



**THE HERMAPHRODITE SOVEREIGN:  
WALTER BENJAMIN, CARL SCHMITT, AND  
THE PERMANENT STATE OF EXCEPTION**

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Received: December 15, 2010; reviews: 2; accepted: January 20, 2011

**ABSTRACT**

This article re-imagines the textual relationship between Carl Schmitt and Walter Benjamin as one of much greater affinity than has typically been granted to it. This reworking of their textual relationship draws largely from a study of how and in what ways the figure of the sovereign in Walter Benjamin's study of the German *Trauerspiel* can be read as a response to Carl Schmitt's theory of sovereignty as found in *Political Theology*. Though the article's narrative trajectory covers a textual relationship, the larger stakes of the work here involve the description of the structure of the state of exception (in particular in its legal, political, and philosophical valences) and its uses and abuses as a tool of sovereign authority, both historically and in contemporary forms. The paper argues that a) functionally and historically a great deal of the truth of the paradoxically riddled structure of sovereign authority can be found in its opposite, namely, the inability to decide on the exception; and b) typologically the sovereign suffers from the tension inherent in a diametrically opposed dual-identity; c) the article also explores from a psychoanalytic perspective the potential space for politics in a world in which law and life have been grafted together in a permanent state of exception.

**KEYWORDS**

Walter Benjamin, Carl Schmitt, state of exception, sovereignty, Giorgio Agamben, Trauerspiel, Jacques Lacan, psychoanalysis

## INTRODUCTION

Over the years much ink has been spilled in an effort to probe the psychological motivations of those wielding ultimate, sovereign authority. From Machiavelli to Hannah Arendt, the justifications of actions taken by those in seats of extraordinary power have been examined, explained, and vigorously worked through in an attempt to comprehend the rationale and grounds for sovereign decisions, to understand those making the decisions, and to recognize (and often empathize with) those therefore affected by those sovereign decisions. The following article belongs in some ways to this intellectual discourse of the study of sovereignty. However, this article aims not at a psychological study of those persons who wear the crown of sovereign power; instead, this paper seeks to expose the impersonal, structural mechanisms of sovereign power as it is embodied in the person who decides on the exception. This article suggests that Walter Benjamin's textual response to Carl Schmitt's famous study of sovereignty in *Political Theology* (1922) uncovers the structurality of the structure(s) of sovereignty. The 'unconscious' truths of sovereign power as revealed through Benjamin's important engagement with the concept of sovereignty bear on the functional/historical workings of sovereignty as well as the typological molds necessarily embodied by the individual embodying sovereign authority. In the process of disclosing the structural foundations of sovereign power, this article also intervenes in traditional intellectual-historical accounts of how Carl Schmitt's important and provocative thinking has been received, by rereading the relationship between Schmitt and Benjamin as one of much greater affinity than has typically been granted to it.

### 1. BENJAMIN VERSUS SCHMITT

In *State of Exception*, Giorgio Agamben lays out a "dossier" of the relationship between Walter Benjamin and Carl Schmitt. He rereads the order and interplay of certain of their writings from the 1920s as a kind of intellectual tennis match between the two, a back-and-forth in which Schmitt serves up the book *Die Diktatur* [*Dictatorship*] in 1921, which Benjamin returns later in the same year with his essay "Zur Kritik der Gewalt [Critique of Violence]." In response to this parlay, Schmitt volleys back with the theory of sovereign decisionism laid out in 1922 in *Politische Theologie* [*Political Theology*]. Benjamin's reply comes in 1928 in a slightly disguised form, in his Habilitationsschrift, *Ursprung des Deutschen Trauerspiels* [The Origin of the German Mourning Play], whose ostensible topic is

the origins and development of a largely seventeenth-century dramatic form and genre called the German *Trauerspiel*: a play of mourning, or more simply if inaccurately put by the book's English translator John Osborne, German tragic drama.

In the *Trauerspiel* book Benjamin takes up Schmitt's notion of sovereignty, only to subtly alter and thereby undermine it. In contrast to Schmitt's sovereign, whose reality and title depends upon the capacity to make the all-important decision on the exception, Benjamin's seventeenth-century baroque prince embodies absolute sovereignty and yet is plagued by the incapacity to decide on the exception. Given the direct references in the text to Schmitt, and based on the fact that the entire second half of Benjamin's book spells out a theory of allegory, Benjamin's castrated (i.e. incapacitated) sovereign is, *inter alia*, clearly an allegorical avatar belonging to Benjamin's contemporaneous political crisis in Germany during the Weimar Republic (and in Europe more generally). By way of allegory Benjamin uses the seventeenth-century German play of mourning to critique Schmitt and his contemporary historical situation of the permanent state of exception. In the course of Benjamin's understated and ingenious critique of Schmitt in the *Trauerspiel* book, the stakes of this supposed intellectual match become clear: for Schmitt, there is no law, or force-of-law, beyond the constituent political violence that founds law; for Benjamin, the ambiguity and tension at the heart of the paradoxical articulation of the sovereign's role (as he who decides on the exception, and who therefore, in Schmitt's words, "stands outside the normally valid legal system," and yet who "nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety"<sup>1</sup>) suggests otherwise. For Agamben, in his rereading of the Benjamin-Schmitt relationship, by this "otherwise" we are to understand here, at least for the moment: Benjamin *versus* Schmitt.

The essential point of Benjamin's implicit critique of Carl Schmitt's theory of sovereignty comes when he (Benjamin) inverts the typical understanding of the state of exception. The sovereign, according to Schmitt, unfolds his dictatorial power by and through the decision on the exception, in particular, the sovereign's total suspension of the law through a declaration of the *Ausnahmezustand* (state of exception). No mere *Notstand* (state of emergency), the *Ausnahmezustand* is the extreme, ultimate version of sovereign power. Benjamin claims that in the baroque German play of mourning the sovereign is portrayed as being incapable of deciding on the exception. The *Trauerspiel* presents the sovereign not as demagogic,

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<sup>1</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago & London: University of Chicago Press, 2005), p. 7.

transcendentally endowed master of decision, but as its absolutely contrary and distorted form: a decidedly worldly creature-human plagued by the incapacity to decide. Benjamin explains that the sovereign baroque prince, “with whom the responsibility rests for deciding on the state of exception, reveals, at the first opportunity, that *he is almost incapable of making this decision.*”<sup>2</sup> Turning for just a moment to the Lacanian psychoanalytic lexicon, is this not a kind of staging of the otherwise unconscious truth of Schmitt’s sovereign? In other words, Benjamin returns Schmitt’s figure of the sovereign to him from the ether of the Real in its distorted, inverted, and therefore true form. The full impact of this insight, however, must wait until more of the textual detail of this relationship has been uncovered.

By paying careful attention to Benjamin’s original German, we can patiently and by slightly different means rearticulate this claim of the sovereign’s incapacity to decide. The German original, with John Osborne’s English translation, reads: “Der Fürst, bei dem die Entscheidung über den Ausnahmezustand ruht, erweist in der erstbesten Situation, daß ein Entschluß ihm fast unmöglich ist [The prince, who is responsible for making the decision to proclaim the state of emergency, reveals, at the first opportunity, that he is almost incapable of making a decision].”<sup>3</sup> Benjamin further clarifies: “Das ist *die Entschlußunfähigkeit* des Tyrannen [this is the indecisiveness of the tyrant].”<sup>4</sup>

The German term “Entschlußunfähigkeit” calls attention to itself here. Osborne’s translation choice of “indecisiveness” is a terrible one, but his translation failure turns out to be our success, for it helps to highlight a crucial subtlety in Benjamin’s chosen term. Indecisiveness suggests an aporetic condition inherent in the subject. Alternately, “undecidability” offers another interesting rendition. However, undecidability indicates an aporetic condition focused mostly on its inherence in an object. Samuel Weber has suggested a more literal translation into English, rendering *Entschlußunfähigkeit* as “the incapacity [of the tyrant] to decide.”<sup>5</sup> While obviously related, the more precise term for indecisiveness in German is just slightly different—just ever so slightly dislocated from Benjamin’s usage of *Entschlußunfähigkeit*: that common term is *unentschlossen*, or, alternately, *unschlüssig*, which means simply “indecisive.” In fact, in typical terms if one wishes to speak of indecisive leadership one does not use the unusual term

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<sup>2</sup> Walter Benjamin, *Ursprung des deutschen Trauerspiels*, in: *Gesammelte Schriften*, Band 1.1 (Frankfurt a.M.: Suhrkamp Verlag, 1974), p. 250 [my translation]. For comparison, see the English translation: Walter Benjamin, *The Origin of German Tragic Drama*, trans. John Osborne (New York: Verso, 1998), p. 71.

<sup>3</sup> Walter Benjamin, *Ursprung*, *supra* note 2, p. 250; Walter Benjamin, *Origin*, *supra* note 2, p. 71.

<sup>4</sup> Walter Benjamin, *Ursprung*, *supra* note 2, p. 250; Walter Benjamin, *Origin*, *supra* note 2, p. 71.

<sup>5</sup> Samuel Weber, “Taking Exception to Decision: Walter Benjamin and Carl Schmitt”: 188; in: *Benjamin’s –abilities* (Cambridge, Mass.: Harvard University Press, 2008).

*Entschlußunfähigkeit*; instead, one speaks of *eine Schwäche in der Führung*, or simply *die Führungsschwäche*. Indecisiveness is a term that preserves the basic capacity to decide, but demonstrates it as stalled. However, what Benjamin's slight dislocation in terminology emphasizes is *the absence of that very capacity in the first place*. The sovereign in Benjamin's account is not stuck hemming and hawing (even permanently) between two or more possible options upon which he might land in a decision. According to Benjamin, from the very start the sovereign does not have the proper capacity to make a decision. It is not that he cannot decide between the options; rather, he does not possess the proper ability to decide on the exception, either because he lacks this faculty entirely or he lacks the proper context that would develop the latent ability.

Terminologically, Benjamin has gone out of his way to carefully emphasize the particular, unique quality of the sovereign's *Entschlußunfähigkeit*. And, as Agamben and Weber have both aptly indicated, this point of the sovereign's inability to decide is where Benjamin lands his somewhat shrouded critique of Schmitt. But *how* does this amount to a significant critique? How does this character-type from the seventeenth-century baroque German *Trauerspiel* amount to a serious intervention in Carl Schmitt's powerful and largely convincing discourse on the power of the state of exception?

How is the sovereign, in fact, incapable of decision, as opposed to commandingly deciding on the exception? I offer two discrete but related answers.

Firstly, functionally and historically the sovereign's *Entschlußunfähigkeit* arises because the state of exception has become the rule. The question of the inability to decide in Benjamin's text comes down to the fact of the immanent relation between exception and norm. For a "*wirklicher Ausnahmezustand* (real/true/actual state of exception)," as Benjamin calls it in one of his aphorisms on the concept of history,<sup>6</sup> to be decided and proclaimed, as opposed to this paradoxical one "in dem wir leben [in which we live],"<sup>7</sup> a real/true/actual transcendence or measure of difference would have to be introduced. Despite acting *as if* buoyed by transcendent power, Benjamin's allegorical material from the German *Trauerspiel* helps foreground the fact that the sovereign is firmly grounded in the same earthly existence as those over whom he holds sovereign power. The sovereign does not harness the power of transcendence in the act of deciding on the exception. Rather, according to Benjamin, the sovereign desperately announces a hollow claim of transcendence within the infinite echo chamber of the earthly realm of immanence.

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<sup>6</sup> Walter Benjamin, "Über den Begriff der Geschichte"; text in: *Gesammelte Schriften*, Band 1.2 (Frankfurt a.M.: Suhrkamp Verlag, 1974), p. 697.

<sup>7</sup> *Ibid.* [my translation].

Secondly, typologically, or in the terms of the political anthropology Benjamin suggests in the *Trauerspiel* book, the sovereign's *Entschlußunfähigkeit* springs from the tension inherent in his split identity: the sovereign is both a tyrant and a martyr. The sovereign unifies two otherwise distinct but co-dependent generative roles for absolute authority by embodying them. This hermaphroditic element of the sovereign reveals the mechanisms whereby the sovereign attempts to contingently, and thereby despotically impose the functional relation and power of transcendence on his decision.

## 2. INDECISION AND THE PERMANENT STATE OF EXCEPTION

Perhaps more than any other factor in his critique, Walter Benjamin's response to Carl Schmitt's theory of sovereignty underscores the point that the onto-theological perspective of the world matters fundamentally. Whether an abandoned creation left to ponder the vacuum now waiting in place of the possibility of redemption, or an eschatology of transcendence that posits a state of grace within history, the onto-theological determination of the world exercises an immense and elemental influence on the sovereign.

Benjamin accepts Schmitt's basic definition of sovereignty. However, the essential difficulty emerges as Benjamin confronts sovereignty and the state of exception from the perspective that eschews the promise of redemption *in* history. For Benjamin, "however highly [the sovereign] is enthroned over subject and state, his status is confined to the world of creation; he is the lord of creatures, but he remains a creature."<sup>8</sup> In a sense, Benjamin's sovereign merely reemphasizes and takes to its logical conclusion the claims that Schmitt himself insists upon in the third chapter of *Political Theology*, namely, that "all significant concepts of the modern theory of the state are secularized theological concepts" and that "the exception in jurisprudence is analogous to the miracle in theology."<sup>9</sup> But the notable difference in this reemphasis is that Benjamin insists on continually keeping in mind the truth of the fiction: that despite being the sovereign, or as Benjamin says, the "lord of creatures," that role is radically marked by an *as if*. Regardless of how high and mighty the sovereign appears to himself and others, he remains just a creature like any other. As Jacob Taubes might put it, the sovereign can take the elevators up to the high rises of divinity, but it will not help.<sup>10</sup> The result is that the sovereign, whose power draws on the form of transcendence, relies precisely on

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<sup>8</sup> Walter Benjamin, *Origin*, *supra* note 2, p. 85.

<sup>9</sup> Carl Schmitt, *supra* note 1, p. 36.

<sup>10</sup> See Jacob Taubes, *The Political Theology of Paul*, eds. Aleida Assmann and Jan Assmann, in conjunction with Horst Folkers, Wolf-Daniel Harwich, and Christoph Schulte, trans. Dana Hollander (Stanford: Stanford University Press, 2004), p. 76.

just that: the *mere form* of transcendence. The sovereign merely acts and decides *as if* his decision has any meaning and ultimate justification. There is no particular power that comes from without to endow his actions and decision on the exception with exceptional meaning.

In "Taking Exception to Decision: Walter Benjamin and Carl Schmitt," Samuel Weber deftly brings together the three basic threads that have thus far been woven: the sovereign's inability to decide, the context of total secularization, and the permanent state of exception. In an explanation of how Benjamin's sovereign comes to be the subtly inverted mirror image of Schmitt's, Weber writes that "the undoing of the sovereign results from the same sense that in a creation left entirely to its own devices, without any other place to go, the state of exception has become the rule."<sup>11</sup> In the seventeenth-century setting that Benjamin describes, the basic rule of law is by way of exception and the essential and corresponding mode of life is crisis: politically, economically, socially, the milieu develops through constant interruptions. At least that is its genealogical narrative for us today, since this too in its way is the permanent crisis and permanent state of exception that we describe and experience now, in the new *nomos* of the earth. For how does one exceptionally suspend the entirety of the rules when it is already the trend and the tendency to have those rules suspended or changed at any given moment? Within this paradoxical setting marked by the eternal transience of the profane order, every decision is equally a non-decision, that is, a decision whose cut leaves no visible traces of logical or eternal meaning and justification.<sup>12</sup>

The sovereign's act of deciding on the exception—an act that proceeds *as if* it were secured by redemption—indeed implies a certain transcendence in the figure of the sovereign. The sovereign fabricates that transcendence or difference by self-reference. In "The Psychological Structure of Fascism" Georges Bataille describes this trait of the sovereign in the following manner: "the simple fact of dominating one's fellows implies the heterogeneity of the master, insofar as he is the master: to the extent that he refers to his nature, to his personal quality, as the justification of his authority, he designates his nature as *something other*, without being able to account for it rationally."<sup>13</sup> The figure of the sovereign reduces ultimate authority to a personal entity, while equally reducing all others to a homogeneous category of "non-peers"; for who shall be the peer of the sovereign? In this way the sovereign wills himself to a fictionalized position of difference, or transcendence. In this way

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<sup>11</sup> Samuel Weber, *supra* note 5: 188.

<sup>12</sup> Among other excellent sources, for more on this claim to the historical (i.e. contemporary) tendency for the norm to become exceptionality, see Giorgio Agamben's "The State of Exception as a Paradigm of Government"; text in: Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), p. 1-31.

<sup>13</sup> Georges Bataille, "The Psychological Structure of Fascism"; text in: *Visions of Excess: Selected Writings, 1927-1939* (Minneapolis: University of Minnesota Press, 1985), p. 145.



the sovereign passes off a (non-)decision in the permanent state of exception as a genuine, meaningful, justified decision on the exception. At bottom, the sovereign feigns difference, and this feint assumes the force of a decision.

The truth of this feint is that in the permanent state of exception the sovereign is incapable of truly deciding on the exception because the situation does not involve a necessary justification for choice, as such, in its stakes. Though action is taken—"he is *almost* incapable of making a decision"<sup>14</sup>—the basic grounds for Schmitt's decisionist sovereignty (i.e. the necessary transcendence, the 'difference' of the sovereign) are notably absent in the secularized, immanent world of Benjamin's sovereign. The totally secularized setting in the German *Trauerspiel* emphasizes that the sovereign is no different from any other creaturely human; and the eternal transience at the heart of the permanent state of exception suggests the ineffectiveness and absurdity of rationalizing and thereby justifying the state of exception from within a restricted economy of meaning, which would be, in this case, the law.

In light of Benjamin's inversion of the figure of the sovereign, Schmitt's well-known claim that "the exception in jurisprudence is analogous to the miracle in theology"<sup>15</sup> takes on a new hue. While Agamben may wish us to understand Benjamin *versus* Schmitt, there is little question that Benjamin would agree with Schmitt's statement about the correlation between exception and miracle. But Benjamin would understand the concept of a miracle not in Schmitt's Catholic terms, but rather, as theorized by a thinker contemporaneous to the emergence of the *Trauerspiel*, namely, Baruch Spinoza, in his 1670 *Theologico-Political Treatise*. In this book Spinoza agrees that miracles happen. But far from transgressing natural laws, he understands miracles as natural, law-like events the causes of which we simply do not know. The exception operates analogously according to Benjamin: the sovereign operation defies explanation by the law itself, but not because it is buoyed by a transcendent grace. Rather, to ventriloquize Spinoza, the sovereign's decision on the state of exception is only intelligible as in relation to human opinion. In other words, the state of exception defies understanding by the law only as we currently understand the law.

We can now begin to re-imagine the Benjamin-Schmitt relationship: this time, Benjamin *apart from* but *with* Schmitt. And this new arrangement indicates what Schmitt's sovereign sees in the mirror when it finds Benjamin's baroque sovereign returning its gaze: namely, that the truth of the sovereign's decision on the state of

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<sup>14</sup> Walter Benjamin, *Origin*, supra note 2, p. 71.

<sup>15</sup> Carl Schmitt, supra note 1, p. 36.

exception is that a decision is not a decision as such in a permanent state of exception.

### 3. THE HERMAPHRODITE SOVEREIGN

A crucial element of Benjamin's critique of Schmitt's theory of sovereignty ushers from Benjamin's development of a typography of the baroque sovereign—a kind of political anthropology based on the complementary figures of the tyrant and the martyr. These categories initially line up in very predictable fashion with Aristotle's theory (from *Poetics*) that there are two fundamental categories for understanding how tragic action works on the spectator: *phobos* and *eleos* (fear and pity): "for the 'very bad' there was the drama of the tyrant, and there was fear; for the 'very good' there was the martyr-drama and pity."<sup>16</sup> If there is lasting significance in these initial Aristotelian references for the purpose of Benjamin's intervention in the theory of sovereignty, it is that, contrary to their frequent determination as mere inner states of mind, *eleos* and *phobos* must be understood in this context as they were understood by Aristotle in his Greek context, namely, as ecstatic experience—modes of being outside of oneself, as it were. In other words, *eleos* and *phobos* are to be understood as emphatically overwhelming experiences.<sup>17</sup> If we are to understand, with Benjamin, that "in the baroque the tyrant and the martyr are but the two faces of the monarch,"<sup>18</sup> then the connection of sovereignty to exceptionality is highlighted in the very fact of the sovereign's power to induce these crucial, exceptional *ekstatic* emotions.

Parallel to the emotional tonalities induced in others by the force of sovereign power runs the basic attunement, or the philosophical-psychological mood, of the sovereign: demonic anxiety. Søren Kierkegaard names this particular form of self-comportment in his *The Concept of Anxiety*, in which he describes the demonic as alternately "the contentless, the boring," and defines it as "inclosing reserve"<sup>19</sup>—in short, a mood of fundamental ambivalence conditioned by anxiety about anxiety. This essentially inwardly bent emotional posture perfectly captures Benjamin's sketch of the figure of the sovereign in the way it highlights the fundamental ambiguity achieved in the martyr-tyrant tension.<sup>20</sup> The sovereign's

<sup>16</sup> Walter Benjamin, *Origin*, supra note 2, p. 69.

<sup>17</sup> For a simple and clear explanation of these terms see, for instance, Hans Georg Gadamer, *Truth and Method*, 2<sup>nd</sup> revised edition, trans. Joel Weinsheimer and Donald G. Marshall (London/New York: Continuum, 2004), p. 126.

<sup>18</sup> Walter Benjamin, *Origin*, supra note 2, p. 69.

<sup>19</sup> See Søren Kierkegaard, *The Concept of Anxiety*, ed. and trans. Reidar Thomte, with Albert B. Anderson (Princeton: Princeton University Press, 1980).

<sup>20</sup> For a more rigorous and subtle description of this category of anxiety that Kierkegaard calls the demonic, in particular its figuration as inwardly turned, see my "Allegories of the Demonic": 514-529; in: *Kierkegaard Studies Yearbook 2007*, eds. Niels Jørgen Cappelørn, Hermann Deuser, and K. Brian Söderquist (Berlin: Walter de Gruyter 2007).

*Entschlußfähigkeit* resonates starkly with Kierkegaard's version of the category of the demonic. The influence of Kierkegaard's understanding of the demonic—that one is in anxiety over anxiety—surfaces in Benjamin's work in the problem of expression that defines the demonic. This connection is also visible in Giorgio Agamben's formulation of the law in *Homo Sacer*, where he describes the law as "in force without signification."<sup>21</sup> In his 1921 essay "Critique of Violence," Benjamin theorizes the demonic sphere as pure ambiguity, which characterizes law as compared to justice (one might think, for instance, of the emptiness of the law in Kafka's writings).

In his *Trauerspiel* study, by setting the demonic arbitrariness of the tyrant against the backdrop of Schmitt's theory of sovereignty Benjamin reveals the demonic dialectical relationship of the tyrant and the martyr. In these pages Benjamin thrice cites Carl Schmitt's *Political Theology*, a book whose theory of the sovereign owes much to Kierkegaard, to whose *Repetition* Schmitt appeals (without mentioning Kierkegaard by name in the text—a troubling and telling suppression) for philosophical authority on the relation of the exception to the universal.<sup>22</sup> Placing sovereignty within the register of the demonic asks not merely about the political significance of sovereignty's attunement; it equally reinforces a different insight from Schmitt's *Political Theology*,<sup>23</sup> namely, that the modern structures of sovereignty still draw force from a decidedly pre-modern category, i.e. the demonic.

In particular as highlighted by the relation to the demonic, the sovereign's problem of expression ultimately boils down to the fundamental tension in the Janus-like dual identity of the sovereign as equally both tyrant and martyr. For Carl Schmitt's part, he certainly understands the tyrannical potential of his sovereign, and accepts it readily. This is the Hobbesian side of Schmitt—the sovereign may and must act in a manner that could objectively be described as oppressive, even and especially with the preservation of the State as justification.

Prior to an investigation of the category of sovereign-as-martyr that pursues it strictly in its (bound) relation to the figure of the tyrant, the term's autonomous insights merit attention. Consider the term Benjamin uses in "Kritik der Gewalt

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<sup>21</sup> See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998).

<sup>22</sup> Walter Benjamin, *Ursprung*, *supra* note 2, p. 245-255; Carl Schmitt, *supra* note 1, p. 15. With Benjamin as the key mediator in this constellation, work remains to be written on the manner in which Schmitt's sovereign might be all too exemplary of the category of the demonic. Though his text does not frame the figure of the sovereign specifically within a Kierkegaardian definition of the demonic, for more on the gist of Schmitt's figure of the sovereign as a decidedly demonic "I," see Thomas Adam Pepper's "The Story of I/i," 129-55; in: *Glossalalia*, eds. Julian Wolfreys and Harun Karim (Edinburgh: Edinburgh University Press 2003).

<sup>23</sup> See chapter three in Schmitt's *Political Theology*, where he teaches that all of the political and legal structures that legitimate sovereign authority in the modern era are secularized theological concepts, whose origins we have ignored, emptied, erased, or repressed. Carl Schmitt, *supra* note 1, p. 36.

(Critique of Violence)” for the function of *reine Gewalt* (pure violence): it “neither makes nor preserves law, but *deposes* it.”<sup>24</sup> For Benjamin, *reine* (pure) does not indicate an essence that existed necessarily *in the beginning*; rather, purity here indicates a kind of place-holder in the value system of law—a zero, as it were. *Reine* in Benjamin’s terms indicates a problematic, paradoxical relationship between the inside and outside of the law, in particular between the potentiality of law and the actuality of the law. Using Lacanian terms, *reine Gewalt* can be understood as an *extimate* force—a potentiality *de actu* and an actuality *de potentia*.

This extimate, pure violence (or force) *deposes* (*entsetzt*) the law. *Entsetzen* typically translates as “to displace.” To translate it here, in this context, with the rather appropriate legal term “to depose” is telling indeed. In common parlance it means to remove or displace from high office or high position. But think also of legal deposition: to give testimony or affirmation under oath—in other words, to bear witness to the truth of an event. The original Greek sense of “martyr” indicates precisely this: to witness; to depose. The sovereign as martyr is witness not to the continued joining and bringing-into-relation of the state of exception and the law, but is the only first-hand witness to the law in its ultimate zone of ontological indistinction between potentiality and actuality. He plays witness to the disarticulation of the relation between some supposedly original, primary force and the law which exists as the signification of that force.

This martyrdom is yet another indicator of the truth of the indecisiveness of the sovereign: he does not create a new constitution, let alone a new juridical order, when he decides on the state of exception. To suspend the juridical order in its entirety does not therefore admit to a decision *for* a particular new order. In fact, it cannot be that; otherwise, it would not be a state of exception in which the juridical order was suspended. The sovereign decides on the exception, which can only be a condition of possibility for a new norm. In this sense, then, the sovereign is truly incapable of deciding—from the perspective of the juridical order.

The tension and concomitant troubled expression of Benjamin’s baroque sovereign unfolds rhetorically in the form of a chiasm: the tyrant identity morphs into a martyr and the martyr shifts into a tyrant. When the sovereign is most tyrant, when he “indulges in the most violent display of power,” he becomes a martyr: “he falls victim to the disproportion between the unlimited hierarchical dignity, with which he is divinely invested and the humble estate of his humanity.”<sup>25</sup> The tyrant comes to grief as a martyr upon the infinite gulf between

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<sup>24</sup> Giorgio Agamben, *supra* note 12, p. 53 [my emphasis]. The emphasized terminology refers to Benjamin’s original phrase “Entsetzung des Rechts,” found in Walter Benjamin, “Zur Kritik der Gewalt”; text in: *Gesammelte Schriften* Band 2.1 (Frankfurt a.M.: Suhrkamp Verlag, 1977), p. 202.

<sup>25</sup> Walter Benjamin, *Origin*, *supra* note 2, p. 70.

the divine dignity assigned to him and the humble, earthly vessel which he must use to act on behalf of his apparent divinity.

The figure of the sovereign articulates a critical threshold found in the theory from the field of medieval political theology called the king's two bodies: a natural body (mortal) and a body politic (undying). Shakespeare's *Richard II* aptly captures the agony and (from a certain perspective) absurdity of a sovereign king deposed from his throne. Having surrendered certain symbols of his sovereign office (e.g. crown, scepter, throne) Richard exposes his essential mortality—he unwittingly removes the veil of holy transcendence that buoys the king's symbolic, 'pompous' body to reveal the reality of his solely earthly existence: "For I have given here my soul's consent / T' undeck the pompous body of a king; / Made glory base, a sovereignty a slave, / Proud majesty a subject, state a peasant" (IV.i.249-52). In the context of the baroque German play of mourning Benjamin locates within the anamorphic martyr-tyrant identity of the sovereign numerous aesthetic accounts of the transgression of the unchallenged correspondence between the king's two bodies, upon which theory's now supposedly secularized form the very structure(s) of modern sovereignty still rely. Within the figural body of the sovereign, the tyrant and martyr strain in opposing directions: for example, as the dying Richard gasps out in his death throes, "Mount, mount, my soul! thy seat is up on high; / Whilst my gross flesh sinks downward, here to die" (V.5.111-112). But as Richard's tragedy demonstrates, no tyrannical act unbinds the king from his permanent contract with his fleshly body. The sovereign tyrant inevitably must be martyred for the very benefit of maintaining the symbolic, eternal life of that sovereign power.

However, just as significantly, when the sovereign is most a martyr, he—or perhaps here we might better say 'she'—becomes a tyrant. This tricky shift in the chiasm introduces a gendering of the pair. The baroque sovereign allegorizes not only Benjamin's contemporary historical context, in which, as he suggested, life is lived in a state in which the exception has become the norm; however, the sovereign also allegorizes the state of the subject or the self. Benjamin claims that in the baroque German play of mourning a figure corresponding to the tyrant sovereign is introduced in the form of a woman as victim. Whereas the tyrant sovereign is always attempting to paint the historical and contingent as natural and eternal in order to restore order in the state of emergency (though not only for that reason), the martyr-drama adopts a stoic technique embodied in a female victim who "aims to establish a corresponding fortification against a state of emergency in the soul, the rule of emotions. It too seeks to set up a new, anti-historical creation—in the woman the assertion of chastity—which is no less far removed from the innocent state of primal creation than the dictatorial constitution of the

tyrant."<sup>26</sup> Though they converge in their task of attempting to naturalize the contingent, the tyrant and martyr diverge along traditional gendered lines in the general purview of their sovereign operations. The tyrant is a man who faces a certain martyr image upon confronting the essential immanence conditioning his worldly finitude. The martyr is a woman, whose very asceticism becomes tyrannical precisely because, although through domestic devotion and physical asceticism she aspires to transcendence, like her tyrant complement she is not released from the eternal transience and materiality of immanence.

Of course the gendering need not refer merely to the woman as the sovereign whose desperate desire for self-mastery has led to extreme asceticism and vows of chastity. The simple gendering of the sovereign demonstrates a male side, the tyrant, and a female side, the martyr, the tension and confusion of which get stirred up in the face of political power struggles for the crown. Nowhere is this political anthropology of the masculinization of the feminine and feminization of the masculine more apparent than in Shakespeare's *Macbeth*, in which the characters of Macbeth and Lady Macbeth form a kind of two-headed sovereign. She (at least initially) takes on the masculine traits while he passively and obediently (though not without some afterthought) accepts her active, willful dominance and control of the events of their regicide. Even the ambiguously gendered, unsexed witches<sup>27</sup> whose incantations open the play, chant chiasmic inversions eerily similar to those found in Benjamin's sovereign tyrant-martyr who is equally a martyr-tyrant: "Fair is foul and foul is fair" (I.i.9). *Macbeth* operates from the very beginning in a moral zone of indistinction. This fair- and foul-confused drama can turn even despicable characters such as Macbeth and Lady Macbeth into abject objects that we fear and loathe, yet inexplicably we still extend them pity. Most importantly, like Benjamin's sovereign, the lasting message of *Macbeth* for the sovereign is one of catastrophic finitude: "Life's but a walking shadow, a poor player / That struts and frets his hour upon the stage / And then is heard no more. It is a tale / Told by an idiot, full of sound and fury, / Signifying nothing" (V.v.24-28). For he who strove in greatest desperation to appropriate sovereign power, the result is no different than anyone else: all succumb to finitude's ultimate promise that all the force of life shall be swallowed up in a black hole of empty signification.

Perhaps Benjamin's hermaphrodite sovereign can be pushed just another step further down the line of inquiry that the gendered distinction begs, namely, the

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<sup>26</sup> *Ibid.*, p. 74.

<sup>27</sup> See Banquo's commentary upon first encountering the three witches: "What are these / So wither'd and so wild in their attire, / That look not like the inhabitants o' the earth, / And yet are on't? Live you? or are you aught / That man may question? You seem to understand me, / By each at once her chappy finger laying / Upon her skinny lips: you should be women, / And yet your beards forbid me to interpret / That you are so" (I.iii.38-46)

introduction of the Oedipal triangle into the sovereign's structure of operation and identification. The initial typology falls into place with little pressure: the male-tyrant part of the sovereign operation plays the Father, whose role is of the Other as Law, the regulator of desire; the female-martyr part of the sovereign operation assumes the role of the Mother, who embodies the Other as original unity and security prior to the alienating procedure of entering subjecthood. This demonstrates aptly how the Oedipal triangle is activated by the poetic device of prosopopeia—the bringing-to-life of the Subject's internal structures (in particular the Subject's internal limits) as tropological figures.<sup>28</sup> In a manner analogical to the structure of the Subject as articulated by its Oedipal dimensions, "in the baroque the tyrant and the martyr are but the two faces of the monarch. They are the necessarily extreme incarnations of the princely essence."<sup>29</sup> The two sides of the essence of the prince's sovereign operation share a family resemblance, so to speak, in that precisely their 'extreme' positioning at the oppositional limits relates them absolutely to the sovereign's identity by the threat of falling into absolute difference.

Applying the Oedipal template to Benjamin's sovereign exposes certain internal limits of the sovereign operation. The mother as symbolic mother, as primordial (or structural) Other, is indeed one face of the sovereign, the martyr's face, because the sovereign must act not only as the tyrant—the Law that regulates desire, i.e. that decides on the exception—but as the original impulse and condition of possibility of that desire (but symbolically, of course). Therefore, especially in the neutrality of the sovereign operation of producing, enacting, and manifesting the state of exception, the sovereign does the impossible: he rejects the law for the sake of the law. For Schmitt this means for the sake of the state, and because the continued existence of the state justifies any and all recession of the law, the sovereign's simultaneous positioning within and without the law poses no contradiction (or at least not a problematic one). However, for Benjamin's hermaphrodite sovereign it means an irreducible tension, a continual shifting and play of disappearance and reappearance in the sovereign's mode and grounds of self-justification, occasioned by the condition of immanence that produces both the tyrant and the martyr. Whatever the figural incarnation, Benjamin's sovereign finds *Entschlußunfähigkeit* at the limits of the sovereign operation.

The chiasmatic relation of the sovereign's Janus-like identity anchors the sovereign's actions with a kind of a coherent foundation—but, crucially, it is a contradictory coherence. Of this structure, Jacques Derrida explains in "Structure,

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<sup>28</sup> It seems the Oedipal family has always been anti-Oedipal in that it is not symbolic in its make-up, but allegorical!

<sup>29</sup> Walter Benjamin, *Origin*, *supra* note 2, p. 69.

Sign, and Play in the Discourse of the Human Sciences” that “coherence in contradiction expresses the force of a desire.”<sup>30</sup> Therein rests the stakes of the sovereign’s hermaphroditism: Benjamin’s philosophical anthropology of the sovereign exposes the hollow, all-too-worldly nature of the sovereign by exposing that the sovereign’s desire is in fact other than advertised. Rather than acknowledging the essentially hermaphroditic identity of the sovereign operation of (non-)decision upon the exception, the sovereign wills himself to transcend himself(s). The hermaphrodite sovereign desires precisely the concrete and unchanging identity lying impossibly beyond him. The chiasmatic fluctuation between tyrant and martyr expresses the force of a desire to solve the sovereign’s dependence upon an impossible transcendence by indefinitely postponing the admission of worldly immanence.

#### 4. BENJAMIN WITH SCHMITT: THE POLITICS OF THE REAL

What is to be learned here from Benjamin’s implicit critique of Schmitt in the *Trauerspiel* study? After all, the history of the ‘real’ state of exception that Benjamin mentions in his *Über den Begriff der Geschichte* [*On the Concept of History*] does not appear to involve any overt incapacity to decide (on the exception) on the part of the sovereign: e.g. Hitler’s rise to power involved a very ‘real’ sovereign decision and declaration of a state of emergency with devastating consequences. Benjamin’s example of the baroque sovereign is, of course, an allegory; or, at the very least, his figure of the sovereign comes to us from within allegorically positioned stories. Paraphrasing a tacit definition of allegory from Benjamin’s final pages of the *Trauerspiel* book, allegory means precisely the non-existence of what it presents.<sup>31</sup> Such is the essential contingency of allegorical movement and interpretation. The sovereign of the baroque German mourning play does not “exist”—or, put differently, exists only allegorically—with respect to real sovereign power as exercised in our very real permanent state of exception, in which the suspension of legal norms and, more frequently, the blurring and at points even abolition of the boundaries between the governmental powers (legislative, executive, judicial) has become commonplace—a routine practice. But, that said, Benjamin’s sovereign *does exist*—in the non-allegorical sense—as a part of the reality of real sovereign power: specifically, as the Real (in the Lacanian sense) of sovereign authority.

<sup>30</sup> Jacques Derrida, “Structure, Sign, and Play in the Discourse of the Human Sciences”; text in: *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago Press, 1980), p. 279.

<sup>31</sup> Walter Benjamin, *Ursprung*, *supra* note 2, p. 406; Walter Benjamin, *Origin*, *supra* note 2, p. 233.



As an allegorical figure, Benjamin's hermaphrodite sovereign serves as an example of what Agamben refers to at the end of *State of Exception*, when he speaks to "unmasking the fiction" of the unity (or even just simple relation) of "life and law, anomie and nomos, auctoritas and potestas" that our contemporary permanent state of exception has conditioned us to accept.<sup>32</sup> The very allegorical nature of the sovereign as staged in the *Trauerspiel* shines a spotlight on the contingency hiding at the heart of sovereign power: the arbitrary link between the sovereign's fleshly person and the symbolic structure of sovereign power that he so desperately tries to naturalize, i.e. to fictionalize as natural. Benjamin's baroque "hermaphrodite" sovereign helps locate the truth *in* the fictional element of the articulation of the relations between these terms ("life and law, anomie and nomos, auctoritas and potestas").

These pairs result, claims Agamben, "from the fracture of something to which we have no other access than through the fiction of their articulation and the patient work that, by unmasking this fiction, separates what it had claimed to unite."<sup>33</sup> Agamben here indirectly exposes what Althusser taught about ideology<sup>34</sup> and what Benjamin spoke about with respect to origin: that to pull back the curtain, i.e. to disenchant, does not reveal a purity, an origin, or a previously given apparatus to which we might have direct access.<sup>35</sup> Rather, we see more clearly the truth in the fiction, in the ideology, in the methodology, and so on.

The question thus remains: what is this "something" that these terms fractured in their emergence as opposition, dialectical terms? What is this "purity" in the Benjaminian sense to which we "have no other access than through the fiction of [these terms and their relations'] articulation"?<sup>36</sup> In his precious final paragraph, Agamben calls this *atopos*, this space-which-is-a-non-space: "politics." Certainly politics is at stake in seeking the grounds of the articulation between law and life—the stakes could not be higher. But, in a decidedly materialist move, I wish to re-mark this description by Agamben, and perhaps also Benjamin's notion of "purity" more generally, including "pure law," "pure language," and "pure violence." I wish to re-mark this "something" to which Agamben alludes in terms of what Jacques Lacan refers to as the Real. In doing so, I wish to suggest that Agamben rushes into a highly idealist final claim in which showing the mutually reciprocal non-relations between law and life "means to open a space between

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<sup>32</sup> Giorgio Agamben, *supra* note 12, p. 88.

<sup>33</sup> *Ibid.*

<sup>34</sup> See Louis Althusser, "Ideology and Ideological State Apparatuses"; text in: *Lenin and Philosophy, and Other Essays* trans. Ben Brewster (New York and London: Monthly Review Press 1971), p. 127-188.

<sup>35</sup> This re-fictionalizing of the disenchantment of fiction is itself a worthy topic with great political ramifications, to be explored elsewhere.

<sup>36</sup> Giorgio Agamben, *supra* note 12, p. 88.

them for human action, which once claimed for itself the name of 'politics.'<sup>37</sup> With this claim to the space of politics, he transcendentalizes that which he previously so successfully demonstrated within the immanent world.

Agamben carefully and clearly articulates his practice of critique in this instance, insisting that there is no longing for lost origin (on his part), or, if not acknowledging such a desire, at least stating the mechanism of the illusion of the purity of origin: "But disenchantment does not restore the enchanted thing to its original state: According to the principle that purity never lies at the origin, disenchantment give it only the possibility of reaching a new condition."<sup>38</sup> But from this clear statement of disavowal, Agamben will come to discuss this speculation over a space of "politics" that places this space other than in relation to the charge of the oppositional pairs mentioned above. Initially one assumes that this "space" which might be called politics would fall into what Agamben calls a "new condition." But Agamben phrases it all in past tense: e.g. "politics *has suffered* a lasting eclipse;" "...human action, which *once claimed* for itself the name of 'politics.'<sup>39</sup> Though what he desires is admirable—a political action "which severs the nexus between violence and law"<sup>40</sup>—it appears to re-enchant, as it were, at least insofar as it poses politics as an origin point, or that "something" otherwise inaccessible.

The truly intriguing assumption in this case is that we assume there is something there in the first place; in other words, a rather traditional transitive model of causality is presupposed. However, immanent causality guides this particular procedure. Immanent causality consists in what might otherwise be called self-causation. What is from the initial perspective considered an origin, the perspective of immanent causality knows only from its effects. In a coinage that bears greatly upon the situation of sovereign authority, Kiarina Kordela calls this particular model of causality (based largely on Spinoza's thought, in particular his insight that truth is an index of both itself and the false): secular causality.<sup>41</sup> In this context, politics may be that which never existed prior to the charged relation between life and law, but is literally a kind of effect of its own effects—it is immanent to its own effects and does not exist except through its effects. Though Agamben might readily agree with this, his adherence to a vocabulary that depends heavily on transitive causality burdens his final appeal to politics.

Lacan explains his theorization of the Real in terms similar to Kordela's Spinozist secular causality. The Real is "the essential object which isn't an object any longer, but this something faced with which all words cease and all categories

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.* [my emphases].

<sup>40</sup> *Ibid.*

<sup>41</sup> A. Kiarina Kordela, *Surplus: Spinoza, Lacan* (Albany: State University of New York Press, 2007), p. 32.

fail, the object of anxiety par excellence."<sup>42</sup> The Real is that which always avoids the same thing, namely, the subject's adequate cognition; i.e. it lies outside of representation. The Real is similar to an origin in the sense that it accepts the characteristic of purity: the Real lacks any possible mediation; it is external to symbolization. Yet the Lacanian Real is *not* properly (or at the very least, merely) an unattainable topographical outside. It is equally and in the greatest part an internal limitation. According to Slavoj Žižek, "the Lacanian Real is not the inattainable In-Itself outside the domain of (symbolic) representations, but its *internal* limitation, the internal obstacle on account of which representations *fail, although there is nothing 'outside' their domain.*"<sup>43</sup> Agamben's overhasty theorization of a new "space" of politics fails to account for the absolute materialist claim that such a politics (of the Real) is not a space as such outside of the human action bound to life, law, and their relations, but rather the extreme limit and threshold of their bond.

## CONCLUSIONS

What Agamben makes of the (supposed) debate between Benjamin and Schmitt comes down to a clash: on the one hand, Schmitt always inscribes politics and constituent violence served by the sovereign decision back into the juridical order by placing them always and inevitably in relation; on the other hand, (Agamben claims) Benjamin reaches out for a theory of "pure" violence and sovereign power that potentially delinks and discharges any relationship between law and life, *nomos* and *anomie*. However, our reading of Benjamin's hermaphrodite sovereign suggests that perhaps this tension is not generated by the intense mutual aggravation of the opposing theories. Instead, because the hermaphrodite sovereign returns the Real of Schmitt's sovereign to him by exposing its extreme internal limitations, perhaps the tension in the Benjamin-Schmitt relationship is not so much a matter of repulsion but of a magnetic and magnified attraction. Though personally (i.e. biographically) the men may have had vastly different visions for how sovereign power might be readily and really deployed, their theories mutually discover the unconscious kernel of truth operative in the other. Schmitt's theory of sovereignty and the state of exception that sponsors its ultimate operation forms a fundamental building block for Benjamin's reading of the seventeenth century *Trauerspiel* as an allegory for the roots of his contemporaneous permanent state of exception; in turn, Benjamin's theory of

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<sup>42</sup> Jacques Lacan, *The Ego in Freud's Theory and in the Technique of Psychoanalysis, 1954-55*, trans. Sylvana Tomaselli (New York: Norton, 1988), p. 164.

<sup>43</sup> Slavoj Žižek, *Did Somebody Say Totalitarianism: Five Interventions in the (Mis)Use of a Notion* (London: Verso, 2002), p. 270, n. 143.

sovereignty exposes the hollow roots of indecision supporting the sovereign's source and justification of exceptional power. If politics has a future as a heretofore untapped (or, as it seems Agamben might have it, long forgotten or repressed) space, perhaps it lies not beyond a relation between life and law, but precisely in a monistic view of that relation's relating. In other words, what might Schmitt and Benjamin be intoning separately, yet in unison?

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