

Political Theology and Historical Materialism

Reading Benjamin against Agamben

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POLITICAL THEOLOGY AND HISTORICAL MATERIALISM

– READING BENJAMIN AGAINST AGAMBEN

Abstract

Giorgio Agamben's work on the power of sovereignty has been greatly influential in recent political thought. However, it has also overshadowed the independently original contributions of his two primary theoretical sources, Carl Schmitt and Walter Benjamin. In this article, I argue that Agamben's political defeatism can be traced back to a double misconception in his reception of these two authors: first a formalistic reduction of Schmitt, and second a Schmittian reduction of Benjamin. Through this reduction to juridical formalism, the radicality of Benjamin's historical materialist critique is replaced by a messianic nihilism, leading to the colonization of society by the logic of the concentration camp. Though Agamben's theory of sovereignty and its implications for a positive political project have been contested, this origin of the decline of radical philosophy has not previously undergone a systematic critique.

Keywords: Agamben, Benjamin, Schmitt, sovereignty, materialism, messianism

For more than a decade, the financial crisis has cast its shadow on the global political landscape. Even after markets have seemingly stabilized, politics remain caught within the framework of crisis. In this situation of uncertainty, one classic concept of political theory has returned to the center of conflict: sovereignty. Questions of national, parliamentary or popular sovereignty have permeated recent public debate, not least regarding the Syriza governmental breakdown of 2015, the political chaos of Brexit, and the rising ‘sovereignist’ movements across Europe (Traynor, Rankin, and Smith 2015; Malcolm 2019; Corbyn 2019; Squires 2019). The outbreak of the COVID-19 pandemic and the partly stupefied, partly panicked reactions of national governments have only served to emphasize the acuteness of the problem. Sovereignty is a much used, though unclear, ill-defined and therefore highly disputed political concept. In the midst of power struggles and conceptual confusion, two things seem clear: that European governance finds itself in a crisis of legitimacy, and that the calls for sovereignty are intimately linked with this crisis. The concept of sovereignty must therefore not only be regained in a technical juridical sense, but its reemergence as a point of conflict must be understood in the context of an economic and political state of exception.

The renewed focus on sovereignty in political debate has also left its mark on theoretical discourse. Much has happened, since Michel Foucault in 1977 declared the need to “cut off the king’s head” in political theory and part ways with the categories of sovereignty and the state (Foucault 1994, 122). In the last decade, we have seen a revived interest in the topic of sovereignty and constituent power. Some contributions have focused on the role of sovereignty in constitutional theory (Loughlin 2014; Lev 2014), while others have dealt with sovereign power in the context of political theory (Brown 2017, 2014; Vogl 2014, 2015; Bargu 2014; Biebricher 2014; Davies 2017). There has been experiments towards a reconfiguring of sovereignty as an analytical tool, as in Joseph Vogl’s concept of a ‘sovereignty effect’ on part of financial agents (Vogl 2015). Sovereign power is once again at the center of political thought.

This interest has not least been nurtured by Giorgio Agamben's extensive work on sovereignty from the 1990's onward (1998, 2005, 2011, 2015). With his book *The Kingdom and the Glory*, Agamben redirected the discussion on sovereignty to a focus on the relationship between the one sovereign God and the administration of the Holy Trinity in the tradition of Christian Theology. Following Agamben, a number of studies has interpreted this relationship as a paradigm for understanding the role of neoliberal governance in state power (Dean 2012, 2013, 2018; Davies 2017; Abbinnett 2018; Christiaens 2019). This literature has produced interesting results, bridging the gap between political theology as transcendence and the immanence of economics, yet it has arguably also overshadowed the engagement with the nature of sovereignty as such, which was Agamben's point of departure in his earlier work.

His work on sovereignty, exception and violence has mainly drawn on two theoretical sources: Carl Schmitt's political theology and Walter Benjamin's Messianic response, reaching back to the early 1920's (Agamben 1998, 2005). Both Schmitt and Benjamin have remained important figures in the work of Agamben, and his interpretation of them has influenced their later reception. From their writings on sovereignty and the state of exception, Agamben has developed a political theory of a totalizing logic of sovereignty gradually imposing itself on all forms of life, which has attracted some criticism from important scholars for its supposedly determinist pessimism (Kalyvas 2005; Laclau 2007; Negri 2007) and its vagueness on concrete politics (Christiaens, forthcoming; Whyte 2013). His reconstruction of the Schmitt-Benjamin debate, however, has been left largely untouched by critics, although one recent study briefly touches upon the subject (Papadakis 2019, 35).

Partly due to Agamben's rehabilitation of him as a key thinker in critical political thought, Schmitt has enjoyed much scholarly attention in later years, being the subject of many studies and recently of an Oxford Handbook as well as a recent special issue (Kervégan 2011; Dyzenhaus 2015; Meierhenrich and Simons 2017; Pan 2019). Benjamin, however, is still mainly represented at

aesthetic and Germanic philological institutes, and although there has been some recent studies on the relationship between him and Schmitt (Bredekamp 2017; Papadakis 2019), the potential for a materialist critique of sovereignty based on their interaction independently of Agamben's idiosyncratic interpretation remains underdeveloped.

In this article, I aim to contribute to the rehabilitation of Benjamin as a critic of sovereignty independently of Agamben, as well as to the illumination of the productive theoretical dispute between Schmitt and Benjamin. In order to revitalize this exchange, I will free it from the constraint of Agamben's dominant reading through a three-stage critique. First, I demonstrate that Agamben's reconstruction of Schmitt's *Political Theology* remains one-sidedly within the sphere of juridical formalism, ignoring the unsolved aporia of the relation between legal emergency measures and historical state of exception embedded in the book. Second, I argue that this formalistic reading of Schmitt is then projected into a Schmittian reading of Benjamin, whom Agamben takes to have anticipated Schmitt's juridical theory in his earlier essay on violence. Third, I analyze how this Schmittian-formalistic version of Benjamin becomes the vessel for Agamben's own Messianic Nihilism. The end result of it all is that political agency is reduced to Agamben's passive-individualist dogma of inoperativity, in stark opposition to Benjamin's revolutionary collectivism.

A formalistic reading of Schmitt

In his books *Homo Sacer* (1998) and *State of Exception* (2005), Agamben reconstructs a conversation on sovereignty between Carl Schmitt and Walter Benjamin. Although Agamben was neither the only one nor the first to recognize the importance of this link, which had also caught the eye of scholars such as Jacques Derrida and Samuel Weber (Derrida 1990; S. Weber 1992), his reconstruction has left its mark on both his own work and on the later reception of these two thinkers. Agamben's main line of argument is that sovereignty constitutes a paradoxical logical

unity of the juridical and the extrajudicial mediated by the state of exception as expressed in the by now famous definition of sovereignty found in Schmitt's *Political Theology* from 1922: "Sovereign is he who decides on the exception [Ausnahmezustand]" (Schmitt 2009, 13, 2005, 5). By force of his authority to declare a state of emergency or exception, the sovereign simultaneously places himself inside and outside of law in that he constitutes the order of law by reference to its suspension, which Agamben summarizes as an 'inclusive exclusion'. To Agamben, this is not just a demarcation of the sphere of jurisprudence, since the exterior to law is integrated within it. The sovereign exception constitutes a 'zone of indistinction' between law and its suspension (Agamben 1998, 19).

This authoritarian juridical account of sovereignty Agamben then juxtaposes with Walter Benjamin's critique of sovereignty and the relationship between violence and law (Benjamin 1991e, 1991d). In Agamben's recounting, Benjamin's 1921 essay "Critique of Violence" is central to understanding the dialectical oscillation between the juridical and the extrajudicial in play in Schmitt's figure of sovereignty. This dialectic consists in the relationship between law and violence, where law on the one hand claims to exclude violence and on the other hand precisely constitutes and continually upholds itself through violence. Because violence is at the constitutive core of law, they become in the final instance logically indistinguishable from one another; a figure mirroring the zone of indistinction between law and its suspension in the sovereign decision as described by Schmitt (Agamben 1998, 63–67). But while Schmitt, according to Agamben, conceives of this figure in purely juridical terms, Benjamin introduces violence into the equation, and this is why, when he later comments on Schmitt's theory of sovereignty, he changes the definition so that the sovereign is charged with *excluding* the exception rather than deciding upon it. To Benjamin, the sovereign is less than absolute, and when he fails to prevent the advent of the exception, it transforms into chaos, the total absence of the order of law (Agamben 2005, 55).

It should be noted that while Agamben's method is philological, his aim is not a philology of neither Schmitt's nor Benjamin's work, but rather the development of his own theory of sovereignty within his quasi-Foucaultian biopolitical framework. In Agamben's writings, the figure of sovereignty reconstructed from Schmitt and Benjamin is thus universalized as a totalitarian logic constantly expanding into all areas of life through the onset of civil war as a political paradigm (Agamben 2015). Nevertheless, because of the influential status of his work it is worth revisiting the debate between Schmitt and Benjamin to demonstrate the shortcomings of Agamben's interpretation and pave the way for an alternative critical account of sovereign power.

Let us first turn to Schmitt and his definition of the sovereign as the decider on the state of exception. Whereas positivist constitutional theory approaches the state from a starting point within the normative order which is expressed in the extant legal system, Schmitt turns the question on its head by focusing on the absolute outlier of normative order, a situation in which constitutional rights are suspended. To understand a norm, he argues, one must study not just the positive, normal concepts which describe it, but rather the liminal concepts delimiting that which is external to it and negatively determining its reach. In the words of Agamben, "the state of exception appears as the legal form of that which cannot have legal form" (Agamben 2005, 2). As the one guaranteeing the preservation of order by reference to non-order, the sovereign transcends the division between constitutional normativity and historico-political reality while simultaneously upholding it.

Apart from 'sovereign' and 'state of exception', the key concept of Schmitt's statement is 'decide'. It is not the state of exception *per se*, but the *ability to decide* over this liminal state that defines the sovereign. Schmitt repeatedly stresses his decisionist theory of state: "Indeed, the decision on the exception is a decision in an eminent sense of the word", "every order is based on a decision", "Therein resides the essence of the state's sovereignty, which must be juristically defined correctly, not as a monopoly of force or rule, but of decision" (Schmitt 2009, 13, 16, 19, 2005, 6,

10, 13).¹ Thus, the ability to decide not only identifies the sovereign as such; at a more fundamental level it is also that which upholds order, i.e. the foundation of law. It is not ‘force’ (*Zwang*) or ‘domination’ (*Herrschaft*), Schmitt insists, that is at the heart of sovereignty, i.e. power in a material sense as ‘*Gewalt*’, but rather the declarative power of the decision.

In his account of sovereignty, Agamben has developed Schmitt’s notion of the state of exception further. The state of exception, he stresses, is not something completely separate from or in opposition to the order of law. Instead, it establishes a link between that which is within and without of this order. The state of exception is “a zone of indiscernibility between outside and inside, between chaos and the normal situation” (Agamben 1998, 19). Agamben therefore qualifies the ‘state’ of exception as a ‘relation of exception’ or exceptional relation rather than a state in any static temporal sense. To be able to exclude chaos from the order of law, the order must include a concept of the chaos which it is to exclude, and this relation is upheld through the ‘exclusive inclusion’ of the state of exception which is neither order nor chaos but the intermediary or, in Schmitt’s term, liminal zone in between them. To Agamben, it is essential to demonstrate the paradoxical relation sustaining the sovereign because it is at the roots of the paradox of sovereignty itself.

In unfolding the importance of the exception, both in juridical and logical terms, Agamben on the other hand underplays the importance of the decision for Schmitt. The decision, he writes, is not “an expression of the will of a subject”, but rather “the very relation between law and fact” (Agamben 1998, 26). This is consistent with Agamben’s own relational theory of sovereignty, but it is not an accurate account of Schmitt who, on the contrary, emphasizes the importance of the sovereign subject in declaring the question of “the subject of sovereignty” to be “the whole question of sovereignty” (Schmitt 2009, 14, 2005, 6). He further claims that “In the contrast between the subject and content of the decision as well as in the proper meaning of the subject lies the problem

of the form of jurisprudence” (Schmitt 2009, 40, 2005, 34–35). Whereas Agamben places the entire weight of his analyses on the self-relation of the relation, Schmitt refuses to dispose of the subject of the sovereign himself, or rather itself in the form of the state.² What is at stake is, according to Schmitt, “the reality of legal life” (Schmitt 2009, 40, 2005, 34). The order of law is substantiated and comes to life in the legal person of the sovereign. This is to say, the concept of sovereignty might be intelligible in abstract terms, but for it to have any real effect, it must concretize itself through the sovereign. In Agamben’s formalistic interpretation of the logic of the exception, the emphasis is placed entirely on the quasi-metaphysical category of the *suspension* at the expense of the historico-political specificity of decisional power.

Agamben, therefore, does not pose the question of *who*, which is so important to Schmitt. Beginning with *Homo Sacer*, his focus is solely on “The Logic of Sovereignty” (Agamben 1998, 13), and his critique is targeted at the structural propagation of this logic. Schmitt is not without complicity in this formalism: In *Political Theology*, he stresses the constitutional importance of the institution of sovereignty, but he remains unclear as to the material preconditions for this form of political power. Nevertheless, both aspects of the concepts are present in the text and cannot simply be dissolved into each other. Correspondingly, Schmitt’s affirmative stance on the sovereign institution may be read as both theoretical-descriptive and political-performative: In his 1924 appendix to *On Dictatorship*, Schmitt discusses article 48 of the Weimar constitution, which describes the authority of the ‘Reichspräsident’ in the event of a national emergency (Schmitt 1994, 11). Here, it is clear that Schmitt’s primary concern is not a theoretical debate about jurisprudence, but rather the preservation of the order of law against the threat of a constitutional crisis. In theory, Schmitt’s sovereign might be absolute, yet this absolutism is a reaction to a historical situation of uncertainty.

Having formalized Schmitt's theory of sovereign to the abstract notion of the suspension, Agamben then proceeds to universalize this absolutist logic: "If the exception is the structure of sovereignty, then sovereignty is not an exclusively political concept, an exclusively juridical category, a power external to law (Schmitt), or the supreme rule of the juridical order (Hans Kelsen): it is the originary structure in which law refers to life and includes it in itself by suspending it" (Agamben 1998, 28). Whereas Schmitt understands sovereignty as a decidedly Modern juridical concept, Agamben expands it to all of Western history going back to Roman law and to all relations of law and life. It is no longer a reaction to historico-political events, but the form of the political as such.³

Whereas the historical foundation for the state is less pronounced in his early work, Schmitt's later writings turn to and expand upon the issue. In the early 1930s, Schmitt began to move away from the formalism of decisionism to what he initially called institutional theory and later renamed concrete order thinking (Schmitt 2006b). In *The Nomos of the Earth*, published in 1950, he undertakes an investigation into the nature of international law and the system of sovereign states. In the opening of the book, he establishes a relation between *Ordnung* and *Ortung*, that is, order and location as in the act of locating or demarcating a territory. While his early decisionist work focused on the constituent power of sovereignty, the material foundation for this juridical form of power clearly gains explanatory importance here, as Schmitt's concept of *Landnahme* introduces a historical force of conquest into the constitution of political institutions.⁴

Every order, Schmitt writes, is instituted through and defined by an act of land appropriation. There can be different forms of land appropriation, for instance colonization of non-claimed land or conquest of previously claimed land, and the specific form of land appropriation in case institutes the specific order of law in a double movement. Inwards, among the land grabbing community, it determines the form of *property rights* and the distribution of territory. Outwards, it positions the

group and its territories in relation to other territories thus constituting a new order of relations (Schmitt 2011, 50).⁵ Whereas in *Political Theology*, the order of law was discussed in reference to the sovereign in the guise of the state, here, there is a shift in focus, so that Schmitt discusses legal order as a constant of human social coexistence independently of the specifically modern phenomenon of the sovereign nation state. The concept employed by Schmitt to denote the universal constitutive power in the organization of society across the centuries is the *nomos*, encompassing both constitutive naming and the taking of territory in the form of land appropriation (Schmitt 1995).

According to Schmitt, the legal order of the modern epoch is marked by a new land appropriation and therefore a new organisation of space:

Only a completely different spatial order ended medieval international law in Europe. It arose with the centralized European continental state, which was sovereign and self-contained in relation to the emperor and the pope, but also in relation to each of its neighbours, and to which faced an unlimited free space for overseas landappropriations.⁶
(Schmitt 2011, 36, 2006a, 66).

Thus sovereignty, as we know it, is dependent on the specific international order which arises with the age of so-called discovery and colonialism. Here, Schmitt's objective is not to define 'the sovereign' in his decisionist absolute self-reliance, but rather to insert the sovereign state in the geopolitical power dynamics of sovereign territorial states. The system in question is the Westphalian Order ending the European Wars of Religion and introducing the transition to modern state sovereignty.

Agamben comments upon the 'ordering of space' that Schmitt introduces into the nexus of sovereignty, labelling it a "determination of a juridical and territorial ordering", but claims that it is

to be understood as “above all a ‘taking of the outside,’ an exception (*Ausnahme*)” (Agamben 1998, 19). The locating act of *Ortung* he interprets as the distinction between outside and inside *and* the simultaneous integration of the outside into the inside of the order of law constituting sovereignty as laid out in *Political Theology*. Agamben thus disregards one of the main achievements of Schmitt’s later work: the introduction of the historical-political role of territorial conflict into the concept of sovereignty, whereby he breaks the ban of a self-referential juridical definition. The later, more materialist Schmitt is thus integrated into the earlier, juridical-formalistic one, which is in itself a one-sided, simplistic reconstruction. The point of dispute here lies in the question of how sovereign power is to be criticized: from within or without the juridical language of sovereignty itself?

A Schmittian reading of Benjamin

Agamben thus draws his terminology of sovereignty from Schmitt’s juridical framework of exception and suspension, revolving around the dialectical unity of inside and outside, inclusion and exclusion, order and non-order. Evidently, this does not mean that Agamben is a Schmittian in any affirmative sense, since his aim is clearly a *critique* of the sovereign logic of power by means of concepts belonging to the institution itself. However, by focusing on the paradoxical logic of sovereignty, he first reconstructs a one-sided version of Schmitt, and then uses this reconstruction as a lens through which he reads Walter Benjamin’s work on law and violence. Thus, Agamben not only gives a formalistic interpretation of Schmitt, but also a formalistic-Schmittian interpretation of Benjamin. Thereby the possibility of a specifically Benjaminian-materialist framework for criticizing sovereign power is lost.

According to Agamben, Benjamin’s 1921 essay “Critique of Violence” “proves the necessary and, even today, indispensable premise of every inquiry into sovereignty” (Agamben 1998, 63). In fact, he insists, a reconstruction of the debate between Schmitt and Benjamin should not begin with

Schmitt's *Political Theology*, but rather with Benjamin's essay, which was published one year earlier and to which Schmitt has had access (Agamben 2005, chap. 4). Although the philological evidence for Schmitt's interest in the essay is scarce and strained, Agamben argues that his book implicitly comments and builds upon Benjamin's work. The result of this creative (re)construction is that Schmitt's account of sovereignty is projected back into Benjamin's critique of law, and the Benjamin that Agamben presents is thus a Proto-Schmittian. Already the fact that Benjamin's essay never mentions the word sovereign or sovereignty should make us suspicious of this Schmittian reading.⁷

In the essay, Benjamin seeks to criticize violence – or *Gewalt* in German – through a development of its relationship to law and justice, *Recht* and *Gerechtigkeit*. In so doing, he differentiates between two forms of violence: law-making and law-preserving, *rechtsetzend* and *rechtserhaltend* (Benjamin 1991e). They are separated by the ends to which they are the means: law-making violence targets natural ends, whereas law-preserving targets legal ends. These ends are furthermore defined by whether or not they belong to the order of law from within which the violent act takes place.

Though Benjamin explores at length the relation between these two sides to violence, which are both essential for the existence of law as such, he then turns to a different duality, building on but surpassing the previous one: mythical and divine violence. Mythical violence takes the place of law-making violence, yet in a sense that emphasizes the originating power of violence to create order. The myth is the founding narrative or the transition from pre-history to history, from chaos to the order of law, by the intervention of the gods and the indebtedness of man towards this order of the gods. By contrast, divine violence, in Benjamin's Messianic terms, constitutes a completely new relation of violence to law altogether: It does not take the form of law, whether as law-making or

law-preserving, but instead marks a radical rupture with both, revoking law and releasing itself from the role of a means to an end.

While much commentary upon Benjamin's essay emphasizes the anarchist-utopian opposition of divine violence to mythical violence,⁸ a central topic is in fact the historical-materialist aspect of the relationship between law and power. This is an aspect which Agamben tends to underplay in favour of the idealist-essentialist relationship between law and life. The title of Benjamin's essay plays on the double meaning of the German word *Gewalt*. One of these meanings is violence, as in the translation of the title, but the other is not, as Agamben has it, "simply 'power'" (Agamben 2005, 53). The concept is more specific than that, pertaining, as Jacques Derrida has pointed out, to the notion of "legitimate power, authority, public force" – as opposed to *Macht*, which would be 'power' in the juridically neutral sense which Agamben seems to be employing. "*Gewalt*, then, is both violence and legitimate power, justified authority" (Derrida 1990, 927).⁹ This points to a tension in the word *Gewalt* which is not just semantic but mirrors a tension in the order of law itself. From Thomas Hobbes onwards, modern law presents itself as that which excludes violence and guarantees its subjects against it. Yet contrary to this self-portrayal, the law constitutes itself through the use of violence and can only live on by preserving this original violence at its core.

According to Benjamin, thinkers of natural law legitimated violent means through naturally just ends, 'Naturzwecke'. They thereby placed justice outside of history and eternalized the ends to which violence could legitimately be used.¹⁰ By contrast, positive law recognizes that the principles of justice expressed in any constitution are historically developed. It therefore replaces the idea of natural ends with that of legal ends (Rechtzwecke), which are founded on a historically contingent recognition of their justness. However, this also means that the ultimate purpose of the monopoly of force on part of the state is, contrary to intuition, not the conservation of justice, but of law itself. The state monopoly on violence, Benjamin writes, prevents the citizen from using violence, not

only for illegitimate purposes, but also for *legitimate* purposes. The violence of individuals cannot be excused by reference to its ends. This means that the intention of the monopoly on violence is not the protection of justice, but of law itself (Benjamin 1991e, 183). In positivism, the violence of law thus becomes self-referential. Already in this early essay, published before his interest in Schmitt, Benjamin criticizes positivist law, employing an argumentation similar at least in form to that of Schmitt. Yet it is important to note that Benjamin's critique is not just addressed at (positivist) legal *theory*, but first and foremost at the historical praxis of the legal system, while Schmitt's critique is primarily theoretic (Lievens 2017).

In the essay, Benjamin does not discuss the concept of sovereignty,¹¹ though arguable his characterization of the state as the institutor and upholder of law may also be attributed to the sovereign. Yet, one passage in particular does evoke an image of sovereignty as represented by 'the king': "It also appears that Sorel touches on a truth of not merely cultural-historical, but metaphysical nature when he surmises that in the beginning all law [*Recht*] was the prerogative [*Vorrecht*] of kings or nobles – in short, of the mighty. For it will remain so, *mutatis mutandis*, as long as it exists" (Benjamin 1991e, 198, 1996, 249). In alluding to the etymological connection between *Recht* or law and *Vorrecht*, which means prerogative or the right of the first, Benjamin determines the direction of his theory of law which will also apply to his later considerations on sovereignty: The logic of law is to be sought in its historical origins – as violence. Hence, law will always rest on the fundamental, asymmetrical relation of violence between ruler and ruled.

Contrary to Agamben's unsubstantiated claim, the first point of contact between Schmitt's theory of sovereignty and Benjamin's historical-materialist critique of the order of law is not "On Critique of Violence", but rather his postdoctoral thesis on *The Origin of German Tragic Drama*.¹² Here, he actively engages with the concepts of the sovereign and the state of exception. Although

the book was not published until 1928, it was written 1924-1925, only a couple of years after the publication of Schmitt's *Political Theology*. Furthermore, Benjamin sent his book to Schmitt along with a letter acknowledging the latter's influence on it: "You will very quickly recognize how much my book is indebted to you for its presentation of the doctrine of sovereignty in the seventeenth century" (Benjamin 1991b, vol. I, 868, 887).¹³

In a subtle displacement of Schmitt's definition, Benjamin writes that the baroque concept of sovereignty "emerges from a discussion on the state of exception and makes it the most important function of the prince to exclude it" (Benjamin 1991d, 245, 1998, 65).¹⁴ Here, as in Schmitt, sovereignty is defined by its relation to the state of exception, yet this relation does not consist in the decision over its imposition, but rather in the ability to guarantee against it. The critique is so implicit that Benjamin even refers to Schmitt as the source for this argument.

Then, later in the text, Benjamin directly addresses the decisional power of the sovereign, this time without mentioning Schmitt:

The antithesis between the power to rule and the ability to rule has led to a feature peculiar to the tragic drama which is, however, only apparently a matter of genre and which can be illuminated only against the backdrop of the theory of sovereignty. This is the incapacity of decision [*Entschlußunfähigkeit*] on part of the tyrant. The prince, to whom the decision over the state of exception falls, reveals at the first opportunity, that any decision is a near impossibility for him.

(Benjamin 1991d).

Here, the state of exception is not conceptualized as the suspension of the order of law at the hand of the sovereign, but rather the 'catastrophe' which faces the sovereign and the continuous delay of which constitutes his entire *raison d'être*. While the sovereign is presented as a transcendent, God-like ruler by virtue of his relation to the state of exception in its potentiality, the actualization of this

potential dispels this indispensable aura of juridical absolutism and reveals him to be factually powerless. The obsession with transcendence on part of the baroque is, according to Benjamin, no theoretical insight in the institution of sovereignty, but rather a reaction to the shocking historical experience of its incapacity to transcend the chaos of the epoch, marred by the European Wars of Religion (Benjamin 1991d, 246).

For Schmitt, the state demonstrates its power through the suspension of law: “The moment this state [of emergency] is effectuated, it is clear that the state remains, whereas law recedes” (Schmitt 2009, 18, 2005, 12).¹⁵ To Benjamin, on the contrary, the sovereign facing the state of exception is incapable of maintaining his own institution, and when he falls, the law falls with him. An example of such an exceptional situation imposing itself on the supposedly sovereign state may be the political instability in the wake of the German defeat in the First World War, to which Benjamin alludes, or the volatility of interwar economy: The “modern economy”, Benjamin writes, “resembles much less a machine that stands idle when abandoned by its stoker than a beast that goes berserk as soon as its tamer turns his back” (Benjamin 1991e, 195, 1996, 246). The forces of economy are thus foreign to the logic of sovereignty and poses the risk of breaking free and wreak havoc, as soon as the sovereign turns his back to the beast. This resonates eerily with the political chaos caused by the financial crisis of our recent past. The state incorporates the law, yet the suspension of order does not necessarily lead to a collapse of law into the police-state of total indiscernibility as in Agamben, but rather may lead to the collapse of the state altogether. To Benjamin, this allows for the possibility of revolution.

The sovereign, Benjamin concedes, is defined juridically by his ability to decide over the state of exception (in the negative sense of excluding its possibility). Yet faced with its actuality, the sovereign is incapable of decision, thus demonstrating that he was never really sovereign to begin with. This does not, however, change the definition of sovereignty but rather expose the inner

weakness of the institution itself: absolute sovereignty is a juridical fiction. The concept of the sovereign, it seems, therefore does *not* capture its reality – yet the reality of its sovereignty rests entirely on its concept. It is a fiction, but it is an operative one.¹⁶

Agamben takes up Benjamin's displacement of Schmitt's concept, commenting:

This drastic redefinition of the sovereign function implies a different situation of the state of exception. It no longer appears as the threshold that guarantees the articulation between an inside and an outside, or between anomie and the juridical context, by virtue of law that is in force in its suspension: it is, rather, a zone of absolute indeterminacy between anomie and law, in which the sphere of creatures and the juridical order are caught up in a single catastrophe.

(Agamben 2005, 57).

Here, Agamben seems to reinsert the impotent sovereign in the *conceptual* logic of sovereignty. The state of exception is defined as a 'zone' of indeterminacy, that is, a limited space or topos, in which chaos and order merge into each other, resulting in an order *of* chaos, a rule of blind violence. For Agamben (1998), this zone is the concentration camp which is itself the manifestation of the state of exception in Hitler-Germany; as such it constitutes the sovereignty of the Führer. The difference between the Schmittian and the Benjaminian understanding of the state of exception, Agamben seems to suggest, is purely normative: "This is why (...) the paradigm of the state of exception is no longer the miracle, as in *Political Theology*, but the catastrophe" (Agamben 2005, 56). The reign of the sovereign might be catastrophic and chaotic, but he reigns nonetheless, and the state of exception, therefore, does not mark a historic rupture in sovereign power, but a logical moment of its concept. The state of exception is not actually an exception in any historical sense, but still a 'paradigm' of the norm.¹⁷ A striking example of this totalizing view on sovereignty was a commentary which Agamben published at an early stage of the COVID-19 crisis: there *was* no

health crisis, he argued, and the alleged epidemic merely served as the “ideal pretext” on part of Italian authorities “for broadening [exceptional] measures beyond limitation” (Agamben 2020). Agamben’s sovereign does not react to exception with emergency measures, but rather *produces* its own state of exception in the double sense of *Ausnahmezustand*. History thus emerges from within sovereign logic itself, allowing for no outside forces to challenge or trouble its absolute power.

To Benjamin, however, the ‘outside’ of law is not merely the structural foundation of the logic of sovereignty but a historical possibility. When Benjamin claims that the exception has become the norm (1991c, 697), Agamben interprets this as an inverted Schmittian theory of sovereignty, where arbitrary rule has replaced law in an absolute sense. Yet seen in its proper context it is clear that this claim is meant as a critique of a belief in progress as a historical norm. And this critique may be directed at any form of historicist determinism, including Agamben’s negative progress of the sovereign logic continuously expanding its sphere of reign. According to Benjamin, the error is to assume that there is any universal logic guiding the course of history apart from the material forces of class struggle. Agamben’s formalization of Benjamin’s critique of sovereignty therefore has consequences for how we view political action and organization.¹⁸

Materialism, messianism, nihilism

The belief in progress – in an infinite perfectibility understood as an infinite ethical task – and the representation of eternal return are complementary. They are the indissoluble antinomies in the face of which the dialectical conception of historical time must be developed.

(Benjamin 1991a, 178, 1999, 199).

As argued above, Agamben establishes his theory of sovereign power in two steps: first, he (re)constructs a formalistic version of Schmitt revolving around the idea of the suspension, and

second, he interprets Benjamin's critique of sovereignty through this lens, resulting in a formalistic-Schmittian and non-materialist Benjaminian dialectics. As the theory of sovereignty is the foundation on which Agamben builds his 'positive' normative project, this double move has great influence on how one may think political action. Of the later Benjamin's messianic-materialist political thinking, only the messianic remains. In fact, Agamben ultimately arrives at a dogma of political 'inoperativity' which is very different from Benjamin's revolutionary project, however utopian it may have been.

That Agamben accepts a *logical*, but no *historical*, outside of sovereignty leads to the vulgar suggestion that the "behaviour of *Muselmann*" could be an "unprecedented form of resistance" (Agamben 1998, 185).¹⁹ Since the logic of sovereignty is all-pervasive, every action only serves to confirm and consolidate it, and so, the only possibility of subversion becomes inactivity. This is a bleak view of the possibility of resistance indeed. The *Muselmann* figure of passive resistance, which is the inevitable outcome of Agamben's totalizing logic of sovereignty, may not in its conception incarnate political resignation,²⁰ yet it does represent a certain element of would-be subversive nihilism. Agamben attributes this nihilism to Benjamin, linking it with his concept of the messianic; against an 'imperfect nihilism' of the exception-come-rule, which is to Agamben the paradigm of present political life, Benjamin grants us the possibility of a "messianic nihilism that nullifies even the Nothing and lets no form of law remain in force beyond its own content" (Agamben 1998, 53). Yet this 'messianic nihilism' is entirely Agamben's own, whereas the messianic moment for Benjamin is precisely that revolutionary moment of opportunity which gives meaning and direction in a situation of utter hopelessness, where exceptional use of violence shows itself to be the norm.

To be sure, Benjamin's messianism is no mark of overt optimism; if the messianic is to be understood as a moment of hope, it is the hope of the hopeless. It is the possibility of the

introduction of a ‘true state of exception’, that is, a social order beyond violence, yet this possibility is in itself a ‘weak power’ and a liminal concept throwing critical light upon a desperate situation without thereby capturing the contents of a positive politics (Benjamin 1991c). The concept of the messianic is not directly political in itself but belongs to a politically invested theory of history and time preconditioning the possibility of political intervention in the course of events.²¹ Nevertheless, as a liminal concept it is also the decisive point of difference between Agamben’s politics of inoperativity (Agamben 2018) and Benjamin’s emancipatory eschatology – which is not so much a Christian idea of the end of history but rather a Judaic conception of a new beginning.

In relation to sovereignty, the messianic takes the form of divine violence as previously discussed. The possibility of divine violence is linked to the fact that Benjamin sees sovereignty as contingent to human social order as such. Because there is a fundamental and foundational violence at the heart of sovereignty, it is possible to think a force which would end the circle of violence within the existing order. Analytically speaking, this has consequences for the way in which we are to understand the relation between sovereignty and human life. As a result of his totalizing logic of sovereignty, Agamben arrives at the problem of conceiving of a form of human life which does not lend itself to the active-reactive dialectic of the sovereign order, which immediately captures and integrates any active expression of life through inclusive exclusion. This life-form can therefore only be thought in negative terms, although Agamben insists that it is not to be understood as ‘bare life’, which is the product of sovereign power and in fact the opposite of human essence. In contrast to the biopolitical reduction to bare life, Agamben calls the defining quality of human life ‘inoperativity’.

He draws this concept from a discussion of Aristotle’s conception of the modalities of potentiality and actuality. It was not Schmitt, but Aristotle, Agamben argues, who first described the paradigm of sovereignty as based in the exception by defining the potential as something which in

being realized leaves no impotential behind, or that which “maintains itself in relation to actuality precisely through its ability not to be” (Agamben 1998, 45–46). Through its realization, potentiality does not negate its impotential, that is, its potential not to be, but rather fulfills it, since the potential is defined by its double possibility to both be and not be. The sovereign exception mirrors this dialectic of possibility and actuality through impossibility, by maintaining the law through its suspension. The zone of indistinction, through which the sovereign logic rules, is thus to be understood in terms of the ontological indistinguishability of potentiality and actuality (Agamben 1998, 47).²²

The impotential inherent to potential, however, is constitutive not just of sovereignty, but of life as such, onto which the sovereign logic latches itself as a parasite. To Agamben, inoperativity is both the most authentic form of life and the most original mode of existence (Agamben 2011, II, 2:246). Against the philosophical tradition which seeks to define human nature through a specific form of activity, he argues that what is essentially human is not the actuality of a praxis, but the potentiality of non-praxis. Human beings are distinct from other creatures by their ability *not* to fulfill a natural cause, but rather refraining from performing an act which they are otherwise capable of (Agamben 2016, 247). This fundamental inoperativity is experienced in art as a lack, as that which is not represented in representation, the reason for the sense of something inexpressible in the work of art.

Since the logic of sovereign power feeds off human life, it necessarily hides an element of inoperativity at its core. The governmental machine continuously maintains this moment of inoperativity within itself as the ‘ultimate mystery’ of power (Agamben 2016, 265). To Agamben, the properly subversive political act becomes to free the original inoperativity at the center of sovereign power by rendering the machine itself inoperative. He calls this form of resistance ‘destituent potential’. Open acts of insurrection, he argues, will always themselves take on the form

of a new constituent power, thereby returning to the logic of sovereignty, although the name of the constitution and the content of its laws may have changed (Agamben 2014, 70). In order to escape this ban, we need a mode of subversion which does not conform to the form of sovereign power itself. Destitution of the governmental machine thus means to refuse it any expression of life onto which it may latch.

What it *means* in praxis to render the sovereign machine inoperative remains extremely underdeveloped. In the closing words of the epilogue to *The Use of Bodies*, which reflects retrospectively on the collected Homo Sacer project, Agamben plainly states that it is “not within the scope of this book” to attempt “translating into act the action of a destituent potential” (Agamben 2016, 278). It appears that the only truly destituent activity to Agamben is the act of contemplating what this same activity would be. Destitution is thus purely self-referential – only in contemplating what it means to be free are we free from the logic of oppression. As soon as the circle of self-referentiality is broken and the destituent potential directed at the actual conditions of oppression in the world, inoperativity is reintegrated in the sovereign machine and its subversive force exhausted. Class struggle, cooperation and activity are thus replaced by the contemplative passivity of the individual, and the impossibility of translating destitution into action amounts to political paralysis.²³

The concept of destitution is a translation of Benjamin’s ‘Entsetzung’ of the law, to displace or bring it outside of itself. To Agamben, this offers an alternative to the dichotomy of reform or revolution, since it conforms neither to the logic of constituted violence nor to a creation of a new constitutive violence. Since Benjamin’s concept of Entsetzung as well as divine violence remain vague, the early essay “On Critique of Violence” may be said to lend itself to Agamben’s interpretation, which does not eradicate but rather deepens its esoteric tendency. Nevertheless, the examples which he gives of positive forms of resistance clearly have little in common with

Agamben's dictum of inoperativity. Among them is the proletarian strike, which although in a certain sense a form of passivity is one that can only be carried out through active collective organization and self-defense against authorities. And in his later thesis on history, written after his turn to Marxism, there can be no doubt about Benjamin's commitment to the politics of revolution: the 'messianic arrest of events', made possible by a materialist view on history, is identical with a 'revolutionary chance' in the struggle for reparation of past oppression (Benjamin 1991c, 703). In Benjamin's work, resistance is neither passive nor individualist, and it does not direct itself primarily at 'sovereign logic', but rather at the forces keeping this logic in place. It is the collective that acts on its material conditions, not the individual that frees itself from a metaphysical logic of power by refusing to participate.

By reducing the materialism of Benjamin's critique to a formalized dialectics, politics to Agamben become only an extension of repression and history becomes the Nietzschean everselfsame, *das Immerwiedergleiche*, against which Benjamin so vehemently warned. The insistence on violence as a historical contingency presupposed by, but irreducible to, the juridical institution of sovereignty, as well as the functional self-contradiction within the institution, is the materialist contribution which we should draw from Benjamin. By assimilating into the totalizing power of sovereign violence all forces of history, we inadvertently buy into the operative fiction at its core. The 2008 financial crisis as well as the COVID-19 crisis are forces of history, which both disrupt sovereign power and may be recaptured by it, yet which remain irreducible to it. A Benjaminian critique of sovereignty does not affirm its totality, but rather exposes the cracks which such outside forces leave behind, and through which one may catch a glimpse of the possibility of a new sociality.

Repoliticizing sovereignty

The substantial deviation from Benjamin's revolutionary politics is not in itself an argument against Agamben, since he does not pretend to be a Benjamin scholar, but is rather an innovative thinker in his own right. It would, however, be a mistake to view Benjamin's critique of sovereignty solely through the lens provided by Agamben, since Benjamin's political philosophy both bridges the gap between the dialectics of law and the materialism of violence and allows us to conceive of politics in terms of collectivist action. In this article I have argued, first that Agamben gives a one-sided formalistic account of Schmitt, reducing the ambiguities of a modern sovereign state in crisis to an apersonal sovereign logic. Second, I have shown how this willful ignorance of the theoretical tension in the early Schmitt and the reduction to formalism subsequently informs his interpretation of Benjamin by identifying his essay on violence as a legal theory of sovereignty. What is left of Benjamin himself amounts to a messianic nihilism, detached from any historico-political project.

The problem does not consist solely in the philological misreading of both Schmitt and Benjamin. Rather, this error, I believe, is at the root of the political dogma of inoperativity. When sovereignty is stripped of its material foundation in the historical use of force and reduced – or expanded – to an all-encompassing *rationality* inherent to any and every political action, whether repressive or subversive, then the only way to escape this totalitarianism by necessity becomes a non-act. It is, however, a very poor form of political existence, as well as a very isolated form of social life. In Benjamin, it is clear that the quintessential political action is a revolutionary act on part of the class of oppressed becoming aware of their own history of oppression – it is an operative and collective vision of politics, rather than an inoperative and individualist. The cure against the decline of so-called radical philosophy to a defeatism thinly veiled in political mysticism may thus very well be a return to the very origin of Agamben's theory of sovereignty, that is, Schmitt's political theology and Benjamin's critique hereof.

Revisiting Schmitt beyond Agamben, the importance of his work lies in the way he poses the question of sovereignty. His conceptualization does not center on the functionality of sovereign governance, that is, sovereignty in the normal situation, but rather on the self-determination of sovereignty in an outlier sphere of societal order. Schmitt asks the question: How does sovereignty assert constituent power in the exact moment of constitutive breakdown? This is why his *Political Theology* becomes acutely relevant when dealing with sovereign power in a time of crisis. One such crisis has been the debt crisis of the Eurozone, in the wake of which we have seen continued conflicts of sovereignty between EU institutions and member states. With Schmitt we may observe that sovereignty becomes a political issue only when it is drawn into question by a threat to the state, but that this issue does not resolve itself as long as uncertainty about the precise localization of sovereignty prevails.

To Schmitt, the state of exception is ultimately the proof of strength of sovereignty, demonstrating both its necessity and its efficiency as a political force. Benjamin, on the other hand, draws out the contradiction already inherent to Schmitt's concept of the exception as both a juridical force and a historical fact and shows this contradiction to be the point of weakness of sovereignty. He displaces the call for a sovereign decision from the theoretical level to the level of historical experience, as an overstrained reaction to crisis rather than its juridical solution. In Benjamin's account, however, the breaking point of sovereignty is not the collapse into the order of chaos, as in Agamben, but the opening up towards a new historical possibility for political reconfiguration. The political caesura of a sovereignty crisis comes with the task of bringing about the *real* state of exception, meaning a social order without the arbitrary violence of emergency law, which according to Schmitt himself is at the heart of the current legal system.

Although regarded as a thinker on radical politics, Agamben in fact radically depoliticizes the question of sovereign power. His reduction of Schmitt to a legal formalist and Benjamin to a leftist

Schmittian empties the discussion of any historical contingency and political agency in favor of a totalitarian logic of sovereignty, which can only be escaped through inoperativity. This depoliticization of the sovereign institution comes at a time where its fundamental contentedness begs for a repoliticization. Revisiting the contrasting positions of Schmitt and Benjamin opens up a field of tension, wherein such a repoliticization becomes possible.

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¹ Translations modified. With the last claim, Schmitt clearly places himself in opposition to his teacher Max Weber, to whom the text was originally dedicated, who defined sovereignty as a claim to a monopoly of force (M. Weber 1992).

² It is not clear that the sovereign is indeed identical to the state for Schmitt. In his 1924 appendix to *On Dictatorship*, he identifies the Reichspräsident as the sovereign (Schmitt 1994, 240 ff.), yet in *Political Theology*, the fact that the *state* remains while law recedes in the state of emergency indicates a bestowal of sovereignty in the state as such. In this context however, the important thing is the insistence on a localizable power of decision as opposed to an impersonal, decentered 'logic of sovereignty'.

³ Agamben's work is permeated by an inclination towards universalization, both temporal and spatial, cancelling out historical specificity (cf. Kalyvas 2005; Toscano 2011).

⁴ While Schmitt remains in stark opposition to socialist thought, his concept of *Landnahme* bears resemblance to the Marxist concept of primitive accumulation, that is, the original act of violence which is a prerequisite for the seemingly violence free order of modern capitalist states. In 1958, in a footnote to his 1953 article "Appropriation / Distribution / Production", Schmitt indirectly touches upon this affinity by referencing the chapter on primitive accumulation in Marx' *Capital*, volume 1. The socialist error, Schmitt argues, is to believe that there can be a social order *without* land appropriation, that is without the original sin of violence. Indeed, "the continuity of a constitution is discernible, as long as the recourse to this first appropriation remains discernible and recognized" (Schmitt 1958, 502). Here, Schmitt is in resonance with Benjamin's claim that constitutive violence remains inscribed in the law that it constitutes. For Schmitt, however, the divine miracle is precisely the upholding of law, and there can be no non-violent violence to end all violence as in Benjamin. Unfortunately, the note is not included in the English translation of the text (Schmitt 1993).

⁵ It should be noted that Schmitt uses the term '*völkerrechtlich*', which in the English translation is rendered 'international'. While international implies a modern system of nation states, Schmitt uses *völkerrechtlich* in a broader, metahistorical sense, denoting all forms of *nomoi* resulting from any original act of land-appropriation. The translator argues that 'Völkerrecht' emerged as a term precisely in the modern period and therefore is historically relation to international law (Ulmen 2006, 9–12); however, this does not change the fact that *Schmitt* uses it universally, e.g. in the case of mediaeval *Völkerrecht*.

⁶ Translation modified to preserve the word 'sovereign', true to the German 'soverän'.

⁷ In the English translation of the essay, 'sovereign violence' is mentioned in the very last sentence as a characterization of divine violence (Benjamin 1996, 252). The German original, however, speaks of 'waltende Gewalt', and *not* 'soveräne Gewalt' (Benjamin 1991e, 203). 'Waltend' means either prevailing or ruling at will and in this latter sense *could* be translated as sovereign, yet as opposed to 'soverän' it does not have any immediate juridical reference.

⁸ Axel Honneth's entry on the essay in the *Benjamin-Handbook*, for instance, is primarily devoted to a dismissive critique of what he sees as Benjamin's 'theocratic', 'terroristic' and 'eschatological' "treaty in philosophy of religion" (Honneth 2011, 193–94, 209). It is a peculiar mode of approach for a handbook indeed, which completely misses the materialism central to the essay and to the development of Benjamin's thought in general.

⁹ Derrida's early commentary on Benjamin's essay is not surprisingly a brilliant deconstruction of the key dialectics at the heart of the piece, that of law-making and law-preserving violence. While Derrida is sympathetic to the critique of the language of law, however, he sees a danger in Benjamin's affirmation of divine force, and not without some reason. Therefore, we cannot look to Derrida for the development of a positive political project in Benjaminian terms.

¹⁰ Honneth criticizes Benjamin for his simplistic account of the rich tradition of natural law (Honneth 2011, 199). The critique is valid, though it should be noted that Benjamin is not so much attempting an exegesis of natural law as he is posing it as the background against which to understand the position of positive law.

¹¹ See note 7.

¹² The English translation of the title is problematic, as Benjamin *opposes* the German 'Trauerspiel' (literally: mourning play) to tragedy (Benjamin 1991d, 279–80). There is neither penance nor moral lesson in the mourning play, only loss.

¹³ Translated in (Bredekamp 2017, 679).

¹⁴ Translation modified.

¹⁵ Translation modified.

¹⁶ Not unlike what Mikkel Flohr aptly calls a 'functional fiction', (Flohr 2019, 123).

¹⁷ Dimitris Vardoulakis points to the striking difference between the 'reducto ad absurdum' of absolute sovereignty in Benjamin and Agamben's reinstatement of that same absolutism (Vardoulakis 2013, 106–8, 159–60).

¹⁸ Thinkers of critical race theory have voiced similar criticisms of Agamben's totalizing logic of sovereignty, which does not account for different forms of subjectivity and resistance on part of oppressed groups. Cf. e.g. Alexander G. Weheliye, who argues that Agamben assimilates Benjamin into a purely legalist Schmittian framework, often citing the task of 'bringing about the real state of exception', yet completely ignoring the revolutionary potential of the tradition of the oppressed (Weheliye 2014, 83–85, 133).

¹⁹ In a similar sentiment, Agamben also names the "harmless citizen of postindustrial democracies" Bloom after the antihero main character of James Joyce's *Ulysses*. This passive citizen "readily does everything that he is asked to do", yet is "also considered by power – perhaps precisely because this – as a potential terrorist" (Agamben 2009, 22–23). The notion that radical apathy equals the highest form of resistance is, if not in name then in spirit, political nihilism cf. Laclau (2007). For a critique of Agamben's politics of passivity, see also Negri (2007).

²⁰ See the discussion in McLoughlin (2016); cf. also the literature review p. 13–14, note 10.

²¹ On the notion of the messianic as a structure of time, cf. (List 2019).

²² For a convincing reconstruction and critique of Agamben's utilization of Aristotle's conception, see (Whyte 2013, 104 ff.)

²³ For other commentaries on the difficulty of translating Agamben's concept of destitution into directions for action, see (Whyte 2013, 110; Christiaens, forthcoming).