

# From Schmitt to Foucault

## *Inquiring the Relationship between Exception and Democracy*

Sara Raimondi

► **Abstract:** This article examines the debated relationship between liberal-democratic politics and states of exception in conditions of emergency. After Walter Benjamin and Giorgio Agamben, it is often maintained that today we live in a situation of perennial exceptionalism, where emergency measures have become a regular practice even by governments we name 'democratic'. In these circumstances, exception is deemed to threaten democracy and hinder individual and collective political agency. Yet, such interpretation remains rigidly focused on the expanded governmental powers ushered by the exception. The article first unpacks how the relationship between exception and democracy has been differently addressed by juridical and biopolitical approaches. Then, it attempts an alternative heuristic: it discusses possibilities of democratic associative practices in emergency by looking at the notion of resistance that Michel Foucault links with power. This route remains unexplored in the literature on the concept of the exception.

► **Keywords:** exception, liberal democracy, resistance, Scarry, state of emergency, threat to democracy

Current academic debates and empirical evidence unveil an alarming portrait of the status of contemporary politics. Increasingly, we find ourselves entrapped in a variety of emergency measures that creep into the life of our liberal democracies, be they legally declared or simply asserted as matters of fact. These provisions construct various forms of exceptionalisms – as the discourses and practices that legitimize exceptional policies (Neal 2006: 31) – that have been adopted by many countries at a growing pace in recent decades. Such measures effect an expansion of states' executive powers when a superior danger is deemed to threaten the polity because of either internal instability or an external peril. In the 1920s, the jurist Carl Schmitt pointed out that exception “suspends the constitution *in concreto* in order to protect [...] its concrete form” (2014: 118). Exception, therefore, does not endanger democratic foundations in its assumptions.



Almost the opposite, it offers a constitutional device to pursue national long-term survival when common jurisdiction is impeded.

Nevertheless, since its revival in contemporary political theory, the number and contexts of application of the term have been inflating, blurring thus its conceptual boundaries and legitimate uses. In a legal perspective, exception was first assumed as a problem of constitutional forms. With Foucault's and Agamben's interventions on biopolitics, then, the concept has been gradually associated with an instrument of control and management on the population used in discourses of modern governmentality (Maguire et al. 2014; Dean 1994, 1999). Only as the last in a long series, the outburst of post-9/11 'war on terror' and the establishment of a regime of 'global civil war' have made the idiom of exception again central to the politics of the late modern west (Huysmans 2008: 165).<sup>1</sup> Whether applied to specific individuals or to the entire populace, exception tends to be associated with a curtailment of political agency and thus with a state antithetical to liberal-democracy. The shift in uses pointed out above, yet, blurs the multifarious understanding of democracy entailed by this complex relation and limits analyses of the exception to its inherent illiberal ends.

The article seeks to engage with contemporary debates on exception and attempts an alternative heuristic for examining its relation with liberal-democracy. First, it demonstrates how the very understanding of democracy assumed by different approaches has undergone a shift over time. Early juridical perspectives have been gradually superseded by Foucaultian approaches of governmentality, which focus on the management and control exercised by power over individuals and the population. Against this backdrop, the article discusses the role that participatory interventions can play in dynamics of exceptionalism. It resorts to another concept used by Foucault that appears undertheorized by the literature in the field: the element of resistance that the French author combines with power. By discussing the dynamics internal to the exception as a dialectic between power and resistance, the article contends, it is possible to make room for collective decisional action under exception. This analytical angle could offer an alternative to perspectives that read emergencies only in terms of the expanded role of the executive powers and their undemocratic outcomes.

The article is structured as follows: the first section engages the legal-constitutional understanding of exceptionalism by looking at Carl Schmitt's and Clinton Rossiter's theories of sovereignty. It underscores how these renditions treat exception as a problem of constitutional forms, which is not *in se* contradictory of democratic assumptions. Next, it follows the shift that the concept undergoes with Michel Foucault's

disciplinary-biopolitical critique of power and its subsequent development in the work by Giorgio Agamben. In this context, exceptionalisms are seen as threatening democracy and creating a legal anomie where an unbounded power can be directly exercised over (bare) life. This approach tends to prevail in security studies and in analyses of contemporary late-modern western politics (Jabri 2010; Neal 2006; Waever 2005). In conclusion, the article introduces the element of resistance in order to suggest an alternative trajectory to these interpretations. The concept of resistance allows for the theorization of possibilities of social interactions that bring back the element of people's political agency overlooked by traditional diagrams of exceptional power. This could open up a supplementary dimension to disentangle the relationship between exception and democracy.

### **Exception in a Juridical Lens: the 'Democratic' Dictatorship of Schmitt and Rossiter**

Giorgio Agamben's seminal work *State of Exception* identifies the archetype of modern exceptionalism in the figure of the *iustitium* in the Roman constitution. In the ancient republic, the *iustitium* provided the state with a constitutional instrument of immediate response to the most extreme forms of danger faced by the polity. In those circumstances, authorities were entitled to adopt any measure in order to overcome the peril and ensure the continuity and preservation of state life (Agamben 2005: 41–51).

Agamben's analysis borrows its legal-constitutionalist perspective from the work of the jurist and political theorist Carl Schmitt, who develops a thorough analysis of the concept in his theory of sovereignty (1985a). His well-known definition of the sovereign as "he who decides on the state of exception" (1985a: 5), bounds the origin of the exception to the role of the sovereign power acting beyond juridical structures. With this focus, the aim is to unveil the inherent contradiction that characterizes the state apparatus of his coeval liberal ideology (McCormick 1997: 121–289; Rasch 2000; Schmitt 1985a, 1985b, 2007, 2008). Formally, in liberal terms, constitutional power is deemed to entirely regulate state life, making the law the key instrument for the coordination of pluralist interests. Factually, however, legal norms are subordinated to the exercise of an actual sovereign power, which intervenes in the interstices of formal legislation. In arguing for the political decisionism behind an alleged self-sufficient law, Schmitt emphasizes the dependency of the latter on a pure decision, that transcends juridical mechanisms of checks and bal-

ances (Schwab 1989). Sovereign decision and legal system stand thus as opposite polarities and function as autonomous terms in the economy of state powers (Schmitt 1985a: 13).

Schmitt's disambiguation of the decision-law binary finds full meaning in his constitutional theory and theory of democracy (1985b, 2008). Here, the qualification of democracy is identified less with the liberal character of a polity than with its capacity to express the will of the people bound by a starting identitarian unity (1985b: 25). In the author's view, democracy is realized any time the state is forged along the principle of people's self-ruling, independently of the processes through which this happens. Following from this, any procedural definition of democracy loses any meaning. The being in place of formal democratic institutions, like elections or universal franchise, does not suffice to define the democratic nature of the state. Rather, the accomplishment of democracy is defined by its popular basis and never by the particular methods used to realize political rule. This position leads to a controversial conclusion (1985b: 32): for Schmitt, the establishment of democracy may happen even through dictatorial action, if that is enacted in the name of the people. Conversely, the rule of a numerical majority may represent a purely tyrannical and illegitimate result, if it is not grounded in a shared political identity. Contrary to the claims of liberal contractualists, it is the prior existence of a people as political unity that offers the condition for the constitutional foundation of a polity, and not an original pact that creates society *ex nihilo*. Consequently, only an already formed unitary body of people can decide to give itself a new constitution in order to establish the forms of their coexistence (2008: 140).

It is here that the previous propositions around sovereignty fill Schmitt's constitutional theory. The moment of the foundation or change of the constitutional principles requires a sovereign decision that introduces the new normal regime. In the name of the people, this action can be pursued even in a non-parliamentary and non-liberal way (2008: 75). The latter case produces thus a 'democratic' sovereign dictatorship, which acts as a constituent power and transcends the existent law. The sovereign has the ultimate voice over the constitutional order and this emerges from its capacity to introduce an exception to it. The ideas of sovereign dictatorship and democracy therefore do not appear antithetical, but mutually necessary, insofar as the political rule remains within the boundaries of people's will.

Nevertheless, the historical experience of the Weimar Republic provided an example where Schmitt saw his theoretical expectations collapse (Schmitt 1985b; Dyzenhaus 1997: 1–37; Kennedy 2004: 154–183). The presidential and democratic dictatorship meant to defend the existing con-

stitution should have enforced the new normal order for re-establishing political democratic life. Yet, it was precisely the use and abuse of emergency powers allowed by the Weimar Constitution<sup>2</sup> that eventually led to Hitler's rise to power and to the institution of the Nazi regime. From this experience, Schmitt ultimately concludes that the 'protected democracy' vested under the exceptionality of the Weimar Republic did not prove a democracy at all. Constitutional dictatorship functioned rather as a transitional phase that led to the establishment of a totalitarian regime. In Schmitt's legal-political treatment of "the problem of sovereignty" (1985a: 16), exception appears as a borderline figure, where democracy reveals its relation of friction with, but also dependency on, a factual sovereign authority (1985a, 1985b, 2014). What is crucial for a democratic dictatorship is its exceptional and temporarily limited character. The Weimar Republic failed precisely in reconverting the exceptional dictatorial moment into the legal normality that should have ushered from it.

Akin to Schmitt's juridical account of the exception and the latter's relation to democracy, Clinton Rossiter's *Constitutional Dictatorship* (1948) discusses the importance and necessity of phases of dictatorship in the life of mature democracies.<sup>3</sup> More than to the moment of the institution, the author links constitutional dictatorship to the survival of the democratic structure. In his view, under conditions of threat, the long-term preservation of the state needs to be entrusted to more expert bodies steering actions for all the members of the community and acting promptly and effectively in rearranging public responses. By discussing the cases of four main modern democracies (United States, Great Britain, France and the post-World War I German Republic), he demonstrates how all of them have been forced to apply antidemocratic mechanisms in critical circumstances. Rossiter's study reinforces the thesis that the 'legal alteration' by an uncontrolled sovereign under exception opens way both to a formal and an actual possibility for a yet entirely 'democratic' dictatorship, which aims at the preservation of the democracy overall (Rossiter 1948: 3–14).

Moreover, Rossiter makes a clear attempt to separate the liberal and the democratic implications of the exception. Paraphrasing Lincoln, he states that a constitutional and democratic government beset by a severe emergency "can be strong enough to maintain its existence without at the same time [being] so strong as to subject the liberties of the people it has been instituted to defend" (1948: 3). In a constitutional dictatorship, in other words, the government should assume just as much power and abridge just as many liberties as it is required to restore normal conditions. The government meets the declared crisis by assuming more powers and respecting fewer rights. Therefore, the exception may likely

entail illiberal implications within its very logic. Yet, its enforcement does not imply a simultaneous denial of democratic principles, which continue to be respected in the name of preserving popular will. With an even greater emphasis than Schmitt, he underscores that what renders the experience of the actual dictatorship ‘constitutional’ is the temporary duration allowed to the alteration. The harmonious state life should be ensured by the capacity of maintaining the emergency rule only as long as it is necessary to overcome the peril and restore the ordinary balance of powers once the danger has ceased. Rossiter’s study expresses a favor for the deployment of constitutional dictatorship in cases of necessity; yet, he acknowledges the risks that its degeneration can imply.<sup>4</sup>

Earlier concerns around exception focus thus on the constitutional and juridical conditions that define the implementation of the measure under circumstances of national emergencies. In this regard, exception and democracy are not seen as antithetical; rather, the former is taken as necessary to preserve democracy’s long-term survival. The crucial point for its legitimate deployment is identified with its provisional duration, which, if respected, justifies even its temporary violation of fundamental liberal principles. In a juridical perspective, exception may result in an actual curtailment of civil and individual rights. However, this does not exhaust the complex relation that exception maintains with democracy and the necessary role it plays for its preservation.<sup>5</sup>

## **Exception in a Biopolitical Lens: Foucault and Agamben on Governmental Power**

It is only with the contribution by Giorgio Agamben that the concept of exception is enlarged and applied to the management of society in the diagram of Foucault’s theory of biopower. In fact, Agamben combines Schmitt’s legal perspective with a Foucaultian biopolitical angle and produces a synthesis that fills, and simultaneously moves beyond, both authors. That said, recalling Foucault’s analytics of power that underpins Agamben’s eventual development is useful at this point.

Foucault’s genealogical study of power shifts discussions around sovereignty and theories of rights to the plane of the everyday practices informing life in the ‘normalizing society’ (Foucault 1977, 2003, 2008). In *Society Must Be Defended*, he stresses:

From the nineteenth century until the present day, we have [then] in modern societies, on the one hand, a legislation, a discourse and an organization of public right articulated around the principle of the sovereignty of the social body and the delegation of individual sovereignty to

the State; and we also have a tight grid of disciplinary coercions that actually guarantees the cohesion of the social body. Now, that grid cannot in any way be transcribed in right, even though the two necessarily go together. A right of sovereignty, and a mechanism of discipline. ... The two limits are of such a kind and so heterogeneous that we can never reduce one to another. (2003: 37)

In this move, the linear, vertical, well-definable power running from the sovereign authority to its subjects is opposed to a more spread out, less recognizable, capillary methodology of actual disciplinary and biopolitical power that operates endemically within the social body.<sup>6</sup> The latter sort of power flows at the extremes of formal state apparatuses and is applied at its edges through mechanisms, techniques, technologies and discourses that affirm power's truth regimes. These elements establish the domain of the 'norm'. In *The History of Sexuality*, he emphasizes "the growing importance assumed by the action of the norm, at the expense of the juridical system of the law. ... A power whose task is to take charge of life ... it effects distributions around the norm. ... The law operates more and more as a norm. A normalizing society is the historical outcome of a technology of power centered over life" (1978: 144). If the ruling function once exercised overtly by the law is replaced by disciplinary-biopolitical mechanisms of governing, exception itself can be rearticulated in the same horizon. On this plane, exception takes the form of all-encompassing practices of governing rationales in the different diagram of the power over life.

Giorgio Agamben capitalizes on Foucault's biopolitical perspective and merges it to Schmitt's emphasis on sovereignty to suggest a provocative diagnosis of the present political west. Two elements in particular push Agamben's work beyond Schmitt's conclusions. First, he emphasizes how sovereign exceptions establish the ever-present possibility for a factual legal anomie that neither creates a new law nor simply enforces the old one, but entirely transcends any legal order. Secondly, the juridical void opens room for a potential absolute violence by the sovereign (1998, 2005).<sup>7</sup> The way in which he even graphically represents this process – by analyzing a "force-of-law" where the last term is marked by a cross (Agamben 2005: 32–40) – denotes precisely the following dynamic: the regulative power of the law is replaced by an unlimited extra-judicial force. The legal structure that protects democratic mechanisms is abolished, to the extent that its normative function "can be obliterated and contradicted with impunity by a violence that [...] nevertheless still claims to apply the law" (Agamben 2005: 87). According to Agamben, by creating a legal vacuum, exception may liberate a use of force freed from any control. By connecting the idea of the sovereign decision to that of force, he develops Schmitt's theoretical disruption to its utmost intensity.

Nevertheless, Agamben's analysis goes beyond Schmitt's legal focus and turns to what he considers the very object of modern sovereignty: the dimension of life. In the context of contemporary liberal democracies, the problem at stake is no longer the constitutional suspension of the law. The legal anomie is instrumental to the mechanism by which sovereignty, by enacting islands of juridical void, enters into a direct relationship with biological existence.

"Together with the process by which the exception everywhere becomes the rule, the realm of bare life—which is originally situated at the margins of the political order—gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoe*, right and fact, enter into a zone of irreducible indistinction" (Agamben 1998: 9).

Sovereignty's aim is no longer to act on the legal component of the state, but on the biological dimension of life. With the suspension of formal rights, life is disclosed in its pure, bare form, to such an extent that any action becomes possible on it: "it is impossible to distinguish transgression of the law from execution of the law, so that what violates a rule and what conforms to it coincide without any reminder" (Agamben 1998: 57). Exception becomes the borderline margin where a power that takes place beyond legality can still claim to be legitimate, missing any external check upon it. The juridical void under exception opens a possibility to utterly annihilate life, which is reduced to the most naked and disqualified condition. Agamben capitalizes on a Foucaultian biopolitical interpretation in order to claim that, in the current predicament, life-as-such becomes the fundamental political goal. As Huysmans echoes, the kind of life now relevant for politics runs at a completely separate dimension: the biologically, in contrast to the politically, defined life (Huysmans 2008: 165).

The shift in the meaning of exception is completed by the introduction of the analytical category of the 'camp', which functions as the dominant political matrix of modernity. In Agamben, the camp provides the material condition for physically locating the anomie. In the camp, the difference between rule and fact no longer holds and the contingent power in place can undertake any sort of action or abuse. In his view, the aim of political power is achieving a totalizing control over subjects, by governing precisely their natural, (apparently) nonpolitical existence.

Ultimately, the permanent threat of the legal suspension in the camps becomes the criterion to define the boundaries of democracy (Zartaloudis 2010: 95–143). Camps offer the physical places where mechanisms of inclusion and exclusion, law and lawlessness, norm and fact—which delimit the boundaries of democratic life—are constantly renewed. The



democratic character of the polity is no longer defined by the endowment of formal rights, but by the exclusion of bare life. From this move, Agamben derives the striking conclusion that today's western countries are in fact forms of modern totalitarianism (1998).<sup>8</sup> Power no longer consists in explicitly acting over the law, but achieves a direct, factual reach on the life of both citizens and non-citizens. Police operating controls at national borders; officers entitled to communication monitoring, identity checks and body searches; enforcement bodies in refugee and immigration camps, up to the most evident cases of guards in provisional detention facilities: all these examples provide the actual places where we experience today's "camps", regardless of their specific geographical positioning. Their pervasiveness in domestic state life captures the transformed nature of the politics of late modernity.

Significantly, these examples are the ones found in current debates on the politics of insecurity, which tend more and more to resort to the diagram of exceptionalism. Concrete applications of the Foucaultian theory of normalization proliferate in discourses around securization, surveillance and, more broadly, the mobilization of war as a new technology of control (Jabri 2010; Maguire 2014). These analyses highlight how situations of crises and emergency are seen to disrupt ordinary political practices and loosen standards of accountability, scrutiny and consensus-gathering that establish democratic legitimacy. Yet, the challenge to standard democratic methods that occurs under exceptional measures is not qualified on the register of the juridical. The current logics of security operate a normalization of the exceptional, which inscribes emergency into the daily routines of social and political life (Jabri, 2006). The matrix of securization inherently transforms society and normalizes techniques of control that alter individuals' and populations' political agency.<sup>9</sup> Power is no longer exercised as the sovereign decision acting upon the juridical sphere but percolates throughout the whole of the social body, gradually altering the peaceful ordering of political and social life. As Jabri puts it: in the practices that accompany discourses of insecurity and emergency, "we see the basis for the undermining of liberal democracy's self-understanding as location of rights historically achieved. [...] The measures undertaken in response are in themselves violation of what constitutes the democratic space and the government of the individual and communities" (2006: 62). Analyses of the exception, then, abandon the legal register and shift towards a different horizon of power that operates through the rationalization of the social sphere. In this case, exception remains associated with the dominant role of power that hinders democratic freedom and rights and, more broadly, curtails individuals' and people's capacity for action.

In the biopolitical horizon of power, the relationship of exception with democracy appears thus in terms of a binary. Exception discloses the despotic elements that are part and parcel of the life of (formally) liberal-democratic constitutional settings. The state of exception challenges the actual boundaries between democratic assumptions and the possible authoritarian outcomes always hidden in the working of democracy, to the extent of suggesting that “the state of exception appears as a threshold of indeterminacy between democracy and absolutism” (Agamben 2005: 3). The concrete effects of exception question constitutive democratic principles at their very heart: by replacing the political with a merely biological qualification of existence, it is now bare life – and not “the people” – which functions as the defining element of democracy (Huysmans 2008: 176).

Ultimately, biopolitical approaches totalize the interpretation of exceptionalism as the element of power that is now imposed directly upon (bare) life. Despite their undeniable critical purchase, such readings simultaneously exclude any possible action able to oppose these biopolitical logics of power. Thus, they risk overlooking alternative outcomes that can be entangled in the complex dynamics of exception and reducing the latter to a rigid scheme. By focusing on democratic possibilities within conditions of emergency, the last part of the article tests the idea of exception using a different heuristic. By introducing the Foucaultian idea of ‘resistance’ in diagrams of exceptionalism, it explores the possibility of reactions to power that can restore forms of individual and collective political agency excluded by previous approaches.

## **The Other Side of Foucault: Exception in the Horizon of Resistance**

As said, perspectives applying Foucault’s apparatus of governmentality to exception tend to consider the sole polarity of power which controls the life of a population. This approach, however, risks remaining limited to a rigid and unidirectional interpretation that excludes any opposition to power in a dialectical and productive sense. After considering the latest developments of the literature on exception and pointing out its bias towards the expansion of power, I look at the complementary notion of resistance that Foucault necessarily accompanies to power in order to attempt an alternative heuristic. This different angle seems missing from the literature on exception.

In discussing the modalities of modern power, Foucault makes the claim that “as soon as there is a power relation, there is a possibility of

resistance. We can never be ensnared by power: we can always modify its grip in determinate conditions and according to a precise strategy” (1988: 123). Foucault’s statement asserts that at a time when there is power, there is the possibility of resistance (Fontana and Bertani 2003: 280). Foucault explicates the relational character of power, which, while operating, simultaneously generates micro-level oppositions across a complex network of *dispositif* (1978: 93). Power, thus, plays an ambivalent role in both taming and nurturing possibilities for counteraction by those who are subjects of these same mechanisms. In the author’s words:

“We must make allowances for the complex and unstable process whereby a discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart” (Foucault 1978: 100).

Similarly in “The Subject and Power” (1983), Foucault affirms: “I would like to suggest another way to go further toward a new economy of power relations, a way which is more empirical, more directly related to our present situation, and which implies more relations between theory and practice. It consists of taking the forms of resistance against different forms of power as a starting point” (1983: 210–11).

In Foucault’s development of the theory of biopolitics, resistance always emerges to confront power and resorts to multiple and mutating tactics that create a complementary plane of forces. In other words: “the relation between power and resistance must be analyzed in the strategic form of struggle rather than in the juridical form of sovereignty” (Fontana and Bertani 2003: 281). With this intervention, Foucault not only creates the theoretical horizon to conceptualize resistance, but also delimits the reach of sovereign power. He argues for another dimension to investigating the productivity of power relations beyond the sovereign decision upon the law and the definition of subjects through disciplinary or biopolitical practices. Avenues of resistance rise from the point of individuals and society and thus enable endeavors against the disempowering of the people which is often taken as the most immediate effect of the exception.

Grounding theories that draw from Foucault, particularly the most recent applications to studies of security, undeniably point out the authoritarian and illiberal character ushered by governments in moments of exceptionalism. Agreeing with such claims, logics of exception can generate a matrix of control that hits at once communities and individuals. If the threat to the liberal character of the polity is well established

in these debates, however, it appears less so in regard to the democratic space left to collective participation and popular choice. Against this closure, the article tries to test a “new economy” of power relations as resistance within the structure of the exception and to discuss the possibility of a new horizon of action. This could eventually allow us to conceptualize avenues for political agency in exception by individuals, communities and societies.

### ***Trying Exception in a Participatory Lens: Scarry’s Democratic Response to the Anomie***

The work of social theorist Elaine Scarry *Thinking in an Emergency* (2011) may offer an example of the possibility of a “new economy” of actions in exceptionalisms.<sup>10</sup> In the book, the author engages with the problematique of our living in conditions of ‘chronic emergency’ brought about by the advent of the nuclear era. In line with the dominant understandings seen above, also in her view, exception appears as an open threat to people’s capacity for action. A condition of emergency reinforces the governmental belief “that the speed of modern life requires that population steps aside and stops thinking” (2011: xv). The current ‘global civil war’ causes decisions that closely concern the whole of humanity to be put in the hands of a restricted elite (the US president’s finger constantly being on the nuclear button is a meaningful example of this process). Readapting Rossiter’s argument, Scarry argues that these governing practices manifest the disguised authoritarian and dictatorial character of contemporary democracies. In these contexts, people are forced to surrender their democratic principles and renounce their capacities for critical thinking.

Against this backdrop, Scarry tries to counter an alternative answer to mere critiques denouncing the veiled exercise of power in emergency. She claims that, even in extreme circumstances of danger, people can prepare themselves to react to extended executive powers. She uses the term ‘habit’ to describe subjective responses against the normalizing logics imposed by the executive in critical moments (2011: 14). In circumstances in which a ruling power overcomes the democratic boundaries of state life, an effective response cannot take place as an open opposition to power through immediate collective forms. Rather, it rises through capillary micro-practices that challenge the biopolitical effects of power. The habits developed by individuals are a means to counter the executive’s power (its normalizing logics). This primarily individualized reaction works as the source for engendering collective agency. Although not using explicitly the terminology of resistance, Scarry’s example of empowering ‘habits’ can be read as expression of what Foucault defined

as the attempt to “not to be governed quite so much” (1996: 384). In a condition where power operates through the micro-management of all aspects of social life, Scarry’s suggestion points to the development of micro-scale behaviors and conducts operating on the same horizon.<sup>11</sup> In this context, the idea of habits works in a twofold sense. On the one hand, it implies a space of subjective existence that is not entirely appropriated by governmental power. In this margin, individuals can develop oppositional acts that interact productively with power mechanisms and enable capillary forms of reaction. On the other hand, these micro-scale responses provide the starting point to generate patterns of collective action that reinforce the societal bond against authoritarian directives.

In traditional takes on exception, emergency is deemed to cause people to surrender any power of action and their political responsibility. Against this reading, Scarry emphasizes possibilities of using exception to draw out new democratic practices and collectively decide the action to be undertaken. Her proposition is that we can collectively address many forms of emergency conditions, by using them to develop democratic counter-practices that remain open, widely understood and carefully enacted. In clearer terms, exception becomes the point in which the threat of an undemocratic arbitrary power generates popular responses that try to minimize the anomie, and even culminate in the construction of new patterns of social existence. This is enabled by the multiple and mobile ‘habits’ that are enacted by people in opposition to the dominant, exceptional, power.

Obvious here is the attempt to open up an alternative reading to both the legal frame and the normalizing logics commonly foregrounded in studies on the state of emergency. These alternative forms of conduct, rather, explore a “new economy” of action that enhances possibilities for associative initiatives by the population. In Scarry’s participatory lens, such modes of multi-scale responses lead to a reaffirmation of the democratic bases of the polity. Counter-practices enacted against the power of exception are able to maintain genuine deliberative decisional moments, precisely in circumstances in which democratic deliberation and consensus are threatened. In the cases discussed, exception becomes an affirmative stage for democratic freedom, since it ushers an attempt to counter potential abuses of power and re-establish the principle of democratic self-governing. In these instances, the risk or danger to democracy encourages individuals to organize new forms of resistance against the exceptional power of an expanding executive. This sort of resistance is able to preserve a fundamental democratic nature: actions implemented in the exception become the expression of people’s will, which reinvents itself in new ways. The legal suspension in the exception becomes an

opportunity to reimagine possibilities of action on a completely different plane than that of sovereign power and the law: the level of counter-practices that individuals and communities can collectively develop.

Scarry's language of internalization and counteractions rehabilitates subjects' critical acting and thinking under circumstances of normalization. In the empirical examples discussed, forms of resistance are linked to the capacity of ushering democratic outcomes and creating new channels of expression for the people against an expanding executive rule. The element of resistance becomes therefore the instrument to both enact and conceptualize an additional pattern of the relationship between exceptionalism and democracy beyond a merely illiberal outcome that focuses solely on an analytic of governmental power.<sup>12</sup>

Although certainly not complete nor comprehensive, the example of Scarry is here used to test the idea of resistance, in order to open up a less rigid and multidirectional interpretation of exceptionalisms. The notion of resistance does not collapse readings of exception to the sole element of power – excluding, in this way, the possibility of other social forces. Rather, it turns standard unidirectional interpretations into a dialectical dynamic that redefines the role of individuals and communities and foregrounds the people as key actors in political processes. The condition of void enforced by exception becomes a moment for the potential creation of new forms and patterns of social life. This ultimately allows us to renegotiate the relationship between the ideas of exception and democracy in a more fluid and possibly productive sense beyond the constraints of dominant theoretical horizons.

## Conclusion

The article has engaged with the discussion of the relationship between liberal-democracy and states of exception implemented in conditions of emergency. The rationale of the inquiry consisted first in addressing an apparent tension in regard to the conceptions of 'democracy' used by different approaches. The article looked first at the way in which the concept has been analyzed in contemporary political literature by two main streams: a juridical approach, as formulated by Schmitt and Rossiter, and its biopolitical refashioning in the theories of Foucault and Agamben. While the former allows for a compatibility between the two notions, it is only in its later development that the exception starts to be univocally assigned an anti-democratic and illiberal character. In such claims, multiple forms of exceptions have become part and parcel of governing practices of contemporary states, despite the maintenance of formal

democratic structures. The sovereign force exercised by multiple channels of authority at the boundaries of formal legislation creates an overwhelming matrix of exceptionalism deemed to disempower individuals and communities.

Although acknowledging this undeniable turn, the article has argued that, yet, reducing the entire interpretation of the exception to the focus on power risks denying the possibility of an action that opposes it. To this aim, I have proposed a different pathway and focused the attention on the complementary element of resistance that, in Foucault, is necessarily associated with the discursive exercise of power. The introduction of the concept of resistance allows us to conceive of a “new economy” of power that looks at the dimension of society and the social body as locus for possible political agency against the overarching effects of governmental power. I then moved on to the work by Elaine Scarry on the role played by a population’s thinking in conditions of emergency, which seems to provide a possible opening in this theoretical direction. Scarry reads circumstances of exceptional government as a moment to restore social behaviors and practices based on democratic deliberation and collective decision-making ushered by capillary forms of resistance. Although not complete nor conclusive, these considerations may provide a novel direction to look into theories of emergency. They could offer an alternative reading of the role that individuals and the people can play in situations of emergency rule beyond the most common focus on its undemocratic outcomes.

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## ► NOTES

1. The language of exception has become part of the vocabulary used to describe paradigmatic instances of politics in the contemporary West. Refugee or immigration camps; incarcerations without trial (Guild 2003); detentions of people without juridical status and exceptional court rulings (The Center for Constitutional Rights. 2002; Taylor 2009); police powers to stop, arrest, body search for border control (Salter 2007); increasing measures of surveillance and control globally (Talbot 2002) are all regarded as manifestations of exceptionalism.

2. Article 48 of the Weimar Constitution regulated and expanded the powers of the president of the Reich whenever the “public security and order” were endangered (Schmitt 1985a; also in Agamben 2005: 10).
3. For an historical framing of the problematique, see Bartelson 1997.
4. As also Giorgio Agamben (2005) points out, Rossiter is not the only author working along Schmitt’s legacy to provide a theory for the proliferation of constitutional dictatorships in many democracies in the inter-world war period (see also Watkins 1940; Friedrich 1941). In his trying to develop a thorough theory of democratic dictatorship by providing eleven necessary criteria of definition, however, Rossiter is the one that more extensively emphasises the element of temporariness here used to compare his work with Schmitt’s.
5. A juridical approach has been used in studies of exception beyond these theorists. Take, for instance, the phenomenon whereby, in recent decades, almost all contemporary liberal-democracies have enforced some form of exceptional measure, very often protracted beyond the duration of the threat. Humphreys reports that in 1978 an estimated 30 countries were in some form of state of emergency; by 1986 that number grew to 70 (Humphreys, 2006: 683). For similar evidence, see also Camp Keith and Poe (2004).
6. Foucault’s analysis of power distinguishes three kinds of power regimes: the juridical power revolving around the law; the disciplinary power concerned with the control of individual bodies and the biopolitical power dealing with the administration of the population as a whole. The latter two kinds are joint in the paradigm of a disciplinary-biopolitical “power over life” (see Gane 1986; Morton and Bygrave 2008; Schwan and Shapiro 2011). The analysis of this section stops at the opposition between juridical and normalizing power (or “right to death” and “power over life”) and treats the disciplinary and the biopolitical as two cases of the second category.
7. On this, see also Kishik 2012; Kotsko 2008.
8. Around the claim of the “exception becoming the rule”, see also Agamben’s indebtedness to Benjamin (Benjamin 1968, 1996; also in Erlenbusch 2010; Kotsko 2008).
9. Systematic communication monitoring, body searches, temporary imprisonments and breach of privacy and data access violating citizens’ fundamental freedoms are all examples of the illiberal modes of power operating in this regime. See Maguire et al. 2014.
10. See also her latest work 2014: 257–296.
11. Scarry uses four examples in support of her argument. In the case of cardio-pulmonary respiration (CPR), the population’s response is enacted by the capillary training of people that collectively develop skills to reciprocally rescue lives in cases of risk of death. In the Canadian mutual aid contracts, local communities establish reciprocal pacts of assistance that circumvent top-down interventions in cases of emergency, like fire or floods. In the example of the Swiss Shelter System, the population is able to perform self-directed reactions in cases in which the ordinary constitutional rules would envisage an exacerbation of power in the hands of the executive (like in potential



nuclear or natural catastrophes). Finally, with the constitutional protections in the extreme case of a (global) war, the population is able to elaborate a response that prevents the augmentation of authoritarian action by governments (2011: 19–80).

12. The idea of resistance in relation to discourses of exceptionalism has been applied also to particular individuals and subjects that enter into the category of 'bare life' and in the idea of 'camps' described above (see Kosko 2008; Taylor 2009). However, the aim of the article is to test and examine the meaning of democracy in exception in an associative and collective sense. Though acknowledging the application of the idea of 'resistance' in these other debates on exceptionalism, these cases fall outside the focus of the argument.

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