, treating Eastern Europe as the "The Frontier" to be made into lebensraum. That is what makes Hitler Hitler: that he applied methods to Europe that were previously only allowable for non-Europeans, or in expropriating a state's own people. Or that at least had been non-allowable for European states since the Witch Trials, and since the French Revolution had imposed limits on the expropriation and exploitation of the European population, limitations that were not in effect for the colonial world. The key to the weakness of Agamben's understanding of the problem is the inability to see the economic bases of state power, of the state of emergency, of individual rights. Yet this is precisely what Hitler's regime was for. Indeed, while the pioneer Marxist historian of Nazi Germany, Tim Mason, came to the conclusion that Hitler's Germany was an example of the autonomy of the political, his conclusion was based on this as the only, desperate solution to the problem of socio-economic class relations in Germany; in brief, as the only way to defeat the organized power of the working class in Germany – to impose a monopoly of power under an extremely violent anti-working class regime that would use lethal force to destroy all of the working class organizations, and therefore the working class' ability to resist exploitation. Indeed, Adam Tooze in *Wages of Destruction*, a recent and innovative work on the Nazi economy, shows that Nazi leaders used the model of "one-man management" as a principle that ran from the father as "head of the German household" to the owner of the factory to the Fuhrer himself. This model appealed to German business owners and convinced them that they would benefit from a reinstatement of their lost authority in the workplace under Nazi rule. Indeed that was a major part of the Nazi program. Even, as Mason shows, state run or nationalist unions for workers were out of the question for Hitler as they indicated that workers had some right to representation as a

particular sector of society²⁰. They were to be banned as well. The regime would then be free to construct a *volks-gemeinschaft* – Mason always made clear that this part of the plan failed, as workers were never, at least until very late in the War, supportive of the Nazi regime – that would provide the resources needed to overrun the rest of Europe and expropriate and enslave large parts of the population. The expropriation and exploitation of the population of Eastern Europe and the Soviet Union and military defeat of the forces of Western Europe that could prevent this, and the incorporation of these resources into the German military power was the point of Hitler’s politics²¹. For Adam Tooze,

Furthermore, although it is important to do justice to the shift in power relations between the state and business that undoubtedly occurred in the early 1930s, we must be careful to avoid falling into the trap of viewing German business merely as the passive object of the regime’s draconian new system of regulation. As we have seen, profits were rising rapidly after 1933...²²

“The Nazi regime” concludes Tooze, “was a ‘dictatorship of the bosses’” as Communists and Socialists argued.²³

What of the Holocaust however? Of the reduction of so many millions under the most ferocious state of exception ever into homo sacer? The Nazi concentration camp is Agamben’s “biopolitical paradigm of the modern”,²⁴ and the Jewish victim of the Nazi Final Solution the paradigmatic homo sacer: “The Jew living under Nazism is the privileged negative referent of the new biopolitical sovereignty and is, as such, a flagrant case of a *homo sacer* in the sense of life that may be killed but not sacrificed.²⁵” For Agamben, a crucial experience for understanding both states of exception and homo sacer is that the Nazis first

²⁰ Mason, *Social Policy in the Third Reich*, p.35.

²¹ Arguably, this goal was in itself an instrument for changing the odds in an inevitable eventual showdown with the US, another continental scale industrial power, for world domination.

²² Adam Tooze, *Wages of Destruction: The Making and Breaking of the Nazi Economy*, London 2007, p.114.

²³ Tooze, *Wages of Destruction*, p. 109.

²⁴ Agamben, *Homo Sacer*, p.117.

²⁵ Agamben, *Homo Sacer*, p.114.

stripped Jews of their citizenship before condemning them to death in the camps²⁶. This is important because it indicates the usefulness of the concept of homo sacer itself. But by not seeing the expropriated and expropriation as homo sacer and instead relying on juridical categories bereft of their economic content, Agamben fails to see why a state of exception or an act of exclusion would serve anyone or anything. It then inevitably becomes a language game. For the Jews murdered in the Holocaust were not merely stripped of their citizenship but were also expropriated of property, and put through the *Selektion* which determined whether or not they could work. If they could, they were given the minimum rations needed to work themselves eventually to death, being as productive as possible for the Nazi state, and Adam Tooze shows that whether one could work or not determined whether they were simply killed.²⁷ Jews were murdered after it was found they could not work, Gypsies were murdered as were Russians, Ukrainians and others if they could not work. Prisoners - Jews, Gypsies and Ukrainians included -were provided rations if they could work with the caveat that priority rations under the terrible food shortage the Nazi regime faced in Europe went to Germans first, then to Western Europeans, and only then to Eastern Europeans, Russians, Ukrainians and last to Jews. Hitler, it is worth noting, told his Armaments Minister and the Gauleiter in charge of labor mobilization (that is, organizing slave foreign labor) that with the conquest of the East, the Slav inhabitants were to be treated as “Red Indians²⁸,” making the link between Agamben’s prototypical case of Homo Sacer and the experience of Native American expropriation (and resistance to such) explicit.

In other words, while legal status is not irrelevant in understanding the fate of Holocaust victims, it is not independent of economic concerns – the ability to exploit even those whose lives were of no other interest to the state than the work they could do. Tooze quotes the Wehrmacht’s military-economic office to this effect. It called for the most precise balance between calories and ability to work, concluding that 100 well-fed people are more productive than 200 receiving just enough to keep them alive, and that “the minimum rations distributed to simply keep people alive...must be regarded from the point of view of the national war economy as a pure loss...”. Tooze comments, “Here was not the “anti-

²⁶ Agamben, *Homo Sacer*, p.132; as it is for Arendt: Hannah Arendt, *The Origins of Totalitarianism*, Cleveland 1951, p.296.

²⁷ Tooze, *Wages of Destruction*, p. 468; 466-7.

²⁸ Tooze, *Wages of Destruction*, p. 493.

economic” logic of anti-Semitism but the ruthless materialist logic of the Hunger Plan that...had arrived at the conclusion that millions of people needed to be killed...²⁹”

Further, in the economic conditions of the war, the Nazi regime was unable to organize agriculture in such a way as to avoid having to make triage decisions. Such a ferocious and extreme racist regime inevitably made these decisions on the basis of ethnic and racial hierarchy. But these triage policies were linked to the whole program of expropriation of the population (and the eventual resettlement of the land by Germans with surviving groups of non-Germans working under slavery conditions for them³⁰) which had arguably, along with the program of military conquest from which this expropriation was inseparable, caused the famine conditions of food shortage in the first place. That Nazi racial theory was the reason why no hesitation was made in deciding to murder large parts of the European population that were unwanted by German rulers is undeniable, and that this racial theory is in no way reducible to economic or class issues even in the “last instance” is clear. But the Final Solution itself and the criteria by which individual Jews and others lived or died were based on extreme scarcity, on productive ability, on labor power and the ability to work for the Nazi economy. This includes the too easily forgotten slaughter of millions who were neither Jews nor Gypsies, among whom were many killed for being socialists, communists and trade union activists, none of whom are memorialized in recent Holocaust memorials, but whose murders again remind us that the state of exception and the exploitation and expropriation of workers remain inseparable.

In this sense, isn't the Nazi experience merely the most horrifying version of capitalism? Isn't the “live and let die” philosophy of the market in which workers have only a “human right” or “inalienable right to life” (or more recently in the US to live in a home) so long as they produce profit for capitalists the normality, and the death camp merely its most frightening extreme? Its trump card? Isn't, in other words, the state of exception when capital attempts to rip up the rules that have limited it as a result of previous class struggles and the democratization these have brought about, in order to carry out a desperate new round of

²⁹ Tooze, *Wages of Destruction*, p.540.

³⁰ A program that Carl Schmitt's *Nomos of the Earth*, with its emphasis on expropriation of land as the basis of nation-state foundation, was intended as an apology and coherent philosophical argument for: Carl Schmitt, *Nomos of the Earth: In the International Law of the Jus Publicum Europaeum*, New York 2006.

expropriation and to smash proletarian resistance to enclosure and exploitation? That is, hasn't Agamben ultimately put the cart before the horse, put effect before cause? In ignoring capitalism, its primitive accumulation and the intensification of repression against organized resistance when class struggles against exploitation have reached high levels hasn't Agamben failed to explain why any of the phenomena he is rightly concerned about are happening?

A final point to make concerns that other prototypical case of both Arendt's category of totalitarianism and of the deprivation of human rights or of individual liberties, namely the Stalinist Soviet Union. Doesn't the USSR and Stalin's dictatorship belie my argument – what regime could be further from the privatizing frenzy of the post-1989 globalization than that one? Except for one thing – whatever the motivations and whatever the particularities of the unique social formation in the Soviet Union during the Stalin era, there is no question that the forced collectivization of the peasantry was a classic, indeed an especially brutal version of primitive accumulation of capital, of expropriation of the land and means of production from the peasantry, of enclosures. That it became the state, not private companies or individuals who came into both possession and ownership of the land after expropriation makes little difference – indeed it is not even historically unique or without precedent. After all, who was the owner and possessor of the indigenous peoples' land after expropriation in North America if not the US state³¹? Some has remained state property in the US ever since, from national parks to military bases. The fierce repression of liberties, the state of exception that was a semi-permanent condition of Soviet life grew not from Lenin's theories of the party³², or from some Bolshevik Jacobinism, but rather from Stalin's expropriation of the peasantry and the repression needed to accomplish this act of primitive accumulation of capital. The Soviet genocide in the Ukraine parallels Hitler's focus on the Ukraine as the key breadbasket territory for his planned reorganization of Eastern Europe under German occupation³³. But in both cases the expropriation of the people from the land, a process ironically first theorized by Karl Marx, was at work.

³¹ See Lenin's reminder of this in an eye-opening article, VI Lenin, "Marx on the American "General Distribution" in *Lenin on the United States*, New York 1970, pp.13-19.

³² In fact *What is to be Done?* argued for political democracy as a necessary precondition for socialist politics. See Lars T. Lih, *Lenin Rediscovered: What is to be Done? In Context*, Chicago 2008.

³³ Tooze, *Wages of Destruction*, pp.542-543.

Conclusion: State Transformation without State of Exception

In failing to take into account the expropriation of the slave, the enclosure of the commons, the expropriation of the peasantry and the burning of the witch, the occupation of the colonized's lands, the IMF Structural Adjustment Program and the repression needed to impose it against resistance, hasn't Agamben also failed to provide his own theoretical framework with the tools needed to explain the survival or death of the Jew in the Nazi camp, his own paradigmatic example? If we find, as Isabella Clough-Marinaro has³⁴, that the camps for Roma in Italy today are classic examples of homo sacer, right down to publicly exposed showers on concrete enclosures surrounded by barbed wire, needn't we try to understand what these new horrors have to do with the rolling back of the welfare state in Europe?; with the attack on employment and wages?; with the intensified exploitation that includes that of the undocumented immigrants and the public discourses demonizing them?; with the increased law and order regimes, campaigns against crime that criminalize the Roma, the undocumented and other minorities that have allowed the Italian military to be deployed in the streets to keep an eye on the population; with the creation of such scapegoats to divide the working class exactly at such a time of attack on hard-won social gains? Agamben, as Clough-Marinaro demonstrates, is indispensable to help analyze the camps in the first place, but I would argue that he is of nearly no help at all to help us strategize about what to do about them, because he doesn't understand what any of it has to do with class relations, relations of expropriation, exploitation and class struggle against these. And that means he can't understand what the latter has already accomplished and what it has yet to accomplish. To understand this, we need to understand the welfare state itself as it has developed. To do that we need to understand democracy, which in turn requires us to think about the state, as Agamben calls on us to do, but to do so in a way that goes beyond the drama of the state of exception to include the historical accomplishments of the class struggle, particularly those other two categories, democracy and the welfare state.

³⁴ Isabella Clough-Marinaro, "Roma in Italy: Racialization and State of Exception", paper presented at the conference on "Racism in Italy: Past and Present" at the American University of Rome, Rome, Italy November 14, 2008.

While this is not the place to enter into a full discussion of these issues, which I address elsewhere³⁵, a brief summary of my argument on democracy is useful to make clear my differences with Agamben's approach. Modern democracy is part of what Polanyi calls the "double movement"³⁶ of expropriation and the establishment of the self-regulating market and the efforts by society to defend itself from this process. Modern democracy is born from the English and French Revolutions³⁷, from the anti-slavery movement in the US, and from the labor and socialist movements in Europe³⁸. Mass democratic movements that have furthered this process have been fought either to retard the separation of the people from the land and access to means of production and subsistence, or to provide new guarantees of meeting these needs and providing livelihood to those already expropriated and now exploited. Put differently, the commitment of ordinary people to democracy comes from their need and desire to use it to do something; democracy is an instrument of popular classes to defend and extend their interests. If, as I have argued, citing various authors' work to the point, the protection of individual rights, avoidance of becoming homo sacer, and prevention of the state of exception required material foundations, those material foundations have, in modern times, required political protection. The modern democratic class struggle, the establishment of democracy and its extension, remain, along with defending or reestablishing control of subsistence and means of production directly in the hands of the people (the commons), the best means of avoiding the fate that Agamben warns us about. This means

³⁵ In a separate essay, "The Revenge of the Oikos: Against Hannah Arendt's understanding of Democracy, Class Struggles and the Welfare State" and in a forthcoming book, *The Living and the Dead: Democracy, The Commons and Civilization*.

³⁶ Karl Polanyi, *The Great Transformation*, p.132.

³⁷ For excellent recent discussions, see Geoff Kennedy, "Radicalism and Revisionism in the English Revolution" and Florence Gauthier, "The French Revolution: Revolution of the Rights of Man and the Citizen" both in Mike Haynes and Jim Wolfreys, eds., *History and Revolution: Refuting Revisionism*, New York 2007, pp.25-49 and pp.71-92 respectively. Gauthier in particular, makes clear the relationship between defense of the common lands and the revolution for democracy, and just as relevant for our purposes here, points out that the revolutionary government abolished slavery, that executive power was in fact reduced under the Jacobins while legislative authority was maintained throughout, that the state of emergency and abrogation of the Declaration of the Rights of Man took place under the reaction of Thermidor and that the Vendee was a regional civil war that was transformed into a "genocide" for ideological reasons.

³⁸ See especially, Geoff Eley, *Forging Democracy: The History of the Left in Europe, 1850-2000*, Oxford 2002; Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln*, New York 2005; and see the important summary of the debate over the role of labor movements in the construction of democracy in David Ost, *The Defeat of Solidarity: Anger and Politics in Postcommunist Europe*, Ithaca 2005.

that the too-facile dismissal of all legal, democratic or constitutional protections, hard-won by generations of struggle, that appear in his analysis that the state of exception is already unexceptional but rather the rule, disarms the very efforts needed to protect us from the state power³⁹.

The democratic movements have broken down the sterile and false separation between the *oikos* and the *polis* argued for by Hannah Arendt⁴⁰, and the similar separations between everyday life and social reproduction and public life, between *zoe* and *bios*. This is not by chance: slave plantations were private homes; the family enterprise studied by Marx was considered virtually an extension of the owners' household; the needs of working families for subsistence or health care, or the infant mortality rate, unwanted pregnancies and their impact on women's lives and the mortality rate of women in childbirth were all considered private affairs, not public or political ones. It was the accomplishment of the modern workers and women's movements, of modern democracy, to change this state of affairs. Agamben sneeringly dismisses, indeed scarily demonizes this accomplishment as "biopolitics":

What comes to light in order to be exposed *apud Westminster* is, once again, the body of *homo sacer*, which is to say, bare life. This is modern democracy's strength, and at the same time, its inner contradiction: modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it into what is at stake in political conflict. And the root of modern democracy's secret biopolitical calling lies here: he who will later appear as the bearer of rights, and according to a curious oxymoron, as the new sovereign subject...can only be constituted as such through the repetition of the sovereign exception and the isolation of corpus, bare life, in himself. If it is true that law needs a body in order to be in force, and if one can speak, in this sense, of "law's desire to have a body", democracy responds to this desire by compelling law to assume the care of this body.⁴¹

³⁹ Agamben provides us with some of the most facile and dangerous thinking, passing for profundity, imaginable: "Once their fundamental referent becomes bare life, traditional political distinctions (such as those between Right and Left, liberalism and totalitarianism, private and public) lose their clarity and their intelligibility and enter into a zone of indistinction." Agamben, *Homo Sacer*, p.122. This statement, with the word "capitalism" replacing the phrase "bare life" could have been written by an adherent of the Third International's Third Period, whose disastrous policies helped bring about precisely the states of exception – Nazi victories – that Agamben is concerned about. See the classic analysis in C.L.R. James, *World Revolution 1917-1936: The Rise and Fall of the Third International*, Atlantic Highlands, New Jersey 1993, especially pp. 307 and 339 and chapter 12, "After Hitler, Our Turn."

⁴⁰ Hannah Arendt, *The Human Condition*, Chicago 1958, pp. 27-8.

⁴¹ Agamben, *Homo Sacer*, p.125.

Agamben goes on to argue, incredibly, that the very right of habeas corpus by requiring the sheriff to exhibit the body of the accused undermines the liberty of the accused, an interpretation unique in the thousand-year history of habeas corpus rights whose defense has quite rightly underpinned many oppositions to Bush administration tactics in the War on Terror, and whose history has recently been provided a radical defense and materialist interpretation by Linebaugh already cited.

The long process of democracy “compelling law to assume the care of the body” instead is the accomplishment of centuries of struggles by ordinary people precisely to move the state out of the business of killing and into the business of providing health care and education. This is what led Ernest Gellner to state, while overstating the case, “At the base of the modern social order stands not the executioner but the professor... The monopoly of legitimate education is now more important, more central than the monopoly of legitimate violence.⁴²” That the European social democratic welfare state coincided with the European Union’s one great accomplishment, the end of wars between the nation-states of Europe should give us pause for thought⁴³. That the abolition of the death penalty followed these developments should make the relationship clear. What seals the argument is that the revived militarism, political repression and demonization of unpopular minority groups in Europe follow upon the efforts directed by the EU Commission and signed on to by every EU member government to privatize, liberalize markets, overcome workers’ resistance to “flexible” work organization, and impose neoliberal globalization⁴⁴. The relationship between the democratic class struggle to defend subsistence and basic needs and the defense of individual rights and limitation of state power should be clear. That it isn’t should be attributed to an elitist, too-sophisticated by half approach to the state, democracy and class

⁴² Ernest Gellner, *Nations and Nationalism*, Ithaca 1983, p.34.

⁴³ See Sheri Berman, *The Primacy of Politics: Social Democracy and the Making of Europe’s Twentieth Century*, Cambridge 2006, p.17. Berman writes, “Although many have interpreted the postwar settlement as a triumph for liberalism, albeit in a somewhat chastened form, what made Europe work after 1945 actually had far more to do with social democracy.” p.17.

⁴⁴ Systematized in the Lisbon Criteria intended to make the EU the most competitive area in the world marketplace.

struggle that appears radical but in fact undermines the very foundations of democracy and social welfare by not making these struggles an integral part of its analysis.

The movements for democracy, the class and gender struggles that brought it about and have continued to try to extend it to more spheres of life are, as Marx explained to the First International, not extensions of state power, but partial transformations of the state from a police apparatus and killing machine for the ruling class into a set of functions whose institutions and cadre now concern themselves with caring for the needs of society's members, with all the contradictions and flaws that studies of the welfare state have demonstrated but with all its benefits too:

However, the more enlightened part of the working class fully understands that the future of its class, and, therefore, of mankind, altogether depends upon the formation of the rising working generation. They know that, before everything else, the children and juvenile workers must be saved from the crushing effects of the present system. This can only be effected by converting *social reason* into *social force*, and, under given circumstances, there exists no other method of doing so, than through *general laws*, enforced by the power of the state. In enforcing such laws, the working class do not fortify governmental power. On the contrary, they transform that power, now used against them, into their own agency. They effect by a general act what they would vainly attempt by a multitude of isolated individual efforts⁴⁵.

Let us look briefly at two examples in which states of exception were declared by democratically elected governments. In India, Indira Gandhi's declaration of a state of emergency, while arguably "overdetermined," came at a particular period characterized by a large strike movement by workers and resistance to policies of her son Sanjay involving two forms of enclosure: slum clearance – expropriation of the poor from their housing – and forced sterilization⁴⁶. The latter explicitly meets Agamben's criteria for biopolitics in a democracy leading to a state of exception – though strangely he does not cite it as an example

⁴⁵ Karl Marx, Instructions for the Delegates of the Provisional General Council, International Workingmen's Association, August 1866, section 4. "Juvenile and Child's Labour (both sexes). Found at www.marxists.org.

⁴⁶ Ramachandra Guha, *India After Gandhi: The History of the World's Largest Democracy*, London 2007, pp.480-481; 517-519. Jad Adams and Phillip Whitehead, *The Dynasty: The Gandhi-Nehru Story*, London 1997, pp.248-271.

to strengthen his argument. This omission is perhaps due to the fact that, despite Indira Gandhi's government being characterized by some policies favorable to the lower castes and the rural poor at times, it can hardly be seen as a welfare state or an example of social democracy. That is, its entry into biopolitical policies- the forced sterilization campaign – was purely repressive and not also a form of “care of the body” or social needs. It wasn't democratic enough, in other words, to be demonized by Agamben. The end of the state of emergency came about through normal democratic means, namely an election that threw Gandhi out of office. Agamben, we might point out, has no theory to address the ending of states of exception.

Marx, again speaking for the First International's General Council defined the Lincoln administration as, “the only example on record in which the Government fought for the people's liberty, against a section of its own citizens.”⁴⁷ Agamben, quite reasonably lists Lincoln's suspension of Habeas Corpus during the Civil War as one of the historic states of exception declared by western liberal democracies that he sees as a precursor to today's menaces. He is right, but in fact this goes to the heart of my argument against his approach. Three questions can be asked here: was the declaration of a state of emergency, as it were, or to be more precise, the use of exceptional measures, in the actual and not just declared defense of the interests of the popular classes and democracy rather than subversive of these? Was there a real emergency, in the sense that there was a plausible threat, not just to some lives and property say, but to the whole democratic order and survival of the society and of the interests of the popular classes? And was the declaration temporary and withdrawn after a short time and when the emergency was over? I think that a plausible case can be made that the answer is yes to all three of these, whereas in the case of say, the internment of the Japanese-Americans during World War II, which involved the expropriation of land and property from the victims, the answer would certainly be no to the first two.

But isn't all this just a social democratic argument, one that forgets the long history of proletarian attempts to establish direct democracy through the Paris Commune, the Soviets, the Workers Councils? Didn't Marx also argue that “the working class cannot simply lay hold

⁴⁷ Karl Marx, “To the People of the United States of America” from Minutes of the General Council of the International Workingmen's Association 1864-1886 Progress Publishers 1964: first published in The Workman's Advocate. 136, October 14, 1865; found on www.marxists.org at <http://www.marxists.org/history/international/iwma/documents/index.htm> May 29, 2009.

of the ready-made State machinery, and wield it for its own purposes.”? Indeed, is this not why Negri and others have been drawn to a kind of photo-negative version of Schmitt’s state of exception – the revolutionary moment in which the proletariat or the multitude can rewrite both the material and the legal constitutions? The experience of recent and current movements and radical left governments in Latin America challenges the idea that a state of exception is needed to carry out constitutional transformation. In Venezuela, Bolivia, Ecuador and elsewhere, major changes are being carried out and new constitutions written⁴⁸. These experiences, despite great diversity in their proposals, debates and outcomes, as well as of course the national contexts in which they occur, have several common features. First, they involve an alliance between an elected representative government and a mass movement that is itself quite diverse, but which is based on the working majority of the population; second they involve attempts to meld traditional representation using existing institutions and various forms of direct democracy at the workplace, neighborhood, and municipality; third, the new constitutions result from a large-scale discussion with serious input and participation from the grassroots and associations of all types; fourth, constitutional changes have been put to referenda votes, so it is the people, in an expression of Rousseau’s General Will, that can approve changes in which they participated both at the level of their associations and through representatives in drafting; fifth the changes affect the material constitution – the distribution of property, the rights of people to land or subsistence or income, as well as the legal apparatus; sixth, these movements typically involve movements of exactly those groups historically designated as *homo sacer*: the indigenous people of the continent. These movements and governments are certainly not without their contradictions, particularly regarding the role of the executive and relationship of leader to movement. But it would be a mistake to deny the autonomy, now greater, now lesser, of the movements from the heads of government, even in Venezuela⁴⁹. No state of exception has been used to impose these changes; rather the only risks of a state of exception have come during the coup attempt by the opponents of President Chavez of Venezuela, with backing from the Bush Administration, and the recent coup in Honduras, overthrowing President Zelaya. The mass

⁴⁸ See the fine documentary on direct democracy in Latin America “Beyond Elections” at www.beyondelections.com.

⁴⁹ For instance, the recent demands of workers for both greater nationalization of business and for such businesses to be turned over to workers to self-manage in opposition to bureaucratic state management, see among other articles, “Venezuelan Workers Unions Call for Greater Workers Control” Venezuelanalysis.com July 19, 2010.

democratic, proletarian movement that has opposed that coup testifies powerfully to the theses in this essay. Similarly, though in a very different context, the mass occupation of the capital Bangkok by pro-democracy demonstrators in Thailand, largely farmers and urban workers, and the massacre they suffered at the hands of the military, the monarchy and the elites they protect, under martial law, again suggests that the lines are increasingly clearly drawn between one set of class forces demanding democracy so as to use democratic government and their own organized movement to meet the needs of the majority, and those who are willing to destroy civil liberties and democratic institutions if necessary, in order to impose and sustain neoliberal capitalist globalization and the inequalities it creates.

Even the examples from the region that do not easily fit this model, such as the Zapatista movement in Mexico and the radical democracy briefly created and crushed in Oaxaca have not been attempts at all or nothing insurrections, but have seen themselves as part of larger processes needed to democratize Mexico. Can these approaches work where both traditional social democracy and the revolutionary tradition of direct democracy have failed to fully transform the state from a machine for killing – from a permanent state of exception – into an instrument of the people to meet their needs under their control? The struggles of peoples who have resisted expropriation for 500 years deserve our patience as they work out how to deal with conditions that Agamben has only interpreted for us. The point remains to change them.

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