

# THE STATE OF EXCEPTION AND RELIGIOUS FREEDOM: REVISITING THE CHURCH-STATE CONFRONTATION CORRESPONDENCE AND STATEMENTS OF 1988

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## *Abstract*

This article revisits the documentation related to the church-state confrontation of 1988 with the aim of showing how it reflects different views on the prophetic role of the church in society, as well as different presuppositions regarding freedom of faith and worship. After a discussion of the polemical 1988 correspondence between church leaders and the State President, the second part of the article attends to the thought of the Italian philosopher Giorgio Agamben, and more specifically to his provocative discussion of the notions of “homo sacer” and “state of exception”. The last part of the article brings aspects of Agamben’s thought into conversation with the church-state correspondence of 1988 in order to argue for an understanding of freedom of religion that encompasses the freedom of the church to speak prophetically against any attempt by the state to normalise a state of exception that threatens vulnerable life.

## 1 INTRODUCTION

Between February and April 1988 the conflict between church and state in apartheid South Africa found dramatic expression in a series of letters and statements by church leaders, academic theologians and the State President (Mr P W Botha). The *Journal of Theology for Southern Africa* (JTSA), subsequently published the relevant documentation in a special “church and state” issue in June 1988.<sup>1</sup> This specific confrontation between the state and the churches that opposed apartheid was ignited by the government’s clampdown on 24 February 1988 on seventeen oppositional organisations and their leaders. In response to this event, leaders of the member churches of

the South African Council of Churches (SACC) held an emergency meeting during which time a petition was drafted. This petition, signed by 25 church leaders (including prominent figures such as Desmond Tutu, Frank Chikane, Stephen Naidoo, Peter Storey and Allan Boesak), was to be presented to the State President and Parliament after a procession from St George's Cathedral in Cape Town to the nearby Houses of Parliament. However, on 29 February 1988 the participating church leaders were arrested *en route* to parliament. Although they were released soon afterwards, the event evoked strong response – from churches and governments abroad as well.<sup>2</sup>

In this article, my aim is to revisit the documentation relating to the church-state confrontation of 1988 (as published by the *Journal of Theology for Southern Africa*) with a view to showing how it reflects different views of the prophetic role of the church in society. The relevant correspondence also reveals certain presuppositions regarding freedom of faith and worship that serve as a perennial challenge to a responsible theological engagement with the notion of freedom of religion. After a discussion of the polemical 1988 correspondence between church leaders and the State President, the second part of the paper considers the thought of the Italian philosopher Giorgio Agamben, and more specifically his provocative discussion of the notion of the “state of exception”. The last part of the article brings aspects of Agamben’s thought into conversation with the church-state correspondence of 1988 in order to argue for an understanding of freedom of religion that challenges a reductive (or “thin”) notion of freedom of religion that views freedom of religion merely as the existence of a safe space provided by the state for religions to worship in an unhindered fashion. This article furthermore argues that a Christian theological understanding of freedom of religion encompasses the freedom of the church to speak prophetically truth to power and to show constant vigilance towards any attempt by the state to normalise a state of exception that threatens vulnerable life.

## 2 THE CHURCH-STATE CONFRONTATION CORRESPONDENCE (1988)

The introductory note to the correspondence and statements published in the *Journal of Theology for Southern Africa* in June 1988

rightly states that these documents provide important insights into the nature of the churches' protest and understanding of their task at that stage, as well as into the position of the government with regard to church-state relations. With the state of emergency (declared in June 1986) still in effect in 1988, P W Botha gave Minister of Police Adriaan Vlok the power under the emergency regulations to place restrictions on extra-parliamentary oppositional organisations. As mentioned in the introduction, leaders of the member churches of the SACC drafted a petition in response but, as a result of the interrupted march to parliament, this petition was only posted to the State President the day after the march – a somewhat wrinkled document after being drenched by a water cannon (Allen 2006:5).

This letter, signed by the 25 church leaders and dated 29 February 1988, addresses the State President and members of Parliament with strong words of protest against the restrictions placed on the anti-apartheid organisations and their leaders. The letter (*JTSA* 1988:69) states: "We believe that the Government, in its actions over recent years but especially by last week's action, has chosen a path for the future which will lead to violence, bloodshed and instability." The church leaders regarded the restrictions as the removal of possible structures to work for change in South Africa by non-violent means. In addition, the restrictions are not only considered as "an attack on democratic activity in South Africa but as a blow directed at the heart of the Church's mission in South Africa" (*JTSA* 1988:69).

The letter continues (*JTSA* 1988:70):

The activities which have been prohibited are central to the proclamation of the Gospel in our country and we must make it clear that, no matter what the consequences, we will explore every possible avenue for continuing the activities which you have prohibited other bodies from undertaking. We will not be stopped from campaigning for the release of prisoners, from calling for clemency for those under sentence of death, from calling for the unbanning of political organisations, from calling for the release of political prisoners to negotiate the transfer of power to all the people of our country, from commemorating significant events in the life of our nation, from commemorating those who have died in what you call

“riots” or from calling on the international community to apply pressure to force you to the negotiating table.

There is also reference in the letter to a previous statement by many of the church leaders, which asked for the intensification of the struggle for justice and peace and aimed to offer hope and encouragement, “for victory against evil in this world is guaranteed by the Lord” (*JTSA* 1988:70). The letter, furthermore, urges the State President to end the state of emergency, to unban political organisations, release their leaders and lift the restrictions on them; to free all detainees and allow exiles to return, and to enter into negotiations for a future dispensation in which people can live together in peace, freedom and justice (*JTSA* 1988:70).

The response to this letter by the State President – addressed to Archbishop Tutu and dated 16 March – makes for interesting reading. March 16, was also the day of Tutu’s famous visit to P W Botha at Tuynhuys. The reason for Tutu’s visit was not, however, related to the church leader’s petition, but had a pastoral goal: to plead for the lives of the Sharpeville Six, who were facing execution on March 18. Tutu was instrumental in rallying international support for clemency for the five men and one woman awaiting execution after being convicted on charges arising from a mob killing of a black council member in Sharpeville in 1984. During the meeting with Botha, Tutu made it clear that he was not appealing for clemency on legal grounds, but that he came to plead for mercy, since he was against the death penalty in principle and also felt that the execution could lead to renewed violence, especially in light of the fact that the following Monday (21 March) was the anniversary of the Sharpeville massacre, the terrible event in 1960 when 69 black people were killed and 186 wounded.

During the meeting Botha also wanted to use the opportunity to discuss with Tutu the church leaders’ petition, and handed him his four-page reply. In the authorised biography of Tutu, titled *Rabble-rouser for peace*, John Allen (2006:5), on whose account of the meeting I draw here, writes:

Wagging his finger in the belligerent style that was his trademark, he excoriated the archbishop for instigating an illegal march; for allegedly drawing up the petition only after the march; for supposedly marching in front of a

communist flag; for advocating sanctions; for supporting the outlawed liberation movement ...; and for having the temerity to invite Thatcher, Reagan, and Kohl to interfere in South Africa's domestic affairs.

The rest of the meeting was a heavy confrontation of words, filled with mutual accusations. It is not the aim here to give a detailed description of this meeting, but it is important to note the context of Botha's reply to the church leaders' petition.<sup>3</sup>

In his reply of 16 March, Botha asks the question whether the so-called march on parliament was really necessary and worthy of the cause and message of Christ. He then remarks: "You are no doubt aware that the expressed intention of the planned revolution by the ANC/SACP alliance is to ultimately transform South Africa into an atheistic Marxist state, where freedom of faith and worship will surely be among the first casualties" (*JTSA* 1988:72). What is interesting in this response is the reference to freedom of faith and worship. The State President calls attention to the perceived threat that churches will experience in an atheistic state.

Botha also responded to the phrase used in the church leaders' petition: "victory against evil in this world is guaranteed by the Lord." He comments (*JTSA* 1988:72):

What is clearly at issue here, is your understanding of *evil* [Botha's emphasis]: Is atheistic marxism the evil, or does your view of evil include the struggle on behalf of Christianity, and freedom of faith and worship, against the forces of godlessness and marxism?

Once again the notion of freedom of faith and worship is invoked to challenge the legitimacy of the churches' participation in the struggle for liberation.

In the conclusion to his letter, Botha also asks whether it is not true that the Christian church knows no other power than love and faith and that if the church "brings its spiritual power into secular power-play ... it becomes a secular instead of a sacred spiritual subject, thereby relinquishing the claim to be church" (*JTSA* 1988: 73). This statement of Botha's clearly illustrates that the State President and the church leaders represent rival understandings of the nature and mission of the church.

The documentation of the church-state confrontation published in *JTSA* in 1988 also includes statements by the bishops of the Church of the Province of Southern Africa, following their respective meetings on 17 March (in Pretoria) and 22 March (in Kempton Park). The first meeting was held after the bishops cancelled talks with the Dutch Reformed Church and invited them to join them in prayer for the Sharpeville Six and their families at St Alban's Cathedral in Pretoria. The statement drafted at this meeting criticised the attacks of the government and the DRC<sup>4</sup> on church leaders like Tutu and Boesak. The Bishops argue in their statement that Tutu is doing nothing new, since his witness follows the prophetic traditions of leaders such as Geoffrey Clayton and Joost de Blank. The Bishops also rejected forcefully the accusation that Tutu is taking instructions from the ANC and the SACP, and that he thus is a tool in the hands of atheists and Marxists. They challenge the totalitarian approach of the government, since it uses methods such as detention without trial, banning and the restriction of organisations, a continuing state of emergency, media control and censorship. In their statement following the meeting of March 22, the Bishops once again defend the charges against Tutu, stating "Archbishop Tutu is our father in God, who belongs to us and we belong to him" (*JTSA* 1988:76). They also challenge the State President's right to define what is spiritual or to decide on what is relevant Christian witness (*JTSA* 1988:76):

The State President would have it that South Africans must choose between the Government's programme and atheistic Marxism. We reject his definition of the choice and we reaffirm our commitment to a just, democratic and sharing society reflecting the values of the Kingdom of God.

Following the march of the church leaders and the attack on Archbishop Tutu and others, Frank Chikane, General Secretary of the SACC, also wrote a letter to the State President (dated 18 March). Botha responded with a letter written in a very combative style (dated 25 March). In the letter he writes that he finds it disturbing that Chikane and other church leaders, who claim to represent the church of Christ and the Word of God, act in such an irresponsible way. Botha sees it as alarming that clergy, who claim to be messengers of God, are "in reality messengers of enmity and hatred while parading

in the cloth, and hiding behind the structures of the Church; and instead of pursuing reformation, they are engaged in the deformation of religion, through the proclamation of false so-called 'liberation theology'" (*JTSA* 1988:78, 79).

Botha continues: "I urge you urgently not to abuse the freedom of religion and worship, and the goodwill of the people and the government of South Africa for the pursuance of secular and revolutionary objectives. In the name of God and in the spirit of true Christianity I call upon you to be messengers of true Christian religion, and not of Marxism and atheism" (*JTSA* 1988:79). Once again one sees the reference to the notion of the freedom of religion. It is clear that Botha's understanding of freedom of religion is embedded in an understanding of the church as having a private, spiritual role that does not include involvement in secular politics. Nonetheless, Botha clearly upholds the importance of freedom of religion when he writes: "Religious freedom is the cornerstone of proper human rights. It is a well-known fact that South Africa is a country which cherishes and safeguards freedom of religion" (*JTSA* 1988:79).

In the conclusion of his letter to Chikane, Botha poses the following challenge: "Can you quote one single instance in the Word of God in which it appears that Christ advocated violence against the State; or led a demonstration against the State; or broke a law of the State" (*JTSA* 1988:80).

A letter to the press signed by 44 university and seminary theologians (dated 7 April) came out in defence of the church leaders. This letter took up Botha's challenge that no theologian could provide support for the protest actions of the church leaders, arguing that there is a clear biblical basis and strand within mainstream Christianity for protest action resisting injustice. The letter states: "To proclaim the gospel in word as well as in action, for both are required of the church, must inevitably mean confronting what is unjust, dehumanising, and destructive of human community and Christian values" (*JTSA* 1988:80). The letter draws on the actions of the prophets of Israel and Jesus' cleansing of the temple as examples of public symbolic actions, when their cries on behalf of the poor and marginalised were unheeded and disregarded. The theologians also used historical examples to argue that public actions against the abuse of power occurred throughout the history of the church, and that such protest was supported by major Christian

theologians, significantly by John Calvin. This letter by the university and seminary theologians can be seen as a strong plea for the freedom of the church to play a prophetic role in society, also vis-à-vis the state.

The last letter included in the church-state confrontation correspondence is a letter from Archbishop Tutu to the State President (dated 8 April). In his biography of Tutu, Allen describes Tutu's eight-page rejoinder to Botha as "the South African equivalent of Martin Luther King, Jr's 'Letter from a Birmingham Jail'" (Allen 2006:292). In his letter, Tutu defends himself against Botha's claims. The main body of the letter draws on the Bible, supplying a thorough critique of *apartheid*. Without my going into the detail about Tutu's arguments, which are also to be found in many of his speeches and sermons, it suffices to say that Tutu places the protest action by himself and the church leaders within the Christian prophetic tradition. The prophets "spoke about the need for religion to show its authenticity by how it affected the everyday life of the people and especially by how the rich, the powerful, the privileged and the rulers dealt with the less privileged, the poor, the hungry, the oppressed, the widow, the orphan, and the alien" (*JTSA* 1988:83, 84). Tutu mentions that he will defend Botha as being for real change if he lifts the state of emergency, unbans all political organisations, releases all detainees and political prisoners, permits exiles to return, and negotiates with authoritative representatives for a new dispensation. The letter ends with the words: "I work for God's Kingdom. For whose Kingdom with your apartheid policy do you work? I pray for you, as I do for your Ministerial colleagues, every day by name" (*JTSA* 1988:87).

The church-state correspondence discussed above, reveals, as John de Gruchy has argued, "how much the struggle for liberation was related to the church struggle, and the extent to which it was a contest between two very different understandings of Christianity and the teaching of the Bible" (De Gruchy 2005:205). A close reading of these documents, moreover, brings implicitly contradicting views concerning the freedom of religion to the fore.

### **3 AGAMBEN ON *HOMO SACER* AND THE STATE OF EXCEPTION**

During the time that the church-state confrontation correspondence took place, the state of emergency was still in effect in South Africa. The decree of a state of emergency corresponds to a concept at the heart of the political theory of the Italian philosopher Giorgio Agamben, namely the notion of the *state of exception*. This section of the article briefly discusses Agamben's thought-provoking engagement with this notion, as well as his intriguing use of the related notion of the *homo sacer* (or sacred person). For this purpose, I will draw mainly on two of his more recent works, namely *Homo Sacer: Sovereign power and bare life*, and *State of exception*.<sup>5</sup>

In his book *Homo Sacer: Sovereign power and bare life*, Agamben engages Michel Foucault's view (as expressed at the end of the first volume of his *The history of sexuality* series) that on the threshold of modernity there was a transition from sovereign power to bio-power. To Foucault, this transition implies that natural life or biological life was now beginning to be included within the mechanisms and calculations of state power. Politics has turned into bio-politics, and the strategies of the nation-state have a direct impact on the human body and its freedom.<sup>6</sup> Agamben, however, challenges Foucault's periodisation of the emergence of bio-politics, and claims that bio-power and sovereignty are more fundamentally integrated and that bio-politics is at least as old as the sovereign exception. Agamben (1998:6) continues: "Placing biopolitical life at the center of its calculations, the modern state therefore does nothing else than bring to light the secret tie uniting power and bare life." This idea of bare life (*la nuda vita*) is central to Agamben's project. To develop this notion of "bare life", Agamben recalls the obscure figure of the *homo sacer* from archaic Roman law. When a person committed a certain kind of crime, the person's rights were revoked. Such a person became a *homo sacer*, that is, a person who could be killed by anyone but could not be sacrificed in a ritual ceremony. This person is thus included within the law through being excluded from the law.<sup>7</sup> The *homo sacer* is therefore the person abandoned by the law as the exception. In Agamben's assessment of contemporary politics, it has become the case that the exception has become the rule: "If today there is no longer any one clear figure of the sacred man, it is because we are all virtually *homines sacri*" (Agamben 1998:115).

Whereas Foucault focused mainly on hospitals and prisons as sites of modern bio-politics, Agamben views the camp as the bio-

political paradigm of the modern world *par excellence*. Agamben refers to the fact that historians debate whether the first camps to appear were the *campos de concentraciones* created by the Spanish in Cuba in 1896 or the South African “concentration camps” at the beginning of the twentieth century. What matters for Agamben, is that in both cases a state of emergency linked to a colonial war is extended to the whole population. This is also clear in the Nazi concentration camps. Agamben (1998:168, 169) writes: “*The camp is the space that is opened when the state of exception becomes the rule*. In the camp, the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement.”

In his book *State of exception*, Agamben elaborates on this notion of the state of exception.<sup>8</sup> Agamben calls attention to the fact that, soon after Hitler came to power, he proclaimed the *Decree for the protection of the people and the State* that suspended the Weimar Constitution’s articles concerning personal freedoms. Since the decree was never revoked, the entire Third Reich can be viewed from a juridical standpoint as a state of exception that lasted 12 years. Agamben (2005:2) comments:

In this sense, modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. Since then, the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones.

Agamben also sees the bio-political significance of the state of exception in the “military order” issued by the President of the United States, George W Bush on 13 November 2001, “which authorized the ‘indefinite detention’ and trial by ‘military commissions’ of noncitizens suspected of involvement in terrorist activities” (Agamben 2005:3). The preceding USA Patriot Act (issued by the United States Senate on 26 October 2001), “already allowed the attorney general to ‘take into custody’ any alien suspected of activities that endangered ‘the

national security of the United States', but within seven days the alien had to be either released or charged with the violation of immigration laws or some other criminal offence" (Agamben 2005:3). The troubling aspect for Agamben of President Bush's order of 13 November is that it "radically erases any legal status of the individual, thus producing a legally unnameable and unclassifiable being" (Agamben 2005:3). With reference to Judith Butler's <Author: This reference has been added to the list below. Please supply the details missing there. - eap> work, Agamben argues that the detainee at Guantánamo Bay (the detention centre in Cuba) has lost every legal identity and hence bare life reaches its maximum vulnerability. Through the state of exception, qualified life (*bios*) is reduced to bare life (*zoe*). Agamben also refers – towards the end of a short historical excursus on the notion of the state of exception – to President Bush's decision to refer to himself constantly as the "Commander-in-Chief of the Army" after September 11, 2001. He observes: "Bush is attempting to produce a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible" (Agamben 2005:22).

It is Agamben's argument that the state of exception today has reached its maximum worldwide deployment in a situation where the "normative aspects of law can thus be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally - nevertheless still claims to be applying the law" (Agamben 2005:87). In contrast to such a normalisation of the state of exception, Agamben hints at a countermovement that seeks to loosen what has been artificially and violently linked and thus unmask the fiction of contemporary politics. Therefore the goal is to open a space between law and life for human action "which once claimed for itself the name of 'politics'" (Agamben 2005:88).

#### **4 THE FREEDOM OF RELIGION AND THE FREEDOM OF THE CHURCH**

In this last section of the article, I bring the reading of the state-church confrontation correspondence of 1988 into conversation with some notions from the political theory of Giorgio Agamben in order to

make some remarks relating to a Christian theological discussion of the notion of freedom of religion.

In the 1988 correspondence discussed earlier, the State President upheld a view that emphasises the importance of freedom of religion as the cornerstone of human rights. P W Botha clearly felt that the state provided freedom of religion, and compared the situation in *apartheid* South Africa with a possible future situation in an atheistic Marxist state where freedom of worship and faith would be among the first casualties.<sup>9</sup> The church leaders are moreover warned not to abuse this freedom for revolutionary purposes. But clearly this view of religious freedom, which can technically be supported from a legal standpoint, is compromised and complicated by the way it is set within the context of a state of emergency. In Agamben's terminology, the sovereign power (who is inside the law) places himself above the law by declaring the state of exception. This has huge implications for the bodies of citizens that are reduced to "bare life" (without legal status) and therefore vulnerable to the bio-power of the state (imprisonment, surveillance and torture being examples of the bio-political invasion of bare life). Such a situation of a state of exception makes a reductive (or "thin") view of religious freedom insufficient. Agamben forcefully argues that the situation of the state of exception has become the rule in contemporary politics. This reminds us that discussions on freedom of religion in our current polarising global political situation require a greater suspicion towards the neutrality or redemptive quality of the state. It also requires a critical and creative rethinking of the relationship between law and life.

It must be affirmed unequivocally that Christians and churches have a participatory stake in the defence of human rights, including the rights related to the freedom of religion. Moreover, this further implies working for the protection of the rights of other religions, especially those that are vulnerable to the misuse of political, economic and ecclesiastical power. However, I think our discussion in particular points to the need for the church to give a more qualified defence of the language of freedom of religion.

In his book *After Christendom?* in an essay provocatively titled "The politics of freedom: Why freedom of religion is a subtle temptation", the North-American theologian Stanley Hauerwas (1991:71) writes:

The question is not whether we have freedom of religion and a corresponding limited state in America, but whether we have a church that has a people capable of saying no to the state. No state, particularly the democratic state, is kept limited by constitutions, but rather is limited by a people with the imagination and courage to challenge the inveterate temptation of the state to ask us to compromise our loyalty to God. Freedom of religion is a temptation, albeit a subtle one. It tempts us to believe that we have been rendered safe by legal mechanisms. It is subtle because we believe that our task as Christians is to support the ethos necessary to maintain the mechanism. As a result, we lose the critical skills formed by the gospel to know when we have voluntarily qualified our loyalty to God in the name of the state. We confuse freedom of religion with the freedom of the church, accepting the assumption that the later is but a specification of the former. We thus become tolerant, allowing our convictions to be relegated to the realms of the private.

Although one may ask critical questions about Hauerwas's controversial statement about the subtle temptation of freedom of religion, it does serve as a reminder for Christians and the church to resist the temptation offered by modernistic political and ethical theory to give too thin a description of religious freedom. Freedom of religion is indeed not to be confused with the freedom of the church or the freedom of the religious.

It is therefore important, also with regard to the discussions concerning freedom of religion, for Christians and the church not to lose their theological imagination, or what the Roman Catholic theologian William Cavanaugh refers to as "theopolitical imagination". In his book, entitled *Theopolitical imagination*, Cavanaugh seeks to unmask three myths, namely the myth of the state as saviour, the myth of civil society as free space, and the myth of globalisation as catholicity. Of special interest for our concerns here is Cavanaugh's view that the modern state is built upon a soteriology of rescue from violence.<sup>10</sup> Cavanaugh sees this as a false or "heretical" soteriology and argues for a theological reimagination of space and time that can serve as an alternative to the myth of the state as saviour. It is indeed debatable what this reimagining must entail, but I think Cavanaugh is

right: that theopolitical imagination is required. It is my view that the church leaders in 1988 embodied – albeit it amidst the reality of human brokenness and frailty – something of such a theopolitical imagination.

The plea for a theopolitical imagination always mirrors new forms of sovereign power that contribute to the detriment of what Agamben calls “bare life”, consequently giving rise to new embodiments of *homo sacer* (people abandoned by the law) in our contemporary world. From a Christian standpoint, this tendency underscores the importance of defending life where it is at its most vulnerable. In this regard, it is interesting to recall Tutu’s remark in his letter to the State President in which he refers to the fact that the prophets “spoke about the need for religion to show its authenticity by how it affected the everyday life of the people and especially by how the rich, the powerful, the privileged and the rulers dealt with the less privileged, the poor, the hungry, the oppressed, the widow, the orphan, and the alien” (*JTSA* 1988:83, 84).

Thus, Christian discourse about the freedom of religion cannot be separated from discourse about the freedom of the church to witness in a manner that keeps alive what Mark Lewis Taylor refers to as “the specter of prophetic spirit”.<sup>11</sup> Freedom of religion (as a Christian concept) is not merely about the freedom to be left alone by the state, but implies the freedom to proclaim the gospel, to witness for justice and peace. To many observers of Christianity and disillusioned insiders, such a prophetic stance seems, however, not to be the rule, but the exception.

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## ENDNOTES

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- 1 The same documentation is also included in Hofmeyr, Millard & Froneman (eds.), *History of the church in South Africa: A document and source book* (1991), 393-405. For a selection of the correspondence, see also Wallis & Hollyday (eds.), *Crucible of fire: The church confronts apartheid* (1989), 139-163.

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- 2 See the introductory note to the documentation in *JTSA* (1988:68). For a discussion of the events surrounding the correspondence, see also De Gruchy (2005: 202-206) and Allen (2006:1-7; 290-293).
  - 3 It must be noted that the next day the judge in the case of the Sharpeville Six was more sympathetic. When the case went back to Botha, after months in court, the death sentence was replaced by long-term imprisonment (see Allen 2006:6). It is also interesting to note that *Die Kerkbode* published a long exclusive interview with the State President on 16 March under the heading “Kerke kan profetiese stem oor politieke modelle laat hoor” (“Churches can make their voice heard regarding political models”). In this interview, Botha responds to a question by the editor (Dr Frits Gaum) concerning the prophetic task of the church by saying that the state does not have the theological base to evaluate the church’s faithfulness to its prophetic task. Botha adds, however, that churches must also acknowledge that the range of their prophetic task outside of church life has limits (“Ek wil darem byvoeg dat die kerke in die uitvoering van hulle profetiese taak buite die kerklike terrein ook sekere beperkings moet erken”).
  - 4 A week after the protest march on 29 February, church leaders joined other community leaders in forming an *ad hoc* Committee for the Defence of Democracy. This committee was banned, whereupon the leaders called for a protest rally, which was also banned. Tutu, Boesak and Stephen Naidoo organised a service at St George’s Cathedral to replace the rally. Two days after this service, the General Synodal Commission of the DRC attacked Boesak and Tutu, stating that they were “on a wicked path”. The statement of the Anglican Bishops of 17 March also contains an attack on the DRC: “In this country, the greatest possible evil we face is the system of apartheid. This policy was the brainchild of the white DRC and it is still being implemented in its most fundamental aspects. The destruction the policy is wreaking in South Africa makes it comparable to a vicious dog: the majority of South Africans believe that the NGK unleashed the dog. It is therefore incumbent on the NGK to bring it under control again” (*JTSA* 1988:74). See also the response of Prof. Johan Heyns, the moderator – he was moderator only of the general synod in session; afterwards, he was chair of the general synod committee of the DRC – in *Die Kerkbode* of 30 March 1988, in which he denied the allegations that the DRC was conspiring with the government against Tutu and Boesak.
  - 5 *Homo Sacer: Sovereign power and bare life* (first published in English in 1998) was originally published as *Homo sacer: Il potere sovrano e la nuda vita* in 1995. *State of exception*, originally published as *Stato di eccezione* in 2003, was published in English in 2005. These two books are part of a planned series of four books, of which the third, *Remnants of Auschwitz*, has also been published in English.
  - 6 Foucault (1978:143) writes in *The will to knowledge: The history of sexuality*, volume 1: “For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question”.

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- 7 As such, this figure functions for Agamben as the mirror image of the sovereign who is within the law (the laws apply to the sovereign), but at the same time outside or above the law, since the sovereign has the power to suspend the law. It is revealing that Agamben uses the following quotation from Savigny as one of the mottos of *Homo Sacer*: “Das Recht hat kein Dasein für sich, sein Wese vielmehr ist das Leben Menschen selbst, von einer Seite angesehen” (“Law has no existence for itself; rather its essence lies, from a certain perspective, in the very life of men” – translation taken from *Homo Sacer*).
- 8 It was the German jurist and intellectual sympathiser with Nazism, Carl Schmitt, who established in his book *Politische Theologie* (1922) the relation between sovereignty and the state of exception through his definition of the sovereign as “he who decides on the state of exception.” Agamben is, however, not merely interested in the notion of the state of exception as political fact, but also in its relation to public law, or more specifically in the space it occupies between political fact and public law (see Agamben 2005:1). In *State of exception*, Agamben also gives a detailed description of Walter Benjamin’s critique of Schmitt. At the heart of this discussion is the question of the relation between violence and law. Agamben writes: “While Schmitt attempts every time to reinscribe violence within a juridical context, Benjamin responds to the gesture by seeking every time to assure it – as pure violence – an existence outside of the law” (Agamben 2005:59). In many ways Agamben’s own project can be viewed as an attempt to complete Benjamin’s critique.
- 9 In a published extract from an interview between the editor of *Die Kerkbode* and the State President, Botha also reaffirms that South Africa is a country where freedom of religion is protected in the Constitution (“Suid-Afrika is ‘n land waar vryheid van geloof en aanbidding in die Aanhef tot die Grondwet as ‘n nasionale doelwit beskryf word, en as ‘n kosbare kleinood bewaar word” (*Die Kerkbode*, 16 March 1988, 16). Botha also says that responsible churches and church leaders ought to be in favour of the state of emergency, since it ultimately aims to create an environment that makes it easier for churches to fulfil their prophetic task (“Verantwoordelike kerke en kerkleiers behoort dus ten gunste van die doel met die instelling van die noodtoestand te wees, wat uiteindelik ook daarop gerig is om omstandighede te help skep waarin die kerke juis hulle profetiese taak makliker kan uitoefen”) (16).
- 10 Cavanaugh (2002:5) writes: “The myth of early modern ‘religious wars’ from which the modern state has saved us is historically untrue. The rise of the modern secular state is a historically contingent event that has produced more, not less, violence. It has done so not by secularising politics, but by supplanting the imagination of the body of Christ with a heretical theology of salvation through the state.”
- 11 For a discussion of the notion of the “spectre of prophetic spirit”, which draws on the work of Paul Tillich, see Taylor (2005:96-109).