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ON AGAMBEN'S SOVEREIGN EXCEPTION: THE POLITICAL ONTOLOGY OF SOVEREIGNTY

Özlem ÜNLÜ*

ABSTRACT

On Agamben's account of the exception, the question of what it is to be exceptional can only be clarified by going back to the history of political philosophy. For Agamben, one of the most important figures in that history is Carl Schmitt whose definition of the sovereign gives occasion to the paradoxical emergence of sovereignty. Schmitt's sovereign is located either inside or outside of the legal order. Agamben proposes the neither/nor, instead of the either/or, to explain the relation of sovereign to naked life through the exception at the ontological level by demonstrating that Schmitt's sovereign is indeed located inside or outside of the legal order at once. In this study, I examine how Agamben's proposed ontological logic of the sovereign exception inserts inside and outside of the law into a functional paradigmatic totality. From the perspective of Agamben's new political ontology, all legal and political theories, as well as regimes, based on the presupposed duality of inside and outside of the law, whether they are liberal democracies or authoritarian, will inevitably find themselves in the same vicious circle of inside/outside. Thus, emergency situations ought not to be understood as a form of contemporary political crises to be governed and regulated by the law. Quite the opposite, the ontology of sovereign exception is destined to reproduce the exception to the point it becomes regular.

Keywords: *Agamben, Schmitt, political ontology, sovereign, the state of exception*

AGAMBEN'İN EGEMEN İSTİSNASI ÜZERİNE: EGEMENLİĞİN POLİTİK ONTOLOJİSİ

ÖZ

Agamben'in istisna durumu açıklamasında, istisnai olmanın ne olduğu ancak politik felsefe tarihine geri dönülerek açıklığa kavuşturulabilir. Agamben için bu tarihin en önemli figürlerinden biri olan Carl Schmitt'in egemen tanımı, egemenliğin paradoksal bir şekilde ortaya çıkışına yol veren bir tanımdır. Schmitt'in egemeni, yasal düzenin ya içinde ya da dışında yer alır. Agamben, Schmitt'in egemeninin gerçekten de yasal düzenin aynı anda hem içinde hem de dışında yer aldığını göstererek, egemenin çıplak hayatla ilişkisini ontolojik düzeyde istisna yoluyla açıklamak için ya/ya da yerine ne/ne de'yi önerir. Bu çalışmada, Agamben'in egemen istisnasının önerdiği ontolojik mantığının, hukukun içini ve dışını işlevsel paradigmatik bir bütünlüğe nasıl yerleştirdiğini inceliyorum. Agamben'in yeni politik ontolojisinin perspektifinden bakıldığında, hukukun içini ve dışını varsayılan ikiliğine dayanan tüm yasal ve politik teoriler ve rejimler ister liberal demokrasi ister otoriter rejimler olsun, kaçınılmaz olarak kendilerini aynı iç/dış kısır döngüsünde bulacaklardır. Bu nedenle, acil durumlar hukuk tarafından yönetilecek ve düzenlenecek bir tür çağdaş politik kriz olarak anlaşılmamalıdır. Tersine, egemen istisnanın ontolojisi, istisnayı düzenli hale gelene kadar yeniden üretmeye mahkûmdur.

Anahtar Sözcükler: *Agamben, Schmitt, politik ontoloji, egemen, istisna hali*

* Asst. Prof., Selçuk University, Department of Philosophy. E-mail: ozlmunlu@gmail.com, ORCID: 0000-0001-5260-5499. Konya/Türkiye.

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Introduction

The Italian jurist and philosopher, Giorgio Agamben stands out a pivotal figure in contemporary discussions on the concept of the exception, offering a distinct and provocative approach to the politics of emergency. He rose to prominence with the publication *Homo Sacer: Sovereign Power and Bare Life* (1995), the second volume in his *Homo Sacer* series. His worldwide reputation was further solidified with the release of *State of Exception* (2005), where his reflections on the post-9/11 legal and political landscape resonated strongly with, and provided theoretical extensions to, his earlier work.

Having already been a vast literature about it since 2001, the 9/11 attacks in the US has still featured prominently in scholarly debates among legal and political theorists especially as to providing a quick and effective solution for an extraordinary happening inside and/or outside the law. This is partly so because the 9/11 attacks happened in and to the United States, which simply means that how easy for even the world's leading liberal democracy to take illiberal steps against the emergency by reinforcing the executive authority. To put it Schmittian terms, the immediate post-9/11 context constituted a 'concrete situation' in which the Bush Administration assumed not only executive functions but also legislative authority. This was formalized through the Authorization for Use of Military Force (AUMF), enacted by Congress and signed by the President on September 18, 2001, thereby granting the executive branch broad powers to prosecute the so-called 'war on terror' and "to use all necessary and appropriate force" against any persons, groups, or states deemed responsible for, or complicit in, the 9/11 attacks, including those who have harboured them—thus authorizing pre-emptive military actions "to prevent any future acts of international terrorism".[1]

It is worth noting that the US Constitution contains no explicit provision for responding to emergencies; nevertheless, this absence did not prevent the swift enactment of public law within a week of the 9/11 attacks, as evidenced by the Authorization for Use of Military Force (AUMF), which conferred expansive legal authority upon the executive. This move is fundamentally illiberal in that it contravenes a core liberal tenet: the principle of the rule of law, particularly the separation of powers. For Agamben, the events following 9/11 exemplify how

[1] U.S Congress, *Authorization for Use of Military Force*, Public Law 107-40, U.S. Statutes at Large 115 (2001): 224, accessed May 15, 2025, https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf

states of exception often evolve independently of their "constitutional and legislative formalization".[2]

Of course, 9/11 was not the only instance in in political history where law was suspended in the face of perceived necessity. In his *State of Exception*, Agamben offers an extended reflection on the genealogy of emergency powers in Western political and legal thought. In a detailed eleven-page note, he traces this history from the decree of the 1791 French Constituent Assembly to President George W. Bush's post-9/11 presidential assertion of "sovereign powers" in the global war on terror.[3]

According to Agamben, this latter instance cannot be classified as an 'ordinary' state of emergency—one that would necessitate prolonged and meticulous political deliberation beyond the routine mechanism of the law as emergencies, by their nature, are unpredictable and demand prudent judgment. The post-9/11 state of exception, however, was not a situation in which the sovereign found itself suddenly; rather, it was actively constructed. As Agamben argues, the presidential claim aimed "to produce a situation in which… the very distinction between peace and war (and between foreign and civil war) becomes impossible".[4] In this way, the Bush administration did not simply respond to a crisis—it inaugurated a global war on terror rooted in a Manichean narrative of the 'axis of evil' versus the 'free world,' all in the name of a so-called global peace.

Already attuned to "the secret law of this vocabulary," in which peace is mistaken for war, oppression for freedom, humanity for inhumanity, Agamben articulates a governing logic of global sovereign ontology that departs from Carl Schmitt's definition of the sovereign.[5] Agamben recrafts Schmitt's original conceptions, highlighting the paradoxical nature of the state of exception. This paradox, Agamben argues, does not signal the gradual depolitization of sovereignty, as Schmitt contends, but instead exposes the original dynamic of the Western politics itself. In contrast to Schmitt's account of Europe's progressive loss of the political, Agamben maintains that not only the paradox reveals aptness of politics for emergencies, but the nature of politics reproduces them repeatedly, such that the suspension of law becomes the rule. What is ruling, for

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[2] Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 10.
[3] *Ibid*., 2.
[4] *Ibid*., 22.
[5] Carl Schmitt, "The Age of Neutralizations and Depolitizations" in *The Concept of Political*, trans. George Schwab (University of Chicago Press, 2007), 95.

Agamben, has never been (the rule of) law, but the suspension of (the rule of) law.

In this regard, the production of exception as the original act of sovereign power is one matter; its continual reproduction to the point where there is no longer rule but only suspension is another. The notion of pre-emptive war, inscribed in the AUMF's reference to "any future acts of international terrorism", full exposes the logic of this perpetual reproduction of the exception. Here the sovereign is not responding to an actual emergency that poses an existential threat to its existence so that the existing law becomes ineffective to deal with it. Rather, as 9/11 demonstrates for Agamben, the existing law is suspended precisely because of the mere possibility that an emergency might occur in the future.

It is not necessary for the sovereign to confront the concrete reality of a nuclear weapon in enemy hands to justify suspending the law, but the mere potentiality or capacity of the possession of weapon as such is sufficient. The contemporary form of the exception, then, rests on the sovereign's ability to manipulate the very distinction between emergency and normality, deploying it as a fictive political instrument to normalize what are, in fact, exceptional and extraordinary measures of state power. This dynamic becomes especially apparent when one considers the proliferation of declared emergencies across the globe throughout the twentieth and twenty-first centuries.

Agamben on Schmitt's Two Concepts of *Dictatorship*

In Schmitt's 1921 work *Dictatorship*, the distinction between two types of dictatorship is made according to a more fundamental "opposition between right [*Recht*] and the exercise of right [*Rechtsverwirklichung*]"[6] or, in another formulation, the inevitable "separation between the norms of justice and the implementation of law".[7] The logic of dictatorship lies in what Schmitt calls the major juridical question to any political theory—a question that is also a general

[6] Carl Schmitt, *Dictatorship. From the Origin of the Modern Concept of Sovereignty to the Proletarian Class Struggle*, trans. M. Hoelzl and G. Ward (Polity Press, 2014), 168.
[7] Schmitt, *Dictatorship*, xlii.

feature of law: no legal regulation can regulate its own implementation.[8] The rule is one thing, law is another.

On the basis of this primordial distinction, Schmitt, seeks to explain how dictatorship was employed by the Roman commissars both politically and legally in order to somewhat keep and amend the existing order. By contrast, sovereign dictatorship aims not at the preservation of the constitution, but at its very re-foundation, changing the previous order into a new one. The classical commissarial dictatorship is a sort of political management about ways of using proper emergency means to restore constitution. The modern sovereign dictatorship, however, has nothing to do with the restoration of constitution, but constitution itself. Thus, the classical dictatorship bases itself on the decision on the exception and who is entitled to have the exercise of the right to rule, but not the right to rule—thus operating for a limited time only to save the ongoing legal order. As opposed to modern sovereignty, the Roman intervention did not create a legal vacuum in which a new order could be asserted *ex nihilo*. The Roman commissar has an exceptional but temporary authority, oriented toward the re-establishment of the normative framework rather than its replacement.

Throughout *Dictatorship*, Schmitt appears to be tracing the historical and conceptual elements that might provide criteria for political intervention from Roman times to the modern era. In 1922 *Political Theology*, however, Schmitt shifts focus, leaving the theory of dictatorship behind to develops a theory of sovereignty in which the primordial distinction between the right and the implementation of the right dissolves entirely in the figure of sovereign who decides and acts in political capacity. In the assertive formulation *Political Theology* just one year after *Dictatorship*, Schmitt defines the sovereign as the one who decides on both the exception and "what must be done to eliminate it".[9] In this conception, it is the decision itself that constitutes both the law and its application.[10] The earlier distinction between the right to rule (decision on the exception) and the execution of the right to rule (decision on what to do to get rid of the exception) thus collapses. Accordingly, Schmitt's theoretical

[8] Suat Kutay Küçükler, *Carl Schmitt'in Hukuk Düşüncesinde Demokrasi ve Diktatörlük Tartışması* (On iki Levha Yayıncılık, 2023), 87-88.
[9] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Stanford: University of Chicago Press, 2005), 5, 8.
[10] M. Ertan Kardeş, *Schmitt'le Birlikte Schmitt'e Karşı: Politik Felsefe Açısından Carl Schmitt ve Düşüncesi* (İletişim Yayınları, 2015), 105.

manoeuvre in *Political Theology* implies the erasure of the boundary between legislation and execution in times of the exception.

It is at this juncture that Agamben intervenes. He begins his 2003 *The State of Exception* by pointing out how vain Schmitt's effort in distinguishing between modern sovereign dictatorship and classical commissarial one since both, in his view, rest upon a conception of the exception that "lies in a zone of undecidability".[11] What Schmitt treats, in the case of the commissarial dictatorship, as a temporary technique for managing the exception has, Agamben argues, already turned out to be "the dominant paradigm of government in contemporary politics".[12] The problem is straightforward: who can guarantee that a commissar entrusted merely with the exercise of right would not also claim the right itself unless such temporary authority is constrained by the right?

On Agamben's reading of Schmitt, if the right (norm/law) and the execution of the right (decision) are irreducible to one another—no norm can regulate its application—then each is autonomous.[13] This autonomy implies that the exercise of the law can operate entirely independently of the law's normative framework. Once detached from the law itself, the act of exercising authority encounters no inherent reason to limit itself to preserving the existing legal order and may, instead, justify overturning it in the name of constituting a new order. In a word, it is possible for a commissar to become a sovereign. The structural autonomy of the decision from the norm means that a commissar may ultimately assume the position of a sovereign.

Agamben on the Sovereign Exception

Agamben reveals that Schmitt lacks a coherent foundation for distinguishing between norm and decision even though his theory of the state of exception relies on the supposed autonomy of each. Accordingly, Agamben also challenges the validity of Schmitt's distinction between classical and modern forms of dictatorship, arguing that the two are ultimately indistinguishable. He is not alone in this critique. David Dyzenhaus's interpretation of Schmitt's theory of dictatorship offers a useful lens through which to position Agamben's unique intervention in the debate over sovereignty.

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[11] Agamben, *State of Exception*, 2.
[12] *Ibid*., 2.
[13] *Ibid*., 36.

In his comparison of Schmitt and Agamben, Dyzenhaus affirms Agamben's claim that there is no defensible basis for maintaining a Schmittian distinction between the classical Roman commissarial dictatorship and the modern revolutionary sovereign dictatorship. Dyzenhaus, however, considers Schmitt's position even more radical than Agamben's. While Agamben's concept of the state of exception as a "black hole" of legal meaning still presupposes a role for law in its own suspension, Schmitt, argues Dyzenhaus, posits a space entirely beyond law, one not produced or mediated by legal norms at all.[14] What makes Schmitt's theory more extreme, in Dyzenhaus view, is that it assigns no function to law whatsoever, not even in the act of suspending itself.

From a liberal perspective, Dyzenhaus appears to be attempting to compare two fundamentally incommensurable figures—Schmitt and Agamben—on the shared terrain of the exception. This is evident in his surprising suggestion that Schmitt's account of "the legal constraints on a commissarial dictator" may warrant reconsideration in the post-9/11 era, even though Schmitt's own distinction between commissarial and sovereign dictatorship collapses under scrutiny either from the perspective of the political or in terms of the pre-legal conception of constituent power.[15] In this regard, Dyzenhaus ultimately distances himself from Agamben's thesis of indistinction, implicitly proposing that the commissarial form of dictatorship might retain normative relevance in times of emergency.

What distinguishes Agamben's critique of Schmitt from those of other theorist is its broader explanatory reach: his theory of exception applies not only to liberalism, but also to critiques of liberalism. For Agamben, the indistinguishability between Schmitt's two concepts of dictatorship is not merely a theoretical inconsistency on Schmitt's part; rather, it discloses a deeper and more unsettling truth about the foundations of Western political philosophy.

Schmitt's conception of sovereign decision is fundamentally structured by an "either-or" logic.[16] The sovereign, in his view, stands at a crossroads and decides which path to take when both cannot be taken simultaneously. Crucially, Schmitt insists that the sovereign is not bound to question whether s/he is legally

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[14] David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge: Cambridge University Press, 2006), 38-39.
[15] David Dyzenhaus, "The Concept of the Rule-of-Law State in Carl Schmitt's *Verfassungslehre*," in *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons (New York: Oxford University Press, 2016), 504.
[16] Kardeş, *Schmitt'le Birlikte Schmitt'e Karşı*, 104.

authorised to make such a decision on the exception, rather exercises it independently of any prior legal validation. The sovereign, in this framework, decides on the exception without needing to derive it from the norms of legal order. At the same time, Schmitt also characterizes the legal order as a framework that allows the sovereign to stand with "one foot within and the other without".[17] This ambivalent position becomes central for Agamben who interprets it not as a flaw but as revealing the deeper operational logic of the exception. Agamben suggest that Schmitt comes remarkably close to uncovering the original structure of sovereign power when he describes the sovereign as a *Grenzbegriff*—a "borderline concept".[18]

For Agamben, Schmitt's attempt to hold together the either-or and the both-and reflects much more than a theoretical failure; it gestures towards a deeper ontological aporia at the heart of his conceptual framework. Agamben proposes that the sovereign, being both inside and outside of the legal order, cannot be characterized by the either-or decision, but by all-inclusive-exclusive exception. That is, a logic of 'neither-nor', instead of that of the either-or, has explanatory power for the original act of sovereign. The ontology of sovereign exception includes and excludes simultaneously. Thus, whereas Schmitt emphasizes the decisive nature of sovereignty in the face of concrete situations, Agamben radicalizes it by framing the sovereign as the figure who inhabits the threshold of the legal order—at once inside and outside, producing the exception that suspends the rule while preserving its form.

For Schmitt, the sovereign decision on the exception does not depend on the constitutional law; rather, in an exceptional situation, "the norm is destroyed in the exception."[19] Indeed, decision becomes the sovereign decision when it "frees itself from all normative ties and becomes in the true sense absolute."[20] Therefore, there is no place to look for the legitimacy of the legal order within the constitution.

Where Schmitt discerns the irreducibility of decision to norm, Agamben interprets this as the site of paradoxical nature of the exception. As Agamben puts it, "the state of exception appears as a threshold of indeterminacy" between

[17] *Ibid*., 108. Not only Schmitt, but also Schmitt scholar E. Kardeş claims 'either-or' and 'both' at once.
[18] Schmitt, *Political Theology*, 5.
[19] *Ibid*., 12.
[20] *Ibid*., 12.

two opposing poles: democracy and absolutism.[21] This threshold reveals the fragile boundary between liberal democratic order and authoritarianism. Hence, it should not be surprising, Agamben suggests, if even the most liberal democratic regime slides into authoritarianism under the guise of emergency. Likewise, Agamben's theory of the sovereign exception offers a powerful explanation for why the distinction between traditional and modern constitutional forms is no longer tenable. This collapse occurs precisely because the emergency powers that "seek to justify in the name of defending the democratic constitution are the same ones that leads to its ruin".[22]

All legal and political theories that attempt to differentiate between what lies inside and outside the constitution or the law either—whether through the distinction between "norms of law and norms of the realization of law,"[23] as exemplified in the classical commissarial dictatorship, or through the distinction between constituent power and constituted power, as found in the modern theory of sovereignty—ultimately remain ensnared in the same "the vicious circle".[24] These conceptual distinctions are indeed made by the most prominent absolutist theories of sovereignty such as that of Thomas Hobbes, as well as the most fervent defenders of indivisible sovereignty, including Jean Jacques Rousseau.

Rousseau's Indivisible Sovereignty Reconsidered

Agamben's account of sovereign exception becomes more accessible when examined through the various historical instances he draws from the Western political tradition. Indeed, both *Homo Sacer* and *State of Exception* can be read as part of a broader project aimed at identifying and interpreting these paradigmatic cases. Although Rousseau is not explicitly included among the figures Agamben analyses, I argue that the logic of indistinction central to Agamben's theory of sovereignty is nevertheless detectable within Rousseau's own conception of sovereignty. Rousseau's insistence on the indivisibility

[21] Agamben, *State of Exception*, 3.
[22] *Ibid*., 8. See also Mete Ulaş Aksoy, "Kutsal İnsan: Giorgio Agamben'in Egemenlik Anlatısında Kurbansal Durum," *FLSF Felsefe ve Sosyal Bilimler Dergisi*, no. 22 (September 2016): 20-21.
[23] Agamben, *State of Exception*, 33.
[24] *Ibid*., 8.

reveals structural affinities with the very dynamics Agamben identifies as constitutive of the modern state of exception.

In *The Social Contract*, Rousseau provides a compelling instance of what Agamben refers to as the amphibology of sovereignty—that is, the indistinct threshold where rule and its suspension blur into one another. It is not a coincidence, Agamben would argue, that Rousseau insists on a distinction between the supreme power and the government: the former derives from the *volonté générale*, resides in sovereignty and constitutes supreme power, while the latter merely executes this will. Yet paradoxically, the more Rousseau emphasizes this separation between constitution and government, the more he edges toward the very principle with which his name is most closely associated—sovereignty's indivisibility—and, in Agamben's terms, toward the indistinction between legislative and executive powers.

Rousseau is rightly to be attributed a theoretical effort to maintain both this distinction and the inherent link between constitution and government. In chapter nine of *Considerations on the Government of Poland*, 'Specific Causes of Anarchy', Rousseau warns that Poland's constitutional breakdown stemmed precisely from the political collapse of the boundary between law-making and administration. He observes that while "exercising legislative power, the Diet mixes in bits of administration, performing indifferently acts of sovereignty and acts of government, often even mixed acts in which its members are simultaneously magistrates and legislators."[25] Rousseau, in this context, affirms the importance of maintaining a structural division of power within the body politic, rooted in the principle that sovereignty is inalienable and belongs solely to the people.

Yet, at this point, Agamben would remind us that the logic of exception always threatens to undermine this distinction. What happens, he might ask, when the executive—originally appointed by the sovereign whose official task is to execute the sovereignty—claims, by virtue of necessity or emergency, to become the sovereign? The logic of the exception always carries this possibility along with itself. This is precisely the dynamic the state of exception enacts: a mechanism whereby the government's capacity to act overrides its original derivation from the sovereign will. Rousseau's own theory thus harbours the

[25] J.J. Rousseau, "Considerations on the Government of Poland," in *The Social Contract and Other Later Political Writings*, ed., and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 217.

very potential for sovereign substitution that Agamben identifies as a structural feature of modern political ontology.

Consider, for instance, Rousseau's brief account of commissarial dictatorship—that is, an exceptional exercise od executive power constrained by both time and scope. In Book IV of *The Social Contract*, Rousseau allots a chapter on dictatorship, acknowledging that certain circumstances may arise in which "the sacred power of the laws" proves insufficient to preserve the state.[26] He even contends that the power of law made for the integrity of the order may cause its disintegration; the "inflexibility of the laws, which keeps them from bending to events, can in some cases render them pernicious, and through them cause the ruin of a State in crisis."[27]

By *crisis* Rousseau refers to, so to speak, those ontologically critical junctures at which "the State is soon destroyed or saved".[28] He limits such exceptional conditions to "rare and manifest" instances when "the salvation of the fatherland is at stake."[29] In these moments, even the most sacred authority of law is rendered inadequate—not because the law loses its legitimacy, but because it becomes, paradoxically, an obstacle to the very protection of the state. So, the law, however sacred it is, reveals its "instrumentality as an obstacle to guarding against it [the peril]."[30]

Crucially, for Rousseau, what is provisionally suspended in such states of exception is not the authority of the laws *per se*, but rather "the form of their administration."[31] In this way, Rousseau preserve the sanctity of law while allowing for its temporary eclipse in application. The dictatorship he describes remains bound to the constitutional order, operating as an emergency function rather than as a break with legality. Nevertheless, as Agamben would note, this arrangement opens the door to a deeper paradox: even when laws are nor formally suspended, the conditions of their execution may transgress the legal framework they claim to protect.

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[26] Rousseau, "Of the Social Contract," in *The Social Contract and Other Later Political Writings*, ed. and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 138.
[27] *Ibid*., 138.
[28] *Ibid*., 140.
[29] *Ibid*., 138
[30] *Ibid*., 138
[31] *Ibid*., 138

On Rousseau's account, firstly, the activity of government in times of crisis—whether executed through a special commission, a supreme chief, or a magistrate—is strictly limited in scope and authority. While such figures may be appointed to silence the laws temporarily within a clearly defined spatiotemporal framework, they do not, and cannot, represent or replace sovereign authority. Their role is strictly executive: they are empowered to manage the exception, but they remain entirely excluded from legislative power. In other words, the emergency commission is authorized to act, not to legislate.

Secondly, as in the Roman model that Rousseau explicitly refers, the duration of dictatorial power is tightly constrained, and any time-out actions are to be regarded as the abuse. The ideal dictator, in Rousseau's view, is one who hastens to complete the assigned task and relinquishes power without delay. Emergency powers, in principle, so unwelcome in republican tradition that the Roman appointments were sometimes conducted "at night and in secret, as if they had been ashamed of placing a man above the laws."[32] Thus, Rousseau considers the six-month limit on dictatorial power to strike a critical balance: the six-month duration for the legitimate use of dictatorial power is neither short enough for the special duty to be left half-done, nor long enough for the dictator "to dream of other projects" and thus to become tyrant.[33]

Even though this 'necessary' way of suspending the laws is full of negative connotations, Rousseau allows the dictatorial measures to suspend the existing law to save it, not to overturn it. He never guarantees, however, that a dictator, once empowered to act decisively, will not eventually claim sovereign authority by virtue of their capacity to impose order. From Agamben's perspective, this ambiguity is precisely the problem. For him, the distinction between dictatorship and sovereignty is ultimately untenable: there is no such thing as a dictator who is not also, at least potentially, a sovereign. The very structure of commissarial dictatorship already contains the seeds of sovereign dictatorship, and vice versa, to the extent that decision is defined in opposition to norm.

What is at stake for Agamben, then, is not merely a critique of liberal constitutionalism—as Schmitt would have it—but an indictment of the underlying juridico-political logic of modern statehood itself. The problem is not one particular constitutional arrangement or tradition, but the Western political

[32] *Ibid*., 139.
[33] *Ibid*., 140.

ontology that constructs power as a dualism between norm and decision, law and force, inside and outside, constituent and constituted power.[34] In order not to fall in this antagonistic trap of Western set of dualisms, Agamben articulates the concept of the sovereign exception. Agamben's political ontology seeks to avoid this dualistic impasse. Within the logic of the exception, the state of exception, instantiated in the absolute decision of sovereignty, is in a "zone of indifference" where the distinction between inside or outside is not maintained, but dissolved, blurred into indistinction.[35]

Agamben on Life and Ontology of Biopolitics

Agamben's critique constitutes a radical effort to address the question of exception at its very roots. For him, the question of the exception is not merely a technical or juridical anomaly, but rather an instance of the reiteration of the biopolitical crack between political and "bare natural life" (that is, inside and outside) throughout Western political theorisation. This fundamental split, far from being a contingent feature of modernity, is inscribed in the very ontology of sovereignty itself. The *original* act of sovereign power, Agamben contends, is "the production of a biopolitical body"—a form of life captured by law through its exclusion.[36] In this sense, sovereignty as the supreme power, whether classical or modern, cannot be understood apart from its biopolitical dimension. Biopolitics has always functioned as a model of power grounded in the capacity to decide over life by distinguishing between lives.

The original act of sovereignty manifests itself in "the decision on bare life"—a decision which characteristically engages life in violence.[37] Against Schmitt, Agamben argues that sovereign (the power to decide on the exception) cannot establish itself with a mere reference to the norms of legality and without reference to outside of them; neither outside nor inside, but both inside and outside are crucial to understand its original act. Instead of the either-or, the dual negation, neither-nor is crucial to understand the relation of politics to ontology.[38] The neither/nor addresses "at the ontological level, the figure of

[34] Enis Emre Memişoğlu, "Giorgio Agamben ve Kutsallığın Ekonomi Politiği," *FLSF Felsefe ve Sosyal Bilimler Dergisi*, no. 35 (Spring 2023): 30.
[35] Agamben, *State of Exception*, 23.
[36] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, California: Stanford University Press, 1998), 6.
[37] *Ibid*., 10
[38] Abdullah Eryiğit seems to misread Agamben by aligning him with Schmitt along a decisionist trajectory, thereby reading Agamben through a reductive either-or

exception, as well as the symmetrical figures that this exception characterizes: sovereign power and naked life".[39] The sovereign act is rather a double one: "inclusive exclusion."[40] What is excluded from the legal order by being included in the same order by the logic of sovereignty is 'life'.

What characterizes biopolitics of modern democracies is bare life—the exception—which takes a foundational and central place to an unprecedented degree; insofar as "the sovereign *nomos*… conditions every rule,"[41] the distinction between '*zoē* and *bios*', 'the state of nature and civil state', 'right and violence', 'inside and outside', 'friend and enemy', 'norm and decision', 'constitutive and constituted power', 'legislation and execution', and finally 'sovereign and law' collapses into "a zone of indistinction" where "fact and law coincide."[42]

Agamben's definition of the exception takes him also to the conclusion that the relation of decision to norm, that is, the relation of the act of sovereign power to the concrete legal order (or the relation of constituent power to constituted power) discloses the location of the exception; it is neither inside, nor outside, but both at once. He argues against the urge to draw a clear line between inside and outside the law which has resulted in thinking it as a rigid set of formal definitions and as having its own science, isolating it completely from humane context in which it originally dwells. The law "has no existence in itself, but rather has its being in the very life of men."[43] And, the relationship of law to life maintains itself in the act of sovereign through the exclusion of bare life "as an exception, within it."[44] Sovereignty is constituted through exclusion of life that would normally be under legal protection. In other words, the only way of including life in the sovereign order is to exclude life from the same order; any human being would not have been included in the order unless there existed the "capacity to be killed."[45]

Hence, given Agamben's synthesis of bare life into the concept of exception, there seems no possibility to argue whether the state of exception is

framework. Such a reading overlooks the way Agamben destabilizes the Schmittian political ontology by emphasizing the indistinction between norm and decision. See Abdullah Eryiğit, *Yasa-Üstü İnsan: Platon'dan Agamben'e Yasa ve Hukuk İkileminde İnsan*, (Runik Kitap, 2021), 183.

[39] Bruno Gulli, "The Ontology and Politics of Exception: Reflecitons on the Work of Giorgio Agamben," in *Agamben and Law*, ed. T. Zartaloudis (Routledge, 2016), 147.

[40] Agamben, *Homo Sacer*, 21.

[41] *Ibid*., 111.

[42] Agamben, *State of Exception*, 26.

[43] *Ibid*., 27.

[44] *Ibid*., 8.

[45] *Ibid*., 8.

inside or outside the law so long as the (non-)relation of law to life is framed within the assumption that inside and outside exist independently of sovereignty or that there is a temporal sequence of 'before' (constitutive power) and 'after' (constituted power) the constitution.

Conclusion

Schmitt's theory of dictatorship ends up with a radical conception of sovereignty in which sovereign right and its execution of are inseparable. It is solely the sovereign who determines whether a situation constitutes an exception and what measures must be taken to resolve it. The distinction between commissarial and sovereign dictatorship hinges on the difference between norm-preserving power of commissar, or the norm-giving power of the sovereign. For Agamben, sovereign dictatorship is already contained in the commissarial form and vice versa insofar as decision defines itself in its opposition to norm. this fluid interchange between classical and modern dictatorship, Agamben contends, illuminates why Schmitt designates the exception as a 'borderline concept' in *Political Theology*—a concept situated on the margin, belonging neither entirely inside nor outside the legal order, but simultaneously to both.

Agamben's position impressively confronts how this very distinction of norm-decision itself is at the root of the problem, as it allows the sovereign exception to legitimize its every act as a necessary and effective measure taken to determine the lives of those who can be in or out at random. By insisting on distinguishing the dualities of the Western-European political thought, in Agamben's view, intellectual efforts are destined to end up with justifying these categories that can be found in almost every single philosophical work.

What makes distinctive Agamben's contribution on the contemporary debate on the exception is the invented principle about 'life' which can annul the traditional distinction between inside and outside of the law and to conflate them into something like a Möbius strip. The state of exception, for Agamben, is not something completely new to politics, but one manifestation of deadlocks of biopolitical sovereignty which functions as the power to dominate over life itself in different forms from ancient to modern times. For this reason, any account of sovereignty would be, regardless of being liberal, commissarial, sovereign dictatorial or even Caesarist in its constitution, rendered commensurable in the face of Agamben's in terms of their respective outcomes.

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Özlem ÜNLÜ