

# A Deconstruction of Giorgio Agamben's "State of Exception"

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I discovered Giorgio Agamben's oeuvre in my reading of the issues on human and constitutional rights vs the security of the North Atlantic state in the post attack on New York city military engagement with Islamic extremism. The first of Agamben's works experienced was "State of Exception" and this reading proved to be simply a continuation of my quest to understand the European enlightenment worldview and its paradigm through the worldview of an European who was engaged with deconstructing the European enlightenment project. These studies then enable those of us of the colonial realm to understand the worldview of our colonial masters and by extension the colonial social order they continue to impact across time. This journey commenced with Franz Fanon continued with Michel Foucault and then Giorgio Agamben.

The abiding reality is that those of us who live in the colonial periphery live on a daily basis a state of exception as colonial domination of the European variety has to be premised on, conjured up and driven by state of exception. State of exception applied external of Europe begets a colony and constitutes colonised persons who are colonised but less than human. The debate over constitutional and human rights in the colonial periphery is then a sick joke expressive of and significant for the various masks of denial we as colonial peoples wear constantly in a bid to enable our passage through the colonial wasteland. This is then an exercise to dredge relevant insights from an European thinker who deconstructs his enlightenment project in a continuing bid to understand our colonial order of the Caribbean and especially that of Trinidad and Tobago. There will then be no involvement in a sterile debate within the ambit of a worldview and paradigm held and assimilated by those of the world of the colonial master. Such a sterile debate masks our colonial social order and keeps us perennially and perpetually the children of Sisyphus condemned by the colonial master to daily acts of futility that insist that we are subjects endowed with free will mockingly. The central task is to then dismantle the two levels of power relations that impact our social orders and ourselves at every instance of action contemplated and exercised. These levels are: the power relations between inmates of the colonial plantation and the power relations between powered individuals, groups, corporations and states external of the plantation that is imperial power relations that impact the state and oligarchy of the colonial state (see Figueira 2009).

Agamben in "State of Exception" makes several statements on the nature of the state of exception within the context of his work. Agamben states: "Faced with the unstoppable progression of what has been called a 'global civil war' the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics. This transformation of a provisional and exceptional measure into a technique of government threatens to radically alter-in fact, has already palpably altered-the structure and meaning of the traditional distinction between constitutional forms. Indeed, from this perspective the state of exception appears as a threshold of indeterminacy between democracy and absolutism." (Agamben 2005 Pgs 2+3). The state of exception is supposedly a 'provisional and exceptional measure" in an enlightenment democracy premised on the rule of law. What makes it provisional and exceptional? Does necessity in the life of a democracy trigger the resort to the exceptional measure? Agamben is stating that the war on terror therefore necessitated the unleashing of the exceptional measure making it the necessity: security of the state. But according to Agamben the provisional even the temporary has now become the "dominant paradigm of government" and as a result the "dominant technique of government". This has happened because the necessity is not temporary thereby it is not provisional and exceptional. The war on terror that has proved to be neither provisional nor exceptional demands a state of exception that is permanent as determined by the necessity. The question for Agamben is then: where is the genesis of the state of exception in European discourse of the state and power? Agamben states that the state of exception paradigm of government has impacted the nature of the constitutional forms of European enlightenment constitutions. But is a state of exception a constitutional form or a creature conjured up from an extra-constitutional

netherworld? Agamben states “from this perspective” but is it his perspective also that the state of exception as a paradigm of government sits today between democracy and absolutism as a “threshold of indeterminacy” this threshold then evolves democracy into absolutism via the indeterminacy it propagates thereby eroding democracy. This statement reeks of enlightenment rooted liberalism and at this point further reading of the text is a waste of time for me and my project. But is this Agamben's line or it simply a perspective on the state of exception?

Agamben has to deal with the genesis of the discourse of the state of exception as he has to deal with necessity that demands the state of exception. On the genesis Agamben states: “In any case, it is important not to forget that the modern state of exception is a creation of the democratic-revolutionary tradition and not the absolutist one.” (Agamben 2005 Pg 5). The modern state of exception was then created by discursive creators of the European enlightenment. European enlightenment democracy formulated and operationalised the discourse to match necessity arising from the daily operation of European democracy. The discourse is not then a legacy of European absolutism therefore the state of exception declared on minorities as Jews, the Roma, Africans and the physically and mentally challenged in Nazi Germany was in keeping with European enlightenment democracy. As are the states exception being declared in the EU today on refugees/Muslims/Arabs/terrorists/Islam the product of European democracy. The discourse of the state of exception is the legacy passed to the US where Native Americans, to Australia where the Native Australians and to Canada where the First Nations all live under states of exception as necessity transcends time.

Given the genesis of the discourse of state of exception a state of exception has then a power relationship with law and the rule of law. On the power relation Agamben devotes much of his attention to as follows: “The immediately biopolitical significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension.” (Agamben 2005 Pg 3). The biopolitics of Europe in keeping with Foucault's discourse is the gaze affixed on the human body for the purpose of rendering it a subject of power/power relations. For Agamben the state of exception has a task to render the body a subject of power it therefore serves power and is part of the power/knowledge discursive apparatus created to achieve the ultimate goal. But state of exception acts to determine subjects of power in a space created by suspending law and the rule of law whilst in this space law is propagandised as the hegemonic operational entity in keeping with the strategy borne out of power relations to mask realities that challenge the discourse of the rule of law. The rule of law must then legitimise the state of exception and its operation even though state of exception and the rule of law are not and cannot be operationally compatible as the state of exception cannot be subservient to the rule of law and be a state of exception. Its discursive creators therefore created an instrument that flouted the rule of law in the course of its effectiveness in addressing necessity necessitating the discourse that insists that law legitimises the state of exception. State of exception conceptualised as a threat to European democracy is in fact the operationalised order of the state of the colonial periphery where the order of the colonial state was initially created and continues to be impacted by North Atlantic imperial domination. State of exception conceptualised via necessity that transcends time is then the basis for evolving European democracy into a colonial order where the rule of law is an ideal at best in reality a cruel joke for the powerless according to Agamben's line. Agamben on this dynamic between law and state of exception further states: “The state of exception is not a special kind of law (like the law of war); rather, insofar as it is a suspension of the juridical order itself, it defines law's threshold or limit concept.” (Agamben 2005 Pg 4). State of exception is then external of the domain over which law is hegemonic but much more than externality/exclusivity when operationalised it suspends the juridical order.. State of exception presents a ceiling, a limit and a threshold to the rule of law. But why in a European democracy that is supposedly premised on a juridic order a discourse of exception is created and operationalised to suspend this supposedly hegemonic

order? What purpose does it serve to the powered elite to unleash such an instrument? In the colonial order of the periphery these questions are rendered inviolate by the daily operation of power and the endemic powerlessness that serves power and those who wield societal power. But in an European democracy power masks the reality of the state of exception. What then is necessity that demanded the creation of the discourse of state of exception as its solution?

Agamben defines state of exception as follows: “Although the paradigm is, on the one hand (in the state of siege) the extension of the military authority's wartime powers into the civil sphere, and on the other a suspension of the constitution (or of those constitutional norms that protect individual liberties), in time the two models end up merging into a single juridical phenomenon that we call the state of exception.” (Agamben 2005 Pg 5). State of exception is the product of combining two discourses created by European enlightenment democracy: the state of siege and suspension of the constitution but both discourses were invented by democracies to deal with a specific necessity. Under the discourse of the state of exception the state of siege projected and intervened into the social order utilising the wartime powers of the military. The politicians were then at war with elements of the social order not an external enemy but an internal. The suspension of the constitution was included in response to the threat posed by an internal enemy the necessity therefore demands the abrogation of the constitutional status and definition of the internal enemy. When combined the discourse of state of exception strips bare the constitutional definition of the internal enemy whilst enabling a military onslaught against the internal enemy. In the reality conjured up by state of exception you cannot be a juridic subject only an internal enemy with a body to act upon, to discipline, to punish and to terminate with extreme prejudice. You are then terrorist. Agamben's definition illustrates that the discourse of the state of exception was in fact the product of the European colonial order that acquired a new specificity when necessity appeared in European democracies. Agamben's position is that the discourse was crafted in response to the First World War and historical events that followed as World War 2. The foundation of the discourse didn't fall from the sky it was present to be refashioned as the need arose in Europe having been constituted in response to necessity created by European colonial domination in the periphery. Another of our contributions to human civilisation as apartheid. In the colonial periphery the era of military intervention in civilian politics is now followed by the policeisation of the military where they legally police the social order of the colonial states of the periphery. It is noted that in colonial states in which the military regularly intervened into civilian politics the policeisation of the military is well advanced. Another instance of the hegemony of the state of exception in democratic colonial states. Whilst in specific states of the North Atlantic the militarisation of the police is well advanced both instances being the products of state of exception.

Having defined state of exception Agamben speaks of its essential characteristics as follows: “One of the essential characteristics of the state of exception-the provisional abolition of the distinction among legislative, executive, and judicial powers-here shows its tendency to become a lasting practice of government.” (Agamben 2005 Pg 7). In the condition of state of exception any distinction between the legislature, executive and judiciary is supposedly provisionally abolished. But Agamben doesn't deal with the repository of power in this environment for power and power relations must manage the state of exception to realise the outcome of the strategy that necessitated the unleashing of the state of exception. In colonial states of the periphery blurring of lines of power between these three state institutions is a reality that has transcended time and the repository of power is a heterogeneous group comprising politicians, oligarchs, state officials and imperial agents. The composition of this power repository is constantly in flux as personnel changes especially the politicians, power blocs, alliances and strategies of power respond to local and international topographies of power/power relations. In this power environment state of exception has to be the norm in a colonial state. Agamben continues as

follows: “in conformity with a continuing tendency in all of the Western democracies, the declaration of the state of exception has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government.” (Agamben 2005 Pg 14). A techniques of power is used to mask state of exception with a paradigm of security that insists on the necessity of security and its pursuit and is in fact now a technique of government. The pursuit of security then abrogates the separation of powers, projects military authority into the civil space, suspends constitutional and human rights and international law. That it is a generalisation of the paradigm of security illustrates its role as a technique of power that has to engage with resistance to power as power begets struggle/resistance. In a colonial state security is the preserve of the specifically powered as a result there is no accountability, no transparency and no redress for its a matter of raw, naked power exercised by the powered elite masked by the discourse of national security and secrecy. This silence is the extension of the silence that encapsulates the daily actions of the powered elite. The powered elites of the colonial state don't embrace and operationalise the European discourse of power where individuals are convinced to discipline themselves, to render themselves docile therefore subjects of power. The powered elites of the colonial state adhere to the colonial discourse of power where power is might, always right, absolute and totally averse to resistance and struggle. The individual is not then constituted by power as in the European discourse of power as a result the individual is not called upon to discipline themselves but in fact to fear power and power exhibits itself via any and all forms of repression that render the democratic constitution of the colonial state a lie. Spare the rod and spoil the individual. There are then no attempts to mask the raw brutality of power as this is the means to ensure subservience what is heavily relied upon are instruments to divide the powerless to ensure the futility of mass action with race and racism being the most potent instrument deployed (See Figueira 2010). This is a paranoid powered elite ever fearful of threats to its hegemony as the elite is composed of highly visible individuals and groups that wield power and amass wealth that sets them apart as as a specially privileged very small category alien to the majority of the population and this societal visibility is enhanced by the fact that this group in many instances consists of minority race groups. The colonial social order therefore merits extreme measures to ensure hopefully preservation of privilege and the sustainable accumulation of wealth hence the embrace of neo-liberalism by this elite. This elite as a matter of sustainable survival must control the state and instruments devised under direct colonial rule and domination especially race and racism remain valid instruments of social control to this day. But the divisiveness that fracture the social order and the arrested development of the state are incubators for threats to the privileged that increase in their sophistication as time passes. The solution adopted by the privileged to the crises of an underdeveloped state is to transplant themselves to the North Atlantic straddling both worlds. It is then obvious that utilising discourse crafted to deal with European power relations cannot expose the nature of power relations of the colonial order. When you apply metric tools to dismantle an engine configured in imperial measurement some metric tools will work but the overwhelming majority will not. The minority that work cannot expose the nature of colonial power relations much less understand them. To continue to apply alien tools to a reality is lunacy and that is what colonial academia is afflicted with.

Finally necessity is the manufactured justification that necessitates state of exception as the only instrument to preserve and to ensure the survival of democracy and the hegemony of the rule of law. A condition has to be created in which in order to ensure that the rule of law is inviolate its violated which illustrates that the rule of law is not inviolate. Necessity has then to be the manufactured artifice of the powered for no social order is devoid of power relations/relations of dominance. Necessity has then to present the threat as visualised by the powered and the justification for unleashing the condition/state of exception that is outside of law in its specific existence as it simply cannot be legal, licit and be the desired and required instrument of the discourse and its hegemonic worldview/overview. But in the

European discourse of power and democracy the rule of law must always be seen to be hegemonic hence the need to place over the state of exception a juridical veneer, a soul by formulating its release as a perfectly legal executive order. As power begets resistance/struggle, necessity begets state of exception as they are locked in the dance of twins joined at the hips and at the head. Necessity today in the European discourse comprises the Islamic/Muslim/Arab/terrorist threat that begets security/safety of the state that masks state of exception. In the operation of this dance states of the North Atlantic will exhibit characteristics of colonial states of the periphery at an intensity in and throughout the social order that will herald a new evolutionary stage of these social orders. A stage characterised by imperial adventures in the digital age as we see in Syria today and the public expression of the quest for racist hegemony lost in an era of tsunami movements of non-white humans from colonial states of the periphery to the North Atlantic state of exception then becomes permanent. Donald Trump in his bid to win the nomination of the Republican party of the US is articulating a public discourse of permanent state of exception to deal with threats posed by minority groups in the US to the US. Security of a race seeking racist hegemony now defined as security of the state: 21<sup>st</sup> century slave plantation or apartheid?

Any study of state of exception has then to locate that study in the power relations of the social order. In this study the formulation of necessity that operationalises state of exception is of primary interest bearing in mind the limits to power in a social order the primary limit being worldview through which you construct your reality and a menu of possible action. Necessity is constituted by worldview and the question is whether its an abstraction of reality produced by power relations thereby resonating with an environment that must be acted upon as its a reality not under the control of the individual. Or it's a reality manufactured by the worldview or an abstraction of the worldview a manufactured reality that justifies its accuracy by its alienation from the terrain of power/power struggles. State of exception founded on manufactured reality cannot disarm the necessity what it does is accelerate its evolution into forms never expected. Invasion of Iraq, intensification of the sectarian divide in Islam into war, birth of the Islamic State, tsunami of people into the EU, the collapse of Schengen and the bid for state power that is increasing in political relevance of the those demanding racist hegemony in the EU. Then there is the dynamic unleashed within Sunni Islam which poses a grave threat to Shia Islam and the allies of the west in the Middle East being forced to prove their Salafi-Jihadi credentials to Sunni Islamic extremists by engaging militarily with Shia Islam. Actions created through manufactured reality by persons with the power to operationalise their response to necessity divorced from power relations on the ground are then very important in the dynamic of power relations. Worldview is then an opiate that produces fetish, fixation, delusion and denial where the human becomes entrapped in their manufactured reality that is entirely divorced from power relations and its dynamic on the ground. This tendency especially amongst those of the powered elite potently and dramatically impacts the dynamic of power relations in a social order. The maximum political leader of Germany Chancellor Angela Merkel publicly announces Germany's welcome to refugees from designated countries triggering a tsunami of humans heading for Europe thereby spawning an illicit trafficking enterprise of global proportions that is utilised by those intent on military engagement with Europe to cross borders with impunity. But what is most instructive is not the inadequacy of state structures that are impacted by the refugee wave on its way to Germany but the inadequacy of the state agencies of Germany to deal with the threats that emanate from the human wave (see Der Spiegel). Years of implementing the worldview of post-world war 2 German neo-liberalism has stripped bare the capacity of the German state to ensure its security as it's now playing catch up with the threats imported within the refugee wave. What reality then influenced Merkel's decision? Failure to perceive the threats involved with welcoming a wave without the necessary means to surveil, collect information on the refugees and act on threats is incompetence at best that begs the question. This opiate is also apparent in mammals other

than humans that form social orders as a survival mechanism thereby pointing to the genesis of the opiate is the quest to dominate and to exercise power and hegemony over the social order. The quest for power then carries in tow arrogance, hubris and the justification of daily existence. Note carefully the total deterioration of the alpha male lion who has been toppled from power by the usurper and the relief quick death brings whilst the usurper moves immediately to slaughter all the cubs alive sired by the deposed alpha male. Power, hegemony begets arrogance. There is then no conception of species and threats to the species there is only lust for power. Nationalism, racism, capitalism and socialism etc are then contrived dualities serving power. The quest for power then expresses the futility of human civilisation as death is still inevitable rendering humans powerless.

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