

“State of Exception”: A Tool for Fighting Terrorism

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Abstract

This paper examines Giorgio Agamben's work on the state of exception, a top-down approach in which the sovereign suspends the constitutional law and imposes decisions on subjects through exceptional mechanisms. The paper seeks to tease out the analytical merit of the concept in helping to interpret the rise of emergency regimes in the current epoch. The paper analyzes some recent cases in France and the United States involving exceptional policies to elucidate the worthiness of Agamben's work on exceptionalism.

Keywords: state of exception, bare life, sovereign ban, terrorism, government

1. Introduction

The inadvertent casualties and destruction inflicted on civilians by the Holocaust coupled with the Concentration camps of World War II compelled the international community to establish universal human rights, a mechanism to curtail the debilitating menaces from re-surfacing. The horrendous conditions suffered by the Jews in Nazi camps were very devastating to the extent that their legal rights and civilities were abrogated. According to Agamben, however, the past two decades have witnessed a resurgence of camps whose rationale is analogous to the previous prevailing milieu of Nazi Germany (Agamben, 1998). For instance, Guantanamo Bay and Abu Ghraib are examples of camps in which prisoners are subjected to dehumanizing treatment such as torture and harassment thus reduced to “bare life.” Moreover, the political and civil rights of these inmates are suspended as enshrined in the International Charter on Human Rights (e.g. the Geneva Conventions). The existence of these camps is legal, although they are considered as spaces in which illegal things occur. They virtually do not exist outside the jurisdiction of the law but rather are allowed in the wake of “war on terror.”

Agamben indicates that the state of exception in which the law is suspended is what some nations such as the United States of America have adopted at present age to fight terrorism, which is synonymous with the rationale that underpinned the concentration camps (Agamben, 2005). For example, constitutional provisions permitting states of emergency have become universal in the 20th century: at least 147 countries have resorted to states of emergency in 1996 (Keith & Poe, 2004). Judith Butler supports Agamben's claim arguing that state of exception should not be perceived as something sporadic and conditional. The promulgation of a state of exception has become the fundamental source of contemporary state power (Agamben, 2005).

Taking this as a starting point, the focus of this paper is to undertake a conceptual clarification of Agamben's concept of the state of exception and assess how it was developed. The paper also seeks to show the utility of exceptionalism in contemporary politics as well as some criticisms levelled against the concept. The discussion in this paper begins with a description of the concept of state of exception and how it emerged. The second part of the paper analyzes the pertinence of Agamben's theory in illuminating modern events specifically in the countries of France and the United States of America. The third section concludes by pointing out briefly some usefulness and criticisms of the concept, and ends with a recommendation.

2. The State of Exception

State of exception denotes a period in which the law is suspended due to a disaster or crisis that threatens the existence of the state and its population (Agamben, 2005). Judith Butler quoted in Agamben argues that “state of exception is a timely and compelling inquiry into the capacity of state power to withdraw the guarantees of legal protection and entitlement, at once abandoning its subjects to the violent whims of law and intensifying state power” (Agamben, 2005). Saint-Bonnet insinuates that a dominantly held belief is that, the state of exception represents a “point of imbalance between public law and political fact” (Saint-Bonnet, 2001, p.28). This proposition means that state of exception is positioned similar to civil war, rebellion and resistance in an uncertain manner at the point of intersection between the political and legal (Fontana, 1999, p. 16).

According to Agamben, the state of exception is not an extraordinary type of law (like the law of war) but so far as it suspends the juridical order itself, it delineates the law's threshold (Agamben, 2005, p.2). Agamben indicates that it is difficult to define the state of exception because of its relationship to civil war, insurrection, and resistance. This difficulty is because civil war is the reverse of normal conditions, it is found within the space of “undecidability” in relation to the state of exception which is the state's ability to respond to most severe internal struggles (Agamben, 2005). So, the twentieth century period experienced paradoxically a spectacle defined as “legal civil war” (Schnur, 1983 cited in Agamben, 2005, p.2). Agamben mentions the Nazi as an example indicating that during Hitler's regime, he pronounced a decree for the protection of the people and state in which the articles of Weimer constitution were revoked concerning fundamental rights. As such, the

decree was not abolished so, from a juridical perspective, the whole Reich can be perceived as a state of exception that persisted for twelve years (Agamben, 2005, p. 2).

Agamben, however, indicates that the state of exception is not another law, but the basis on which any law is formed (Agamben, 2005). In this sense, the modern totalitarian establishment is by means of state of exception, a legal civil war that allows for both the physical exclusion of political enemies and the whole group of citizens who for particular motives cannot be included in the political system (Agamben, 2005, p. 2). The result of this permanent creation of the state of emergency has grown into a basic practice among contemporary governments including democratic states (Agamben, 2005, p. 2). A state of exception which can be applied in an emergency (such as disease outbreak), rebellion or war situations is a period in which the ordinary law is suspended, and the force of law that is in operation is enacted by sovereign power (Agamben, 1998). In the course of such a situation, sovereign power dominates over others: the fundamental laws such as the constitution can be violated by the sovereign while at the same time dealing with the predicament. For instance, in the past, war was the source of state of exceptions, but in the absence of wars at present age, the “war on terror” is now the source by which state of exceptions is promulgated. Terrorism has increasingly caused state of exceptions in which the sovereign arbitrarily suspends the law to regulate and control its population.

2.1 Historical development of State of Exception

The origin of the state of siege can be traced to French dogma particularly Napoleon's decree of December 24, 1811 (Agamben, 2005). This was to create the likelihood of a state of siege that the king could order whenever the city was being attacked or was vulnerable to an enemy (Ibid). Thus, Reinach posits that “wherever circumstances require giving more forces and more power to the military police without it being necessary to put the place in a state of siege” (Reinach, 1885, p.109). The institutionalization of the state of siege commenced with the French constituent assembly's decree of July 8, 1991. The assembly identified amongst *etat de paix* to which military and civil authority operate in different spheres; *etat de guerre* in which civil authority must function in “concert” with military power and *etat de siege* in which “all the functions entrusted to the civil authority for maintaining order and internal policing pass to the military commander who exercises them under his exclusive responsibility” (Reinach, 1885, p.109).

The subsequent history of the state of siege is when it was continuously liberated from the war period in which it was initially bound such that it could be applied as an additional strategy to adapt to the “internal sedition and disorder thus changing from a real or military, state of siege to a fictitious or political one” (Agamben, 2005, p.5). The constitution was first suspended in the law of 22 Fremaire Year 8 Article 92 of which states:

“In the case of armed revolt or disturbance that would threaten the security of the state, the law can in the place and for the time that it determines, suspend the rule of the constitution. In such cases, this suspension can be provisionally declared a decree of government if the legislative body is in recess, provided that this body be convened as soon as possible by an article of the same decree” (Agamben, 2005, p.5)

While the model intends to expand the military's power over war into the civil realm and at the same time suspending the constitution, it ended up integrating into a single juridical phenomenon called the state of exception. Thus, the origin of the state of exception can be traced back to the French Revolution (Agamben, 2005, p. 2). The original formulation of the concept is not credited to Agamben, but in actual sense, the idea of a state of exception was developed by two renowned scholars Carl Schmidt (2005) and Walter Benjamin (2004). The duo although did not write together and were from different ends of the political spectrum, developed this idea of state of exception in the earlier decades of the twentieth century. For Benjamin, the issue of exception appears in his analysis as the existence of a pure form of violence which he refers to as “divine violence” independent of the law (Benjamin, 2004). He indicates precisely that the exception is excluded from the juridical order by the sovereign's decision.

Schmidt, on the other hand, defines sovereign power as the ability of the sovereign to disregard the legal structure and declare a state of exception to confront any existing threat to its environs and integrity (Schmidt, 2005). For instance, Vaughan-Williams points out that “for Schmidt, the essence of sovereignty is understood to be a monopoly on the ability to decide on the exception” (Vaughan-Williams, 2008, p.329). The foundation of the state of exception is both internal and external of the rule according to Schmidt's position. He posits that the decision on the state of exception transcends the traditional framework such that it encompasses the temporary deferral of legal restraints on sovereignty. Meanwhile, the exception is the structure in which the law exists (Schmidt, 2005). The normative order is inversely characterized by its opposite; that is the state of exception defines what is included in the law by establishing a platform in which the law becomes inapplicable. For instance, Jeff Huysmans denotes that, “the norm does not define the exception, but the exception defines the norm” (Huysmans, 2006, p. 136).

Agamben draws on this theoretical framework by Schmidt and Benjamin to start his general theory of the

state of exception which he suggests has developed into the “the dominant paradigm of government in contemporary politics” (Agamben, 2005). For the purpose of his analysis, Agamben unequivocally distinguishes between two opposing schools of thought on the legal status of the state of exception. The first school of thought Agamben suggests is premised on the grounds that state of exception is “an integral part of positive law because the necessity that grounds it, is an autonomous source of law” (Agamben, 2005, p. 23). For instance, when a state is confronted with emergencies that threaten its existence, international human rights treaties as well as constitutions can authorize the state to suspend the protection of certain fundamental human rights (ICCPR, 1976). This attribute has been noted as an important achievement of modern international law (Klein, 1993). As a matter of fact, this perspective establishes a zone between fundamental basic rights and the rule of law. That is states will continue to be lawful but can still violate individual rights, efficiently generating, as Tom Hickman indicates a “double-layered constitutional system” (Hickman, 2005).

The second school of thought in Agamben's view conceptualizes the state of exception to be “essentially extra-judicial” (Agamben, 2005). For this cohort of proponents, the constitutional ratification of the state of exception is a logical acknowledgment of limited constitutional power. For instance, Madison, Hamilton, and Jay posit that “the circumstances that endanger the safety of countries are infinite, and for this reason, no constitutional shackles can wisely be imposed on the power to which the care of it is committed” (Madison et al. 1987). Thus, followers of this school emphasize that it is impossible to control executive action in times of disaster applying the conventional judicial accountability instruments. Any efforts to impose legal restrictions will only jeopardize the rights of individuals (Gross, 2003).

In unveiling the contrast between proponents who view the state of exception as juridical from those who perceive it as political, Agamben finally breaks protocol and renounces both approaches emphasizing that “the state of exception is neither internal nor external to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with one another” (Agamben, 2005, p.27). Agamben questions that “how can an anomie be inscribed within the juridical order”? (Agamben, 2005, p. 27). Agamben drawing from Foucault's analysis of biopolitics indicates that exception is a pervasive political tool. The suspension of the law is essential as it inversely affects individuals' lives not as political subjects but as human beings (Agamben, 2005).

Agamben's notion of the state of exception is grounded in the indistinction in the sphere of politics concerning outside and inside, private life (*zoe*) and the public domain (*bios*) (Agamben, 1998). The Aristotelian distinction of life (*zen*) and the good life (*eu zen*) no longer holds for Agamben since sovereign power distorts the lines to continue to control and regulate the lives of its citizens. The type of human being that results in the process is defined as “*homo sacer*” (Agamben, 1998). *Homo sacer* in Roman tradition is an individual who was banned and may be killed by anybody with impunity but may not be sacrificed in a religious ritual (Agamben, 1998). This enigmatic figure is reduced into what he defines as “bare life.” For Agamben, bare life constitutes life that can be killed without recourse to any form of proper, acceptable rituals or ceremonies (Agamben, 1998). This means the sovereign has exclusive power over *homo sacer* not solely as a citizen but even to the extent of deciding his or her natural life. Agamben cites the Nazi camps such Auschwitz-Berkenau and Belzec as telling examples in which the rights of Jews were suspended and treated as in-humans (Agamben, 1998).

Vaughan-Williams emphasizes that the importance of the concept of bare life does not reflect in the decline of political to natural life, *bios* to *zoe* but in the indistinction between the two: “bare life is a form of life that is amenable to the sway of the sovereign power because it is banned from the realm of law and politics [...] whenever and wherever the law is suspended” (Vaughan-Williams, 2008, p 333). For Agamben, *zoe* and *bios* are inseparable since exclusion strengthens the bond between the two forms of life. This relationship is analogous to the state of exception and the law: the state of exception has a common boundary with the law since it delineates the limits of the regular order (Agamben, 2005). Pertinent to this logic of the state of exception is the relation of the ban.

The sovereign ban is practically linked to the state of the exception because they are both responsible for organizing groups in the political order. For instance, scholars that have delved on the identity and securitization framework such as David Campbell indicate that identity is designed by dissimilarities. People construct the differences of others as well as sameness of themselves through representation. As Campbell writes “the passage from difference to identity as marked by the rite of citizenship is concerned with the elimination of that which is alien, foreign, and perceived as a threat to a secure state” (Campbell, 1992, p. 42). Such an exclusion and difference is precisely what the state of exception creates. State of exception enacts itself in connection with an outside threat which must be dealt with via extraordinary measures (Agamben, 1998).

Similarly, the state of exception reinforces the bond of national unity and identity by characterizing the enemy as inhuman and unfit to be handled in a humane manner other than to be reduced to “bare life.” For instance, Aradau and Van Munster have emphasized that “exceptionalism does not just play upon public panics, but also institutionalizes fear of the enemy as the constitutive principle for society” (Aradau & Van Munster, 2009, p. 689). For example, the depiction of we and them can be more best conceptualized in war. By following

the ways in which distinct visuals and regimes with their associated relation of power operate in the production of collateral damage depicts an existing repository of “self” and “others.” The social and political production of war unfolds how the world is represented in reality regarding *here/there, inside/outside and them/us*. These constructions reflect the language of exception.

The application of exception is imperative both in establishing a sense of unity and identity while at the same time creating boundaries to strengthen the self, and deconstructing and dehumanizing the enemy by reducing his or her life to “bare life.” This concept (state of exception) with the primary message of suspending the law and dehumanizing life whether international or internal is a confirmation of the authority of the sovereign to deny it the political qualities and reduce it to an empty life (“bare life”): deconstructing citizens without rights to guard them from the sovereign, the dominant figure in the monopoly of violence. This demonstrates the situation in detention camps such as the Guantanamo Bay camp, or at the Abu Ghraib prison in Iraq. The rights of prisoners in these camps are disenfranchised including the right to file petitions of habeas corpus and the position of detainees as clearly stated in the Geneva Convention (Agamben, 2005).

3. State of Exception in Contemporary Context

Globally, the emergence of exceptionalism enhances our understanding of the most effective measures established by sovereign governments to protect the biological existence and well-being of populations. While the idea of the state of exception is always thought to be a domestic affair, it, however, extends beyond the domestic realm to include the international arena (Agamben, 1998). The locus of exceptionalism at the international level is always predicated on the grounds of war and the exceptional conditions that differentiate it from that of domestic politics (Aradau & Van Munster, 2009). For instance, Walker confirms that the international is depicted regarding international law, and the laws guiding inter-regional relations are embedded in such logic. In this context, “exceptions may be enacted as a claim about inhumanity” (Walker, 2006, p. 76). This assertion means that individuals who violate such a standard are regarded as *persona non grata* in which the law that sustains the international becomes inapplicable. Bauman defines such lives as “wasted lives” because they are banished or abandoned from political beings and reduced into human waste, lives that become redundant, lives not relevant to the political community even though they constitute part of it. Thus, Bauman notes that “the waste of order-building combined into the main preoccupation and metafunction of the state, as well as providing the foundation for its claim to authority” (Baumann, 2004). As such, the concept of exceptionalism holds a significant degree of utility in the contemporary world.

While the paradigm of exceptionalism has progressively been used as a device by governments predominantly in the United States, Europe and the Middle East, a zone considered as the most intensive battleground of war on terror, we choose to locate the logic of exceptionalism using the countries of France and the United States. This is to shed light on how these two nations respond to the crisis of terror on their socio-economic and geopolitical environments. That is the reinforcement of sovereign power contrary to the constitutional democratic order. Exceptional mechanisms have intrinsically become important in the current epoch considering the constant wave of terrorist activities across countries particularly in the global north. Undertaking an analysis of these mechanisms will contribute substantially to our understanding of how governments protect the well-being and ensure the security of their populations despite the rising levels of terrorists’ activities. The subsequent two sections will discuss the application of exceptionalism beginning with the state of exception in France.

3.1 State of Exception in France

Exceptionalism constitutes a cogent and insistent characteristic of European countries in the aftermath of World War I. Agamben engaged in a genealogical trace of the concept to the French revolution in which the constitution was revoked in the midst of underlying threats to its social fabric and integrity (Agamben, 2005). Despite the fact that most European countries resorted to the revocation of the normative order in times of insurgencies, the constitution of France remains today the only document that regulates the declaration of a state of emergency. Thus, Agamben asserts that “the declaration of the state of exception in France has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government” (Agamben, 2005). Agamben’s analysis has developed into a new analytical merit in the aftermath of the recent terrorist attacks that occurred on France soil in 2015. These strikes claimed more than 130 civilians’ lives and rendered others with serious injuries.

Following these sudden attacks, the President of France, François Hollande responding to the strikes, declared a state emergency based on article 16 of the constitution across the country to fight terrorism. The very first emergency lasted for three months but has accordingly been prolonged for another three months (France24, 2016). This state of emergency took different dimensions such that public demonstrations were banned and gave police the impetus to search individuals’ private homes without a warrant. Others were also placed under house arrest without the necessary court trial of habeas corpus which they are entitled to as their rights documented in

the French constitution and other international juridical proceedings. Web sites were blocked as a mechanism of stopping acts of terrorism. Similar to this, the Prime Minister Manuel Valls has yet declared his intention of retaining the emergency until the global war on ISIS comes to an end (Boyle, 2016). This persistent exceptionalism has attracted opposition within the country, thus culminated in the United Nations issuing a warning to France of its stringent “excessive and disproportionate restrictions on human rights” (Dearden, 2016).

The promulgation of the state of emergency in the wake of these terrorist strikes to a large extent empowers the president and other security apparatuses such as the police to suspend the law and enforce extraordinary measures that prohibit mass gatherings and protest: precisely, arresting suspects without fair trial. Such actions epitomize similar experiences among inmates in Guantanamo Bay and Abu Ghraib in Iraq. The apprehension of persons without due process of the law breaches the dominant ideology of habeas corpus, the subject of natural and political life, the indistinction between zoe and bios. In such a situation, the distinction between citizens and immigrants is blurred: a contested issue currently pending in the French National Assembly concerning the dispossession of people convicted of terrorism of their French nationality, a move that will virtually diminish the lives of such groups of individuals into “bare life.”

Agamben on this note indicates that France is being transformed into a “security state” whose legitimacy is dependent on the proliferation of fear, not upon its abolition (Agamben, 2015). The attacks have metamorphosed France into a new form of order. This includes domination by the sovereign and the depoliticization of citizens who are only seen as passive participants in the democratic process who need to be guarded by the law. This notion, for example, remarkably reflects the models of Schmidt and Nazi jurists who worked to ensure that society was separated from the realm of politics, perceiving the people not “as a multi-faceted and autonomous political dynamic” but rather as “a political entity existing only by being called into existence by the ruler” (Huysmans, 2008, p. 170).

This monumental procedure of suspending the ordinary law and the force law enacted by the sovereign portrays France as a country at war with terrorists. The waging of war is a tool for canvassing support for the government as well as serving as a unifying force in a common front against the enemy. War is the act of promising friends and displeasing enemies, amassing support for one’s actions and initiating the abandonment of enemies. Therefore, war is the means of constructing us/them, here/there, and outside/inside. To quote Aradau and Van Munster “fear integrates political communities according to friend/enemy lines and creates homogenous identities that need to be defended” (Aradau & Van Munster, 2009, p. 690). This suggests that exceptional measures are tools for preserving a state’s interest against the enemy. This exemplifies the case of France in which the President declared a state of emergency to protect its environs and integrity (Interest).

3.2 State of Exception in the United States

Exceptional policies are viewed as biopolitical devices that sovereign governments consistently employ to exercise power over subjects’ bodies in particular through the lens of race which deprives individuals of their political existence (Foucault, 2004). While Agamben posits that state of exception has become a potent tool in contemporary politics, Jabri (2013) asserts that state of exception is a pervasive instrument that is used to establish hierarchy. This idea signifies that some bodies are not worth living but deserve animalistic treatment thus reducible to bare life, whereas some lives are more deserving of proper and humane life. That category of life purported to exist outside the realm of political beings is evident in the wake of the September 9/11 terrorist attacks in the United States of America. The attack commenced on the September 11, 2001 in which four planes were hijacked by a terrorist group causing damage to the World Trade Center and Pentagon.

This crisis recorded a death toll of more than 3000 people including both American and non-American citizens. Apart from the death toll, the crisis also compromised the security apparatuses of the country. The reigning President during the incident was George W. Bush who by the power conferred upon him declared a state of emergency: “now therefore, I George W. Bush, president of the United States of America, by the virtue of power vested in me as president by the constitution and the law of United States, I hereby declare that national emergency has existed since September 11, 2001” (Washington’s Blog, 2010). The declaration of state of emergency unilaterally by the president illustrates the exercise of sovereign power and the production of state of exception. According to Agamben, the biopolitical importance of state of exception in which the law includes living beings by suspending itself is clearly manifested in the military orders delivered by the President of the United States on November 13, 2001. This permits the prolong sentence and trial by military command of foreigners alleged to be involved in terrorist activities (Agamben, 2005).

These procedures empowered the President to rule the country through the suspension of the prevailing legal order. This mandates him to deploy military forces abroad, introduce martial law, suspend the law and in many ways regulate the lives of the American citizens (Washington Blog, 2010). For instance, Agamben states that the USA Patriot Act confers on the government the power to “take into custody any alien suspected of activities that endanger the national security of the United States” (Agamben, 2005, p. 3). For this reason, the president launched a war on terrorism in the later part of September 20, 2001, in which 100,000 American troops

were sent to Afghanistan to fight terrorist enclaves such as Al-Qaeda and Taliban. Similarly, the President established security apparatuses such as Homeland Security within the Presidential executive wing to institute terrorism screening centers. For instance, security checks at airports, border checkpoints, highways, city streets, foreign intelligence on terrorist activities and more are currently ongoing.

Likewise, the No Fly List has been updating with names prohibiting some particular people from traveling as they appear to be on terrorist watch list mainly because of their Arabic names. This is with the express intention to enhance the government's efforts to thwart terrorist networks as well as to prevent the recurrence of 9/11 or any other crises. However, the branding of Arabic names to be associated with terrorism explicitly creates a climate of international racism against races such as Muslims, Sikhs, Hindus and other nationalities that bear Arabic names. This is a clear manifestation of sovereign power in creating new stereotypes, innocent people placed in detention and on No Fly List, and the general perspective about the Arabic sect. In this sense, it would have been preposterous to make such derogatory pronouncements if not for sovereign declaration. Such statement creates grounds for Islamophobia and xenophobic attacks making people with Arabic names vulnerable to the unconditional threat of death. Also, labeling people with Arabic names as terrorists has abetted in concealing the notion of terrorism and Muslim.

The creation of a state of exception through sovereign power, the President established a Guantanamo Bay prison located in Cuba, outskirts of the US environment to concentrate enemies, question them and prosecute them for committing crimes against the United States of America. Most especially, the prison presents a niche for punishing detainees considered to be connected to terrorist networks. They (convicts) are arrested and detained, and reduced to bare life; homo sacer virtually stripped off all their rights. Inmates could be held for prolong periods without any right to file petitions of habeas corpus. In the first eleven days of September 2001, George W. Bush was informed that "America is under attack" and Bush said "they had declared war on us and I made up my mind at that moment that we are going to war" (Walsh, 2008). This statement demonstrates sovereign power, one figure deciding war against terrorism and initiating tactics such as launching US troops to Afghanistan, inhumane interrogation techniques that reduce the lives of captives to bare life.

The launching of soldiers to Afghanistan signifies the reduction of inhabitants of this region to a form of human life that exists outside the normative order. This area is coded as a terrorist zone and exists outside the international law since the US government is exercising its right to self-defence which is not universally acceptable. In such a context, it is hard to prove whether targets killed during raids were al-Qaeda victims or civilian population. Thus, people are neither protected by international law which should apply in war zone nor recognized as citizens who have the right to fair trial before being constructed as terrorists and reprimanded. Those labeled as terrorist do not even enjoy the same rights as their fellow citizens enshrined in the national constitution and the International Charter on Human Rights.

Agamben indicates that the Taliban seized in Afghanistan does not solely enjoy the status of prisoner of war (POW) as written in the Geneva Convention, but also they do not have the right of persons to be convicted of a crime in the American law (Agamben, 2005). They are purely objects of "de facto rule," of custody that is undefined not only on non-permanent basis but in its entirety they are erased from the law... (Agamben, 2005, p. 4). The only comparable thing to their situation is the legal condition of Jews in the Nazi camp who had lost every legal identity. As Judith Butler emphatically stated, in the detention at Guantanamo bare life reaches its peak "indeterminacy" (Agamben, 2005, p.4). This framework of government infringes the constitution of Afghanistan and the international charter on human rights that this country has ratified. Hypothetically, terrorists in this region can be perceived as inhabitants who are deprived of security by their state and left bare to their whims and caprices, and constantly live in a state of exception.

4. Conclusion and recommendation

Overall, the concept of exceptionalism is appropriate in understanding many events in the contemporary political landscape. For instance, exceptional policies illustrate the new securitization that countries, particularly in the West are embracing as a remedy to the global war on terror such as ISIS, al-Qaeda, and Taliban. Also, exceptionalism is a device that enables us understand the constructions of self/other, here/there, inside/outside, and private/public. This constitutes an analytical tool for making sense of the emerging global society. Thus, Agamben's framework is a valuable contribution to the growing literature on violence. The framework could be improved by existing studies as well as previous ones on mass violence that rely on the idea of the state of exception.

The concept, however, has not been sufficiently developed since there are several criticisms levelled against it. For instance, Agamben treats the concept as a static phenomenon without doing further investigations about the contemporary archetype of it. Similarly, exceptional policies result in racial profiling against individuals especially people bearing Arabic names such as Muslims, Sikhs, and Hindus. This development often culminates in Islamophobia and xenophobic attacks. In this regard, Judith Butler indisputably indicates that such racial declaration predominantly exposes certain populations to inhumane treatment, particularly black and

Arabic/Muslim sects (Butler, 2006). For example, after the 9/11 attacks, xenophobic disgruntled Americans demolished mosques, attacked and killed Muslim foreigners on city streets. An angry white supremacist also opened fire on the Sikhs temple in Wisconsin in August 2012 which was alleged that the man's actions were basically as a result of the association of turbans Sikhs wears with Islam. Following the 9/11 attacks Sikhs, Muslims and other people hailing from the Middle East or South Asia have constantly been hot targets of terrorism mainly due to xenophobia. They are thereby susceptible high risk of death.

Although propositions are debated in national parliaments such as France to dispossess individuals of their citizenship known to be associated with terrorism, such proposals are often directed to Muslim sects or progenies of immigrants. In this context, Agamben's analysis does not take into account the considerable role of society in such processes. He rather focuses on top-down approach in which the sovereign is the supreme always imposing decisions on subjects through the state of exception. Meanwhile, the sovereign draws his (her) legitimacy from these very subjects through a democratic electoral process which makes him answerable to the people on the bottom of the hierarchy.

Likewise, Agamben's work is limited in its analytical merit as it perceives the sovereign to be acting alone in times of emergency. He is insinuating a separation of powers between the arms of government. For instance, he resented in discussing the important role of the judiciary. Meanwhile in contemporary times, the sovereign acts in collaboration with the legislature and the judiciary in executing matters of state concern. For instance, in 2004 the Supreme Court of the United States and the Britain's Law lords ruled over cases that were directly linked to the executive emergency measures. In the UK case, the Secretary of State for the Home Department collaborated with the judiciary arm of government in reviewing the "government's derogation from its human rights obligations and subsequent indefinite detention without trial of eight non-nationals" (Humphreys, 2006, p. 684). This is surprising as judicial processes are not discussed in matters concerning states of exception. It is therefore recommended that since the concept is yet at its developmental stage, analysts should pay more attention to this task to make it a solid concept for present or future use.

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