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The Philosophy of History of The Exception
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CRISIS SOVEREIGNTY
THE PHILOSOPHY OF HISTORY OF THE EXCEPTION

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Writing a PhD thesis can be a lonely affair – not least during a pandemic when social isolation is literally state mandated. I have been fortunate enough to have people in my life who have made it less so. First of all, my deepest gratitude to my supervisors, Stefan Schwarzkopf and Mitchell Dean, for their guidance, commentary, and generosity in sharing with me their knowledge and time. I would also like to thank the administrative staff at the Department of Business Humanities and Law, especially Anja Vega Frederiksen and Henrik Hermansen, for their moral and material support. Thank you to the members of the many research groups I have been affiliated with during my time at the department for approaching me and my work with kindness and critique: The history group, the politics group, the philosophy group, HUMAN, and JURASOC. I am not least grateful to my PhD colleagues for sharing the struggle with me: Tim Christiaens, Jonathan Harmat, Mads Kogut, Alice Neusiedler, Jette Sandager, Morten Tinning, Christoph Viebig, and everyone else.

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I have gained immensely from discussing early versions of the chapters amounting to this thesis with many of the people and groups mentioned here.
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Thank you to Aske Günther Andersen for sharing the isolation with me, and to Benni Günther List for breaking it.
Since the international political turmoil in the wake of the financial crisis, sovereignty has resurfaced as an urgent and controversial topic of political debate. While critics have argued either that the concept is an anachronistic leftover of past absolutism or that it was always just an illusion of jurisprudence confusing normativity with social reality, its proponents have long seen crisis as a call for sovereign intervention, and they therefore envision our new epoch of crisis as the return of sovereignty. This thesis argues that the modern juridico-political concept of sovereignty was always linked with a historico-philosophical notion of modernity as crisis temporality. It does so through a critical reading of Carl Schmitt’s theory of sovereignty from his decisionist period in the time of the Weimar Republic and approaching Schmitt as a prism for a wider tendency in state theory from Thomas Hobbes onward.

The thesis consists of three parts. Part 1 situates the discussion by delimiting sovereignty as a problem and as a concept. Chapter 1 argues that sovereignty should neither be approached as a question of juridical normativity nor as a question of political violence but as the problem of their mediation. The function of sovereignty, it concludes, is to respond to the problem of the realization of law by establishing a relation to a source of legitimacy outside of the juridico-political sphere itself, namely within a metaphysics of time. Yet, the thesis does not assume that sovereignty completes this function successfully. Chapter 2 discusses the possibility of analyzing the concept of sovereignty as non-self-identical, that is, as a concept in contradiction with itself. Insofar as it is aimed at addressing social conflict, the concept of sovereignty may not add up to the reality it is supposed to mediate, and thus its inner contradiction is not simply a logical flaw but a central element of its functionality.

Part 2 locates Schmitt’s theory of sovereignty within a tradition of modern European intellectual history conceiving of modernity as crisis time. Against Karl Löwith’s canonical interpretation of Enlightenment philosophy of history as secularized eschatology, chapter 3 reconstructs an alternative tradition of conservative crisis theory, tracing a line from Juan Donoso Cortés’s and Jacob Burckhardt’s eschatology of modernity to Schmitt’s notion of the state of
exception as the constitutional foundation of the modern state. Chapter 4 discusses the debt of this concept to Thomas Hobbes’s theory of the state of nature, arguing that both of these concepts aim to extract, from the historical crisis, a juridico-political concept of state. By revisiting the debate between Carl Schmitt and Leo Strauss on Hobbes and his influence on the self-conception of modernity, the chapter demonstrates how Schmitt’s state of exception not only draws from Hobbes’s state of nature but also deviates from it in order to reflect the specificity of Schmitt’s late modern crisis in contrast to Hobbes’s foundational moment of early modernity.

Whereas part 1 approaches the topic of the thesis logically, and part 2 historically, the analysis of part 3 proceeds politically. Through a close reading of Schmitt’s definition of sovereignty in his *Political Theology* (1922), chapter 5 argues that the defining concept of state of exception or Ausnahmezustand should be understood in a double sense: as both historical crisis and juridical measure simultaneously and interchangeably. In a performative move to strengthen the sovereign institution, Schmitt glossed over the role of crisis and emphasized the sovereign suspension of the law, and this shift in emphasis has been passed down in the reception and has allowed for a one-sided interpretation of sovereignty as a totalizing logic and force of history, yet the ambiguity of the crisis/exception concept, the chapter concludes, is central to the legitimizing function of sovereignty and thus to the power of its institution. Chapter 6, finally, turns the argument of the thesis around to investigate how this concept of sovereignty informs theories of modernity as crisis time, which culminates in a diagnosis of our contemporary era as a time of permanent crisis. Sovereignty and crisis together form a nexus of modernity, which the chapter seeks to counter by recovering Walter Benjamin from the tradition of sovereignty theory in which he has mistakenly been integrated and reconstructing his double critique of the notions of sovereignty and modernity as politically invested concepts of philosophy of history.

Through these steps, the thesis aims to contribute to the understanding of the relationship between modern state theory and philosophy of history by developing the novel concept of crisis sovereignty as an analytical tool for the critique of contemporary appeals to sovereign power in times of crisis.


Del 2 placerer Schmitts suverænitetssteori i konteksten af en betydningsfuld strømning inden for moderne europæisk idéhistorie, som opfatter modernitet som krisetid. Kapitel 3 går imod Karl Löwiths klassiske fortolkning af

Hvor del 1 griber afhandlingens emne logisk an, og del 2 historisk, der skrider argumentationen i del 3 politisk frem. Gennem en nærlæsning af Schmitts definition af suverænitet i hovedværket Politisk teologi (1922) argumenterer kapitel 5 for en forståelse af det definerende begreb om undtagelsestilstanden som dobbelttydigt: Begrebet betegner både en historisk krisesituation og et retsligt middel, og det betyder begge dele simultant og i vekselvirkning med hinanden. I et performativt forsøg på at konsolidere den suveræne institution udviskede Schmitt krisens betydning til fordel for den suveræne ophævelse af loven, og denne forskydning er gået i arv igennem hans tænknings virkningshistorie og har muliggjort en ensidig fortolkning af suverænitet som en totaliserende logik og historisk drivkraft. Men undtagelsestilstandens tvetydighed som krise/undtagelse er central for suverænitets legitimerende funktion og dermed for dens magt som institution, lyder kapitlets konklusion. Endelig vender kapitel 6 argumentationen om for at undersøge, hvordan det behandlede begreb om suverænitet påvirker teorier om moderniteten som krisetid – teorier, der kulminerer i en diagnose af vores egen nutid som den permanente krises tidsalder. Tilsammen udgør suverænitet og krise et moderne knudepunkt, som afhandlingen søger at løse op ved at bjælge Walter Benjamin fra suverænitetsteoriens tradition, som han fejlagtigt
er blevet integreret i, og rekonstruere hans dobbelte kritik af forestillingerne om suverænitet og modernitet som politisk investerede historiefilosofiske begreber.

Afhandlingen ønsker at bidrage til at afdække forholdet mellem moderne statsteori og historiefilosofi ved at udvikle et nyt begreb om krisesuverænitet som et analytisk værktøj til at kritisere samtidens påkaldelse af suveræn magt i en krisetid.
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Sovereignty is in crisis. So we are told: The sovereign nation state as a political form is under pressure from international institutions, transnational powers, and global financial flows; and sovereignty as a juridical concept is an obsolete, anachronistic remnant of monarchical absolutism that is out of pace with the liberal constitutional state. Yet sovereignty, the present thesis argues, is also in crisis in a quite different sense: Out of the self-image of European modernity as a time of crisis arises the juridico-political notion of sovereignty, and thus the key to understanding the nature of modern sovereignty lies in its relationship with crisis temporality. The thesis thus recontextualizes the problem of sovereignty by placing it within modern philosophy of history. If sovereignty is essentially a product of crisis, then its crisis is not the same as its end. On the contrary, sovereignty is located in crisis. It is crisis sovereignty.

To the German legal positivist Hans Kelsen (1881-1973), writing in the interwar period, the concept of sovereignty was nothing but a figment of the fantasy of confused jurists confounding their own inventions with reality. Like the sorcerer’s apprentice, the jurisprudence of his time had conjured forth a
supernatural fairytale creature over which it had then lost control: “Spirits that it cited / Its command ignore”, he quoted Goethe’s ballad. Being nothing but a fictive chimera, henceforth the concept should be disregarded as irrelevant by jurisprudence, Kelsen maintained. Since then, the claim that sovereignty is a ‘fiction’ has not ceased to resurface as an argument against its examination. However, to be fictitious is not to be without consequence, as Wendy Brown notes: “If nation-state sovereignty has always been something of a fiction (...), the fiction is a potent one and has suffused the internal and external relations of nation-states since its consecration by the 1648 Peace of Westphalia.” The mere noting of the fact that sovereignty is not real in the material sense, therefore, does nothing to banish it from reality and only ignores rather than solves its problem.

In this thesis, I wish to go beyond the diagnosis of sovereignty as a fiction in order to examine the beliefs about modern history from which it draws its potency. The notion of sovereignty is controversial as regards its localization, function, and relevance as an analytical concept. It is theoretically elusive yet forceful in public debate. It is often used synonymously with the state, yet it is not identical to it. It has to do with the legitimacy of the state and resides somewhere between raw power and legal normativity, yet the concept appears as well suited to problematize this relationship as it does to consolidate it. Indeed, even when used polemically in political debate, it has the appearance of a question rather than a clear answer, in the sense that it is only relevant when it is the object of conflict.

According to Pierre Bourdieu, the “fundamental question of all political philosophy” is precisely the problem of legitimacy. Yet, paradoxically, he wonders, this problem is not posed as a problem but appears strangely unproblematic: “Indeed, essentially, what is problematic is the fact that the established order is not problematic; and that the question of the legitimacy of the state, and the order it institutes, does not arise except in crisis situations.”

3 Bourdieu 1994, 15.
Bourdieu proceeds to ponder the non-problem of legitimacy while disregarding his own important qualification: ‘except in crisis situations’. The present thesis examines sovereignty as the locus of the intersection of legitimacy and crisis. It asks how sovereignty relates to crisis as a structure of temporality in the self-image of modernity and how this relationship serves to legitimate the rule of law of the modern nation state. Furthermore, it reflects on how this foundation in a philosophy of history of crisis shapes sovereignty as an institution of the state, that is, in what way it influences sovereignty’s ability to sustain state power. And finally, the thesis turns the investigation around to ask how the notion of sovereignty might inform our understanding of crisis. Seen from this perspective, it may be that the reason why state legitimacy only appears problematic in ‘situations of crisis’, as Bourdieu notes, is that the problem of legitimacy has its roots in the problem of crisis. This is the sense of the neologism ‘crisis sovereignty’. The overarching research question directing the course of the thesis is as follows:

In what way is sovereignty, as a concept and as an institution, structured by the notion of crisis as a mode of time specific to modernity?

In order to answer this question, I turn to the theory of sovereignty of the German jurist and political philosopher Carl Schmitt (1888-1985). Over the past few decades, Schmitt has become an infamous yet unavoidable figure of the history of political ideas. His notoriety results from his biography as well as from his intellectual production. Already in the Weimar years, as a conservative Catholic thinker, he was a defender of a strong sovereign leadership within an authoritarian state. In 1933, he joined the NSDAP and served as a legal counsel under the Third Reich, and, after the Second World War, he was excluded from the university yet unapologetically portrayed himself as a victim of the war and remained intellectually active and influential throughout the remainder of his life. The critical thrust of the present thesis is in direct opposition to Schmitt’s enthusiasm for authoritarian rule: It aims at putting the legitimizing function of sovereignty into question by examining its metaphysical roots. Yet, as Étienne Balibar has noted, Schmitt raises problems which
should not be ignored: “For in question here is one of the most inventive, provocative and representative bodies of thought of the twentieth century. And this is precisely the issue. To run away from this problem, to devise protective incantations against it is to be condemned at best to stupidity and at worst to impotence.”

Such a problem is the concept of the state of exception, which Schmitt makes the defining term of sovereignty with his now classic formula: “Sovereign is he who decides on the exception.” For a thesis interested in the relationship between crisis and sovereignty, this is an ineluctable starting point. As opposed to theories of governance and the mechanisms of the state apparatus, Schmitt approaches sovereignty from the perspective of its Other, locating the origin of order in disorder, normativity in authority, and stability in emergency. Building on this, he unfolds sovereignty as a liminal concept, mediating between the juridical formalism of the law and the social fact of conflict. The present thesis engages with the concept through a critical reading of Schmitt’s theory of sovereignty. It operates on the assumption that Schmitt’s localization of the problem was right, yet it argues that not only was his solution wrong but his analysis of the problem displaced it in a way that distorted the nature of sovereign legitimacy. This distortion has been passed down, even by those of his commentators critical toward his authoritarian conclusions. In Schmitt, sovereignty and crisis, I shall argue, are placed in constellation with each other only for this constellation to dissolve into juridical formalism and the absolutism of an abstract sovereign logic. For the purpose of uncovering their proper relationship, it is necessary to move through Schmitt in order to move beyond him.

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4 Balibar 2017, 38.
AIM AND METHOD

The aim of the present thesis is a critique of sovereign power through the development of the concept of ‘crisis sovereignty’ as a key to unfolding the relationship between sovereignty as a juridico-political concept and crisis as a historico-philosophical paradigm of modernity. I will pursue this end through a critical engagement with Schmitt’s theory of sovereignty. The critical approach of the thesis in this sense is double: I will develop my core concept through a critique of Schmitt, and this concept in turn will contain a critique of sovereign power. Insofar as my approach is conceptual-philosophical rather than sociological, however, this double critique will not take the shape of a two-stage argument, i.e., first the critique of Schmitt and then the critique of sovereignty, as it is necessary for them to be folded into each other throughout the thesis. The contradictions within Schmitt’s theory of sovereignty, I shall argue, are not merely symptoms of a faulty theory but of the contradictory nature of the sovereign logic itself, and for this reason the critique of Schmitt can be constructed as simultaneously a critique of sovereignty.

To this end, I am inspired by the method of ‘immanent critique’, as practiced by G.W.F. Hegel and Karl Marx and pursued further by thinkers of critical theory. Immanent critique focuses on the inherent contradictoriness of a text or social system. It does not, however, seek to merely expose the object of its critique as incoherent and therefore false but rather looks for the origin of the contradiction in order to extract from it something true of the context from within which contradictoriness arises. In other words, it seeks truth in the false. This also implies that immanent critique chooses as its object not simply a ‘bad’ theory or normative order in order to debunk it but, rather, a theory which operates from relevant observations and assumptions which the theory then distorts in a misguided or ideological attempt to eradicate contradiction. Immanent critique, in contrast to the thing it criticizes, does not assume that theory must be contradiction-free to be valid; instead, it takes the contradiction as the proper object of its epistemological interest.

6 Sørensen 2022, 188.
The difficulty with critical theory is that it is “expressed through a series of critiques of other thinkers and philosophical traditions,” Martin Jay argues, which makes it an elusive form of philosophical thought. This elusiveness is related to the common methodological background in immanent critique of the disparate writers belonging to critical theory. To read a text through the approach of immanent critique is, on the one hand, to take it seriously as something which holds truth, and on the other demonstrating its impossibility as a coherent theory, while at the same time developing one’s own concepts from within its contradictions – *without*, it must be remembered, attempting to do away with these contradictions. The contradictions are what point beyond simply intra-textual matters toward the inherent conflict of the subject in question. As Titus Stahl argues, immanent critique is neither external nor simply internal to the criticized object. External critique adopts principles foreign to the object as its standard of evaluation; for example, a set of norms which the critic holds to be universal and therefore applicable to the object, regardless of whether they are expressed within it or not. Internal critique, on the other hand, holds the object accountable to its own principles only. This means that it has a stronger claim to recognition of its critique from those it criticizes; however, it cannot criticize the principles it examines in themselves but only their reciprocal consistency within the system they form. “In other words, while external critique seems to have a problem of *justificatory power*, internal critique seems to have a problem of *transformative potential*.” In contrast, immanent critique takes its starting point in internal principles but, through the exposition of inner contradictions, points beyond mere incoherence toward a critique of the principles themselves. For instance, bourgeois society does not simply fail to live up to its own concept of freedom but renders freedom as such impossible insofar as the ‘freedom’ from the means of production chains people to an exploitative labor system. The immanent critique

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7 Jay 1973, 41.
8 Antonio 1981.
of the bourgeois ideal of freedom thus leads to the demand for a new concept of freedom.

In this thesis, I approach Schmitt’s theory of sovereignty in a similar way to the method of immanent critique. Chapter 2 presents a longer theoretical discussion concerning the approach to political concepts as non-self-identical and how to analyze such concepts dialectically. The concept of sovereignty, I argue, is not only contested but contradictory and must be analyzed as such. For the present context, I will limit myself to a few central remarks on the practical method of the thesis. While the thesis centers on Schmitt, it is not about Schmitt. It approaches the topic of crisis sovereignty through a close engagement with Schmitt, yet its aim is not a ‘correct’ reconstruction of what Schmitt held to be the nature of sovereignty. Rather, it seeks to give a dialectical interpretation of the contradictory nature of sovereignty by uncovering the impossibility of a coherent theory in its most staunch proponent, Schmitt. Its aim is the development of the concept ‘crisis sovereignty’ as a key to deciphering the function of the sovereign institution.

In practice, I do this through a combination of close reading and comparative readings, placing Schmitt in dialogue with important figures of modern political and historical thought. The close reading is especially directed at Schmitt’s Political Theology as the core text for the thesis, but it also draws on other, related works; primarily those of the Weimar period. In order to conduct such a reading, a certain degree of exegetical care is necessary, although I strive to avoid text exegesis for the sake of text exegesis. This meticulous work focuses on the ambiguities and contradictions of concepts in constellation with other concepts, their often unclear, double or multiple meaning, and their distortion or transformation in the reception of Schmitt’s writings. Given that I write about German texts for an English speaking readership, I have found it productive in many cases to expound such ambiguities through a discussion of the way these concepts are translated into English since translation often changes their meaning dramatically or emphasizes certain aspects which then come to shape a research field which is, like most research today, becoming increasingly dominated by the English language, its possibilities, and its shortcomings (see also “A note on translation” at the end of this introduction). I
conduct my close readings in dialogue with the secondary literature on Schmitt, although I consider only those contributions which are relevant to the specific concepts guiding my reading, especially the concepts of exception and sovereignty as developed in the Weimar works, and only occasionally more general commentaries.

In support of the close-reading approach, I situate Schmitt’s concepts in comparative readings with thinkers such as Jacob Burckhardt, Thomas Hobbes, Marx, and Hegel, as well as contemporaries of Schmitt such as Leo Strauss and Reinhart Koselleck. These interlocutors, however, are chosen on the basis of an immanent principle insofar as Schmitt himself defined his theory of sovereignty in an engagement with the included thinkers; in some instances building on their theories and in others positioning himself in opposition to them. The context for the development of the concept of crisis sovereignty is thus twofold in that it consists, on the one hand, in the argumentative structure of Schmitt’s theory of sovereignty and, on the other, in its relative position within an intellectual historical constellation of modern European political thought. A critical examination of the way Schmitt positions his own theory in relation to others serves to give concrete content to his concepts, which then in return may be criticized according to this positioning. For instance, when Schmitt claims that Hobbes is the originator of decisionism, rather than rejecting this claim as false (which it is), I ask what it expresses about Schmitt’s own use of the concept of decisionism, how his concept of state of exception relates to Hobbes’ concept of the state of nature, and how from this comparison we may understand the crisis theory implicit to Schmitt’s concept.

In this sense, I develop my engagement with Schmitt through recourse to intellectual history. Lærke, Smith, and Schliesser, in their introduction to the relationship between Philosophy and Its History, distinguish between three different methodological approaches to history of philosophy.¹⁰ The first is what they call ‘appropriationism’, an outdated approach with little contemporary endorsement, which consists in eclectically lifting concepts and ideas from the

¹⁰ Lærke, Smith, and Schliesser 2013, 1–6.
history of philosophy to appropriate them for one’s own philosophical project. This method is rejected by the second approach, contextualism, which is associated with the Cambridge school of intellectual history and its most prominent representative, Quentin Skinner. The latter, in a now classical text, argued against traditional history of ideas as a narrow focus on ‘unit ideas’, that is, free-floating universal philosophical concepts existing independently of their authors and historical context. He proposed instead a method of historical contextualization by which intellectual historians should understand the meaning of texts as the intention of their authors by placing them in relation to other contemporary texts and asking not what the authors say but what they do – that is, to interpret philosophical texts as interventions in a debate with their contemporaries, expressed through a network of texts belonging to the same period. According to Skinner, the only ‘philosophical’ lesson we can draw from the history of philosophy is the historical relativity of any belief system and thus of ‘our’ own.\footnote{Skinner 2002b, chap. 4.} The third option, however, according to Lærke, Schmitt, and Schliesser, positions itself against both appropriationism and contextualism. Originating broadly from what has come to be known as continental philosophy in contrast to the Anglo-Saxon sphere, it is an approach “in which one’s philosophical position is developed dialectically with a tradition that is often simultaneously constructed for that purpose”.\footnote{Lærke, Smith, and Schliesser 2013, 3.} Like them, I align myself more with this third understanding of how history of philosophy or intellectual history serves as a method for philosophy. I concur with Skinner that historical context is essential to the interpretation of philosophical concepts but reject the reduction of the meaning of concepts to this context. This thesis develops its concepts through a dialectical interaction with a tradition that it simultaneously contributes toward constructing.

The thesis thus draws on both philological and intellectual-historical elements, yet both of these remain in the service of a philosophical research interest. Although I harbor an interest in both Schmitt’s theory and the history of political thought, the thesis is not ultimately motivated by either of these but
by its primary interest in crisis sovereignty. In the course of the thesis, I shall argue that this concept belongs specifically to modernity (although I problematize the periodizing quality of this notion) and thus has historical specificity, yet I do not believe that we have left the era of sovereignty, and for this reason my interest in the concept is as much contemporary as it is historical. The thesis, then, is guided by a conceptual interest which structures its historical and Schmitt-philological elements. For the comparative and contextualizing readings, I draw on relevant secondary literature on the authors, which I pose in dialogue with Schmitt as support for my critical analysis of his interpretation of, for instance, Hobbes as well as his self-commentary in relation to this interpretation. However, I strive to avoid venturing into an elaborate interpretation of Hobbes’s work myself as this would not directly serve my purpose and would demand an engagement with an enormous amount of high-quality scholarly research on the thinker, his thought, and the context of its development. Again, although I draw on philological as well as intellectual historical methods, my aim is neither philological nor intellectual historical but conceptual.

It is a basic assumption of the approach of this thesis that the critique of the concept of sovereignty is also a critique of its institution. That sovereignty is a fiction implies that the institution originates in the history of political ideas. In this sense, the way we think sovereignty decidedly shapes the institution. This is not to say, like Kelsen, that without a concept of sovereignty, the institution would go away. Rather, it means that sovereignty is a historical reality belonging to the ideological elements of social life which have materialized in the form of the state. Again, as Bourdieu writes, “(...) behind the appearance of thinking it, most of the writings devoted to the state partake, more or less efficaciously and directly, of the construction of the state, i.e., of its very existence. This is particularly true of all juridical writings (...)”13. It would be one-dimensional to view the most influential theories of state as merely descriptive and not also performative-creative. In the case of sovereignty especially, the concept is a juridical vessel for the construction of the institution. It does not

INTRODUCTION

correspond to anything in reality before it is jurisprudentially conceptualized as the unity of the state, and, as such, sovereignty is its own concept.\footnote{See also Jessen, who argues that the “language of juridical sovereignty” functions as “the self-description, self-observation and self-conception of the State” with a capital S, which in combination with governmental and economic state reason drives the formation of the modern state as a political entity, Jessen 2015, 31–32.}

The hypothesis I defend is that sovereignty as defined by Schmitt in the tradition from Hobbes is based in a notion of modernity as a time of permanent latent crisis, and that it therefore draws its legitimacy from this crisis metaphysics. This essential link with crisis, however, is at the root of both the force and the weakness of sovereign power, creating a complex dialectic of omnipotence and impotence within sovereignty. On the one hand, sovereignty is dependent on crisis for its legitimization and consolidation as an institution, while on the other the crisis holds the potential to reveal the institution as less than sovereign. This comes to the fore in Schmitt’s concept of sovereignty, which oscillates between the juridical formalization of crisis in the form of ‘exception’ and a metaphysical belief in the necessity of crisis as a structure of historical time. In order to understand his theory of sovereignty, then, we should examine how the defining term in his definition, exception or Ausnahmezustand, incorporates at one and the same time the juridical institution of a state of emergency and the historico-philosophical notion of modernity as crisis time. Sovereignty and crisis together form a nexus of modern political philosophy, whereby sovereignty becomes the promise of order and stability, while crisis serves as both the legitimizing root and potential ruin of the sovereign state.

STATE OF THE ART

The scholarly contribution of this thesis consists in the intervention in one body of literature by way of a deep engagement with another body of literature: It seeks to cast light on recent discussions about political and societal crisis through a critical reading of Schmitt’s concept of sovereignty as based in the
notion of exception. Each of these topics have attracted large bodies of research literature in themselves. The financial crisis of 2007/2008 was an epochal event imprinting itself on the collective self-understanding of our social reality today. In its wake, we saw a series of independent yet related crises: the Eurozone crisis, the Greek sovereign debt crisis, and the refugee crisis; just to mention the most prominent ones in European public discourse. And all this and more happened against the backdrop of a steadily escalating, although chronically neglected, climate crisis.

It comes as no surprise, then, that crisis literature has proliferated in recent years. It was clear to scholars that the financial crisis reached beyond the sphere of economics and fundamentally shifted the political balance of powers. Some saw the years after the crisis as a Gramscian ‘interregnum’, a power vacuum in the temporal gap between two systems of rule, while others speculated that the crisis itself constituted a new form of rule, namely, a neoliberal takeover of politics by economics. The literary critic Joseph Vogl has suggested that the crash instituted a new form of political organization where sovereignty dispersed into a multiplicity of ‘sovereignty effects’ of events in the economic sphere and reshaping the political, while others have talked of the ‘crisis society’ as led by officials trained in crisis management, and the philosopher Dario Gentili sees ‘endless crisis as an art of government’. Gentili’s book comes in continuation of a large strain of crisis literature focusing on credit and debt as, on the one hand, the origin of money and the basic element of finance and, on the other, a form of dominance submitting the debtor to the creditor on all levels of society, prominently spearheaded by Maurizio Lazzarato. ‘Italian critical thought’ has linked the neoliberal power of debt with techniques of modern biopolitical governance, whereby debt becomes a tool of government to produce a servile population endlessly working to make up

15 Tooze 2018; Streeck 2016; Krippner 2012; Rasmussen 2021; Kjaer and Olsen 2016.
17 Davidson 2017; Streeck 2016; 2013.
18 Vogl 2015; 2014; Rasmussen 2021; Gentili 2021.
19 Dienst 2011; Graeber 2011; Lazzarato 2012; 2015a; 2015b; Charbonneau and Hansen 2014; Peters 2015; Singh 2016; 2018a; 2018b; Stimilli 2017; Streeck 2013.
for a never-ending deficit.\textsuperscript{20} Yet, the sense of crisis as a defining character of our present time does not stop with the financial crisis. With the Covid-19 crisis came a new wave of crisis literature trying to make sense of the political turmoil resulting from the pandemic.\textsuperscript{21} Contrary to the thinkers of biopolitics, some of these scholars have tended to focus on the disruptive force of the Covid outbreak and its unmasking of the weaknesses of a capitalist system showing not only its inability to solve existential threats to society through the mechanics of the free market but also disseminating and deepening the crisis. There appears to be a tension, then, between a critical tradition interpreting crisis as a tool for continued dominance and another critical tradition viewing it as the symptom of a failing system that is potentially giving way to another form of sociality. Furthermore, adding an extra layer to the discussion, some scholars have begun to think about how the concept of ‘crisis’ itself influences the way we interpret and act on reality.\textsuperscript{22} Such analyses generally take an intellectual historical approach and often build on the conceptual historian Reinhart Koselleck’s (1923-2006) history of the crisis concept.

In the recent literature on crisis, many authors have established a connection between new forms of political power and the traditional concept of the sovereignty of state. Some of these see in crisis governance the substitution of sovereignty by administrative-economic power,\textsuperscript{23} while others see the emergence of a new form of sovereignty.\textsuperscript{24} What appears clear, however, is that the generalized sense of crisis does not leave sovereignty unchallenged. Crisis theories raise questions about sovereignty, its origin in traditional state theory, and its capacity to assert its legitimacy in conflicts on a global scale. Whereas well-functioning governance in situations of relative stability generally do not occasion debates about sovereignty, crises threatening the stability of the status quo do. In the period between the end of the Cold War and the financial crisis, thinkers such as Antonio Negri and Michael Hardt had begun to consider the

\textsuperscript{20} Gentili, Stimilli, and Garelli 2018.
\textsuperscript{21} Blakeley 2020; Malm 2020; Žižek 2020.
\textsuperscript{22} Roitman 2014; Runciman 2016; Menke 2018a; Gilbert 2019.
\textsuperscript{23} Gentili 2021; Davidson 2017.
\textsuperscript{24} Vogl 2015; Wainwright and Mann 2018.
sovereign state as a thing of the past, giving way to a new, global, US led
dominance. Yet, the aftermath of the crisis and the efforts to bail out failing pri-

tate enterprises began to raise new questions about the relationship between
neoliberal marketization and the state and about the locus of sovereignty in
this relationship. At the same time, calls for popular sovereignty against the
enforcement of austerity by international institutions on local populations
sparked discussions about the foundation and form of sovereignty: national
from above or popular from below27? And, all the while, the stalling interna-
tional negotiations on climate policy led some to theorize the possibilities and
dangers of global state structures, such as a ‘Climate Leviathan’.28 Wendy
Brown, among others, continued to see sovereignty as a thing of the past and
these recent eruptions as the last convulsions of a dying state.29 Nevertheless,
such analyses also contributed to the general picture: that societal crisis,
whether immediately political, economic, ecological or other, puts sovereignty
into question and makes it a topic of political urgency.

Critiques of sovereignty as a form of power have flourished in recent
years. Many have sought to go beyond legalistic formalism to uncover the
extra-legal foundation of sovereignty in violence. Such endeavours have
been able to draw on the groundwork laid down by the philosopher Giorgio
Agamben in his Homo Sacer project (1995-2017), which has centred on the
origin of the legal logic of sovereignty in a dialectic of inclusion and exclusion
of the individual from law, creating a matrix of disorder and violence at the
heart of order. In chapter 5, I shall criticize Agamben’s take on sovereignty
and argue that it is a flawed logic based in metaphysics and resulting in reac-
tionary conservatism. Yet, it is the merit of Agamben to have thematised this

26 Lazzarato 2015b; Davidson 2017; Biebricher 2014; Callison 2014; Davies 2017; Streeck
2013; Singh 2018b; 2016.
28 Wainwright and Mann 2018.
31 Bargu 2014; Mbembe 2019; Menke 2018c; Vardoulakis 2013.
topic in the first place and to have raised interesting and important questions about sovereignty, legal rights, the place of exception in order, and law’s relationship to violence, to mention only a few. He has, therefore, been a central interlocutor and challenger in the work leading to the present thesis. An important influence of Agamben has been his contribution in making Schmitt the object of philosophical discussions, beyond the fields of political science and jurisprudence, and thus subjecting the philosophical and metaphysical foundations of his writings to scrutiny. Importantly, he has popularized comparative readings of Schmitt and the Frankfurt literary critic Walter Benjamin, who wrote in the same Weimar situation and dealt with similar problems to Schmitt yet from a critical anti-state perspective. In this, Agamben was not the first: Samuel Weber and Jacques Derrida had made the link before the publication of the first volume in Agamben’s project. Yet, these early attempts only testify to the relevance of the study which Agamben has continued to develop and expand upon.

By dint of such efforts, Schmitt’s theory was there for the taking when crisis made sovereignty the topic of the day. To be sure, commentaries on Schmitt had been plentiful before this, with his writings being discussed and criticized by prominent commentators already during his lifetime, especially in the German context. As Dirk van Laak has abundantly documented, Schmitt’s influence on German intellectual life in the post-war years reached beyond publications and public debate through a network of personal relations, letter correspondences, and private symposiums. Schmitt conversed with intellectuals such as Jacob Taubes, Joachim Ritter, Alexander Kojève, Reinhart Koselleck, Hans Blumenberg, and Ernst Jünger, as well as editors of newspapers such as Frankfurter Allgemeine Zeitung and Die Welt, among others, just to mention a fraction of the connections van Laak mentions. In more recent years, we have begun to gain partial insight into these conversations through

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34 Laak 1993.
the publication of letter correspondences as well as Schmitt’s diaries, although, of course, verbal exchange, on which Schmitt himself placed great emphasis, remains a big unknown. The work of Reinhardt Mehring, Schmitt’s intellectual biographer, has contributed greatly in this regard. From his death in 1985, studies on Schmitt proliferated, and his works began to be translated into English (the first being Political Theology, published in the year of his death), spawning a new wave of international reception. Prominent voices in the French reception have been Étienne Balibar and Jean-François Kervégan, and in the English speaking world political theorists such as David Dyzenhaus, Martin Loughlin, John P. McCormick, Ellen Kennedy, Miguel Vatter, and Andreas Kalyvas, among many others; in Italy, Schmitt has become an apparently indispensable point of reference not just for Agamben but also for Antonio Negri, Elettra Stimilli, Roberto Esposito, and Dario Gentili; and in Denmark, Mikkel Thorup has edited two volumes on Schmitt and his reception. Oxford University Press has published a handbook, and the Schmitt reception has reached beyond the Western world into Asia and even escalated into a ‘Schmitt fever’ in China. Most influential, perhaps, next to Agamben, has been Chantal Mouffe’s adoption of his friend/enemy distinction for her theorization of democracy as ‘agonistic’ politics. Such takes on Schmitt as a source of inspiration, if not in any directly affirmative sense, have again sparked passionate criticism against engaging with the works of a conservative-turned-Nazi jurist formerly employed by the Third Reich. It is telling that, as
late as 2019, Jürgen Habermas would dedicate his 2000-page two volume tour
de force of the history of European philosophy, *Auch eine Geschichte der*
*Philosophie*, to refuting Schmitt’s metaphysical and pessimist view on modern-
ity.45

Part of this large field has focused on the philosophical and metaphysical
elements of Schmitt’s thought, among these his philosophy of history. Often,
such contributions have centered on his later, more explicitly historico-philoi-
sophical works; most notably *The Nomos of the Earth* (1950), which set the
tone for his post-war writings, and in which he developed the notion of a ‘kate-
chon’, a theological concept borrowed from Paul the Apostle, to designate a
withholding force of history to balance the destructive revolutionary forces of
acceleration.46 Scholars have picked up this concept in order to characterize
Schmitt’s view on history, often generalizing it as a structuring feature of his
collected writings.47 In comparison with this, the literature on the philosophy
of history of Schmitt’s Weimar writings is sparse and must be reconstructed as
such in order to form a coherent research discussion. Some have focused on
the concept of crisis, historically contextualizing Schmitt’s early work in an
interwar situation of economic and political instability,48 and of those some
have made a link between this situation and our own, post-financial crisis era,49
yet these have not explicitly focused on reconstructing a philosophy of history
of the crisis. Kathleen Davis, although not a Schmitt commentator, has drawn
on Schmitt, among others, to uncover how the concept of sovereignty has
taken on a temporal dimension to function as a mode of periodization, thus
controlling the historiography of modernity. The present thesis wishes to con-
tribute to such efforts by examining the necessary historico-philosophical
implications of Schmitt’s theory of sovereignty as developed in the early 1920s,
as well as its influence on later understandings of state sovereignty. Through a
critical engagement with Schmitt, I aim to investigate the intricate relationship

45 Habermas 2019, chap. 1.
49 Kjaer and Olsen 2016; McCormick 2016.
between the notions of crisis and sovereignty in order to cast light on the dependency of political theory on metaphysical assumptions about the movement of history. It is my hope that such a project will contribute to casting light on the way crisis theory informs our understanding of sovereignty as a form of power today.

THE CONCEPT OF CRISIS

In this thesis, I argue that the exception which defines sovereignty should be understood in a double sense not only as a legal construct but also in the historical sense of crisis. Although there are two key concepts, as expressed in the title, the main concept and object of analysis is sovereignty, while the concept of crisis serves as a qualifier or a lens through which to conduct the study. I am interested in this concept only insofar as it relates to sovereignty. Crisis, however, is a deeply problematic concept in itself. The wealth of different strains of crisis theories is almost overwhelming, not least since the financial crisis of 2007/2008. Sociologists, historians and political scientists have developed in-depth analyses of how this economic crisis sent earthquakes through the global political landscape; some of them diagnosing it as either the beginning of the end of democracy or capitalism. Philosophers and philosophically inclined commentators have seen in crisis a new paradigm of governance, whereby states or economic agents rule populations through financial tools and controlled chaos. And since the Covid 19 outbreak, scholars have added health crisis to the defining crises of our time, exploring its origins and political effects as well as its potential for radical change. Some have declared that the ‘crisis society’ is upon us. But crisis theory is no new phenomenon, and nor is the propensity to declare one’s present a ‘time of crisis’. In 1959, Koselleck described the era of the Cold War as a ‘world crisis’ brought about

50 Tooze 2018; 2017; Krippner 2012; Streeck 2013; Runciman 2016.
51 Gentili 2021; Lazzarato 2015b; 2015a; Stimilli 2017.
52 Malm 2020; Blakeley 2020; Žižek 2020.
53 Rasmussen 2021.
by the expansion of European history to world history.\textsuperscript{54} In chapter 3, I shall revisit two examples of 19th century crisis theories that also diagnosed their own present as a generalized crisis time.

In contemporary media as well as academia, the concept is thrown around almost to the point of losing any specific meaning and only rarely with any attempt at a definition. However, even when it is defined, it is often unclear at what level of observation it operates. ‘Crisis’ is generally taken to be an observable phenomenon in the world, the observation of which is made difficult by its empirical complexity but nevertheless remaining theoretically possible. Even a conceptual historian such as Koselleck often moved seamlessly between analyzing crisis narratives \textit{in} history and himself theorizing ‘crisis’ as a structure \textit{of} history.\textsuperscript{55}

One important exception from this tendency is Janet Roitman, who, in her work on the concept of crisis, poses the simple yet central question: “Why should crisis, as a category, be so self-evident?”\textsuperscript{56} Crisis is generally used, both in daily discourse and academic research, as an analytical concept to make sense of contemporary or past events. As Roitman argues, however, this sense-making assumes that the concept itself conveys some definite, if not readily definable sense. Like her, I refrain from analyzing historical events through the lens of crisis to focus instead on the historico-philosophical implications of the crisis concept.\textsuperscript{57} To characterize an event or series of events as ‘crisis’ is to assume that it deviates from the ‘normal’ course of history, and this implies a philosophy of history, albeit in very broad terms. While ‘philosophy of history’ is often and traditionally used in a derogatory sense for 18th and 19th century utopianism, here I used it to denote any concept of history as a scientific object rather than as a discipline.\textsuperscript{58} I shall return to specific examples of such concepts

\textsuperscript{54} Koselleck [1959] 1973, 1.
\textsuperscript{55} I unfold and criticize this tendency in Koselleck in chapter 6.
\textsuperscript{56} Roitman 2014, 35.
\textsuperscript{57} Roitman 2014, 3–4.
\textsuperscript{58} Theoretically, it would be possible to have historiography without philosophy of history, that is, a pure methodology without a concept of the object to be examined, but, in practice, it is very doubtful whether this distinction could ever be upheld.
in later chapters; for the present context, some preliminary remarks on how I use the concept of crisis will suffice.

I follow Roitman in taking a step backward from the plethora of crisis theories that have (re)emerged, not least since the financial crisis. Rather than attempting to define crisis, she examines the role of the concept in producing historical narratives: “To do so, I explore how we think crisis came to be a historical concept: I ask how crisis achieves its status as a historico-philosophical concept and I ask how we practice that very premise in narrations of history and in the determinations of what even counts as history.”59 She does not ask what constitutes crisis as an event but rather how it functions as a conceptual framing of events, generating historical meaning. Building on Koselleck’s classic conceptual history of crisis, Roitman argues that ‘crisis’ is the driving force behind modern European philosophy of history in that it inserts a distinction between what happens in history and what ought to have happened, the crisis course of events as opposed to the ‘normal’ course, or what she calls the alienation of history ‘in terms of its philosophy’.60

Roitman’s account is singularly clear in distinguishing between the different epistemological levels on which we may examine the concept of crisis. Drawing on Niklas Luhmann’s theory of first and second order observation, she distinguishes between theories of crisis as first order observation of crisis events and her own second order observation of the implications and effects of such first order observations. For the present context too, it is important to maintain this distinction: We are not observing crisis, its causes, characteristics or patterns but the implications of the assumption that crisis informs history among the observers considered in the thesis, first and foremost Schmitt. One problematic aspect of Roitman’s analysis, however, is that she too readily accepts Koselleck’s conceptual history as the ‘authoritative historiography’ of the crisis concept.61 She does, quite rightly, point to the fact that Koselleck’s work on crisis must be read on two different registers since he himself is both a first and

59 Roitman 2014, 4.
60 Roitman 2014, 89.
61 Roitman 2014, 7.
second order observer of crisis. Yet, in the second sense, she – as most commentators – accepts his historiography as indeed the prime ‘authority’ on the subject, leaving unquestioned how his politically invested crisis theory informs his apparently disinterested conceptual history of the concept. In chapter 6, I argue that Schmitt deeply influenced Koselleck’s account of the history of the crisis concept and, by implication, the many commentaries that, like Roitman’s, adopt Koselleck’s account as their own.

One could also raise the objection that in her interpretations of different aspects of the financial crisis, Roitman might tend to overstress the role of the crisis narrative as a motor of political events. Crisis, she argues, is a judgement on history relying on a difference between how things are and how they ought to be. Thus, she analyses the subprime mortgage crisis as an interpretation of events amounting to such a judgement on history. The housing crisis was not about houses at all, because “brick and mortar were not visible to the financial system that was engaged in valuation”. Against this constructivist view, it may be objected, first that financial ‘valuation’ nevertheless always needs some material reference in the so-called real economy – if brick and mortar were of no importance, why not simply trade papers with no backing in any commodity? Second, it was indeed never about brick and mortar in themselves but about the ability of home-owners to pay off their debts with interest, that is, their labor power. And third, the crisis obviously had ‘real’ material impact on people’s lives. Surely, Roitman is right to question the premises for distinguishing between a ‘normal’ situation, in which some people default and lose their homes and livelihoods, and a crisis, in which many people do so – what is the point at which one turns into the other? And how do we insert this turning point in a generalized idea of the course of history by naming it a crisis? Yet, we should not necessarily view the experience of such events as merely a function of the concept ‘crisis’. I am interested here in how the philosophy of history implicit in the notion of crisis informs political reactions to events, not in debunking the real possibility of economic, social or ecological breakdown.

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62 Roitman 2014, 7–8.
63 Roitman 2014, 54.
Another insightful meta-commentary on the concept of crisis is Andrew Simon Gilbert’s *The Crisis Paradigm*. In this book, Gilbert comments on the often implicit assumption in crisis literature of an agreement between author and reader on the self-evident existence and character of a contemporary crisis. Not only is the unspoken premise of such analyses that a crisis already exists, but it has become a common gesture to open any form of scholarly analysis by identifying a local crisis within one’s own field of research or academic tradition.\(^{64}\) He characterizes this widespread taking for granted of crisis as a ‘conceptual paradigm’. He too finds inspiration in Luhmann, defining concepts as something which create meaning by limiting the ‘repertoire of possibilities for connecting meaningful references’.\(^{65}\) A paradigmatic concept, however, is one that applies across many different contexts and discourses, making it the object of many different modes of discussion. The crisis paradigm, then, makes the crisis concept a reference for many different types of interpretation, while observers (mistakenly) “remain under the impression that they are addressing the same topic”.\(^{66}\) Discussions about the origin and character of crisis, as well as its possible solutions, therefore remain confused by the fact that discussants do not agree on the topic of debate, while at the same time not noticing this disagreement. Furthermore, Gilbert rightly points to the fact that crisis discourse is often highly politically invested, and that it is often disseminated from positions of authority.\(^{67}\) Second order observation of how crisis functions as a historico-political concept, then, also entails critically uncovering the political ideology benefitting from a specific crisis theory.

Gilbert recognizes Roitman’s work as an important reflection on how the crisis paradigm tends to ontologize crisis as a structure of historical time. However, he criticizes her for inflating the concept of philosophy of history, arguing that not all crisis theories must necessarily contain historico-philosophical assumptions. He summarizes the characteristics of philosophy of history as an

\(^{64}\) Gilbert 2019, 3.
\(^{65}\) Gilbert 2019, 6.
\(^{66}\) Gilbert 2019, 7.
\(^{67}\) Gilbert 2019, 2, 22.
“immanent teleological dynamic toward a future of rationality”, an alienated relation between contemporary history and reason, and a symptomatology of crisis – i.e., the characteristics of Karl Löwith’s (1897-1973) classical diagnosis of secularized eschatology. In summary, Gilbert writes, “the concept of crisis operates upon an assumption that opportunities for novelty, openness and justice are afforded in moments of perceived failure”.68 In this characterization of how crisis narratives function, he is actually in line with Roitman; their disagreement pertains as to whether or not first order observations of crisis always and by necessity involve a utopian ideology of progress. As Gilbert points out, if we maintain that they do, then we have difficulties explaining the existence of non-progressive or anti-progressive – that is, conservative or reactionary – theories of crisis. His solution is to distinguish between crisis theories that rely on a philosophy of history in the sense defined above and those that do not – such as Koselleck’s.

Gilbert’s definition of philosophy of history is both common and meaningful, especially when he uses the concept to distinguish it from late 19th and early 20th century historicism, which held that historical periods and events should be understood in their own local context rather than integrated in a universal world history.69 The concept of philosophy of history as utopian, eschatological, and revolutionary is the standard definition in circulation among its conservative critics, such as Schmitt, Löwith, Taubes, and Koselleck. However, this narrow definition deprives us of a name for any account of history which, like Koselleck’s, “partakes of a narrative of decline, which traces a ‘pathogenesis’ of crisis and critique and attributes this to the rise of twentieth century totalitarianism”.70 What should we call such theories on the laws of historical development? I choose to call them philosophies of history, meaning all theories, explicit or implicit, on the nature of history and its unfolding in time. As I demonstrate in chapter 3, considerations on the role of crisis in

68 Gilbert 2019, 20–21.
69 Gilbert 2019, 68–69.
70 Gilbert 2019, 93.
history are by no means exclusive to revolutionary or utopian thought but rather a key element in conservative philosophies of history.

Roitman and Gilbert offer insightful meta-commentaries on the structure and functioning of crisis theories. Unlike them, however, I do not commit myself to solving the problem of crisis. For the discussion on crisis sovereignty, we do not need to counter crisis narratives with a concept of anti-crisis (Roitman) or to reclaim critique from crisis (Gilbert). Rather, the focus of the present study is how a certain strain of philosophy of history implied by the notion of crisis informs the concept of sovereignty and serves to legitimize it as an institution. This is not to say that all concepts of crisis necessarily imply the same image of historical time, such as Roitman and Gilbert both claim following Koselleck, nor that crisis theories necessarily generate support for a strong, quasi-absolutist sovereign. The relation to be explored here is rather the opposite: How sovereignty necessarily depends on a certain, often tacit image of crisis. Crisis in this sense is a qualifier of sovereignty, the latter being the operative term. I therefore leave it to other studies to develop an elaborate (meta-)theory of crisis.

THE PROBLEM OF CARL SCHMITT

Carl Schmitt is an enigma. As a thinker as well as a dramatic character, he represents a problem for any study engaging with his work. In the introduction to his book on Schmitt, The State After its End (1996), Friedrich Balke distinguishes his own work from the wave of Schmitt literature in that period as follows:

It casts doubt on whether the riddle Carl Schmitt may be solved on the grounds of his work alone. Rather, it proceeds from the hypothesis that this work answers to a problem (...) which transgresses the work, or more precisely: it answers to a problem, which surely can and must be
determined by taking a starting point in this work, yet which is not contained within the work as its core or center.\textsuperscript{71}

The approach to Schmitt in the present thesis follows Balke’s reading strategy: It does not assume that Schmitt was a systematic thinker whose work must be read as systematical in order to reconstruct a coherent theory unfolding through the intellectual development of his career. On the contrary, it takes the unsystematic nature of Schmitt’s writings seriously in order to uncover the inconsistencies and aporias as the loci of truth in and about those writings. It suggests that the problems which Schmitt poses are of greater interest for political thought than the theory he offers, and that the shifts and turns in his theoretical development are reactions to historical displacements of those problems. Balke proceeds to stress that this is not to be taken in a biographical sense: The point it not to demonstrate how Schmitt’s writings are simply imprints of the shifting political situations in which he found himself; historical documents rather than lasting ideas. Building on Balke, I suggest instead that the inconsistencies of Schmitt’s work point to problems which were the catalysts of his theory; yet, because of its limitations, the theory was unable to express these problems in full. The task would then be to bracket the efforts toward a positive theory in order to focus on uncovering the problems.

In contrast to Balke, a commentator such as Sjoerd Griffioen seeks to explain the difficulty in reconstructing a coherent ‘Schmittian’ theory by two lines of reasoning.\textsuperscript{72} First, following Jan Werner Müller, he argues that Schmitt’s aim was never to formulate clear concepts for neutral scientific analysis but rather to gain the upper hand in a battle of concepts. In concord with his own friend/enemy distinction, Schmitt viewed his intellectual opponents as enemies to be defeated, implying that concepts are weapons to be strategically employed. Second, and relatedly, Griffioen argues that the theological foundation of Schmitt’s thought prohibits him from openly disclosing the basic premises of his theory, citing Heinrich Meier: “Carl Schmitt envelops the center of his

\textsuperscript{71} Balke 1996, 15.
\textsuperscript{72} Griffioen 2022, 76–77.
thought in darkness because the center of his thought is faith.”73 In this, Griffioen takes the side of those Schmitt commentaries which see theology as an integral part of his thought rather than merely an ornamental element. Neither of these lines of reasoning, however, bring us further in uncovering a unified coherence in Schmitt’s work. On the contrary, they only mystify this unity by claiming that it exists yet escapes conceptualization. The strategic explanation makes it impossible to analyze his concepts since they apparently designate something other than what Schmitt ‘really’ means, and the theological explanation simply makes the core of his reasoning inaccessible to analysis. In comparison with this position, Balke’s suggestion appears much more convincing: that the theoretical coherence of Schmitt’s work is elusive because it is not there.

‘The problem of Carl Schmitt’ could and should be understood in a triple sense: First, Schmitt himself represents a problem. After the Second World War, he spent a great deal of his time and energy on self-interpreting his earlier writings and political engagements, as van Laak has shown. He continuously edited and republished his works, providing them with new introductions or appendices which shifted their framing, and he self-edited his collected volumes. He dramatized himself as a tragic figure, crystallizing in his person the decline of the *jus publicum europaeum* under the name of a ‘Christian Epi-metheus’ or ‘Hamlet’.74 When reading Schmitt’s texts, the reader must repeatedly wonder what the author is up to and what he is trying to gain by writing as he does. Not only are the texts polemical; they also represent calculated attempts at orchestrating their author’s reception as a dramatic persona. In engaging with Schmitt’s Weimar works, we should therefore be careful not to follow uncritically the late Schmitt in his self-commentary and self-orchestration, since this is structured by an overarching concern for his own rehabilitation as a serious, but misrecognized scholar of political theory.

Second, as noted above, Schmitt’s positive theoretical statements react to problems which are not always explicitly stated yet which occupy the author

73 Griffioen 2022, 77.
74 Schmitt [1950] 2015, 12; Mehring 2009b, 75.
as the structuring element of the given text. One such problem is that of ‘Rechtsverwirklichung’, the realization of law, or the extralegal origins of legality, which remains a central issue to Schmitt throughout his writings (see chapter 1). Another, related problem consists in the relation between power and normativity as the locus of jurisprudence. As Balke argues, the importance of Schmitt lies in such problems or problem complexes rather than in his specific theories. Some of these problems, we might add, are more explicitly addressed than others. The problem of depoliticization as a result of the professionalization of politics in modernity, for instance, is one than Schmitt explicitly thematizes time and again. These explicit problem statements might be understood to constitute what is often called Schmitt’s ‘diagnosis’. However, diagnostics already entails a theorization of the problem, even if it omits a solution, which means that the common liberal strategy of accepting Schmitt’s diagnosis but rejecting his solution implies also that one accepts his definition of the problem and thus his framing of the ensuing discussion.\textsuperscript{75} I reject this strategy to focus instead on the more implicit yet structuring problems. In this thesis, I shall argue that a historico-philosophical notion of crisis time is a problem for Schmitt that remains mostly implicit yet which, nevertheless, serves as a central structural principle for his theory of sovereignty. And I shall argue that sovereignty is best understood as an attempt at a solution to such a problem.

Third, in the second degree, there are also problems within Schmitt’s texts which are not identical with the problems he seeks to address. This secondary form of problem may be the key to unfolding the primary ones. These are problems which arise out of the attempts at theoretical solutions to the former kind of problems. These problems are not immediately historical, social or political but rather conceptual in origin and nature. They are the result of a discrepancy or gap between the issue Schmitt addresses and the concepts he employs. In missing their target, such concepts point to the fragmentary constitution of his solutions. Yet, as failed concepts, they also contain a residue of meaning pointing beyond the limitations of Schmittian political thought (see

\textsuperscript{75} See, for example, Dyzenhaus 1999.
chapter 2). In demonstrating the inadequacy of his theory, they reveal the self-conflictual nature not just of Schmitt’s concepts but of the institutions which they seek to express. In the thesis, I shall investigate the concepts of ‘exception’ and ‘sovereignty’ as failed concepts whose function is to be found in their problematic nature.

As mentioned, Meier identifies political theology as the “centre of Schmitt’s theoretical project”; the ‘unifying core’ of his ‘oeuvre’. According to Meier and Griffioen, this specific element constitutes the continuity of Schmitt’s thought as a gravitational center around which all his other concepts and questions orbit. Against this, Balke suggests that even if we were to concede that political theology is the core aspect of his work, we would have to question Meier’s claim that it has any unifying effect. “Does it not rather have a differentiating effect?”, he asks, “is it really the same political theology which we encounter in Schmitt’s different writings throughout the decades?” As Balke points out, political theology can mean any number of things, and Schmitt uses the term in various senses: sometimes polemically as a positive theo-political project, sometimes as a methodological approach based on a historical structural analogy between theology and politics, and sometimes more broadly as the basic assertion that any political system presupposes metaphysical assumptions about the world. The way he uses the concept, as well as the specific content he gives it, changes throughout the years according to the historical and political conjunction in which he finds himself – as a participant, an observer or both. Too often, even today, the attempt at systematizing Schmitt’s thought results in an assumption of continuity throughout his work so that, for instance, the ‘katechon’ of his post-war writings is taken to inform the philosophy of history of his Weimar period works.

We should therefore pay attention to the changing context of Schmitt’s texts and the different stages of his writings. Of course, as in any authorship, a mathematically exact periodization might be impossible or in any case entail nuancing so minute that it would defeat the purpose. Central questions remain structuring elements throughout his career, and concepts disappear and

reappear, sometimes after a hiatus of several decades, as in the case of ‘political theology’. Yet, in Schmitt’s case, socio-political history does provide some obvious turning points in the context of his intellectual activities and thus in his way of approaching theoretical problems. Apart from the studies and literary writings of his youth, three important stages can be distinguished: First, his Weimar writings on constitutional law, second his propagandistic and esoteric writings during the Third Reich, and third his post-war historico-philosophical writings on international law. The Weimar phase was his most prolific and produced some of his most interesting texts, beginning with Political Romanticism (1919) and ending with the 1932 edition of The Concept of the Political as well as Legality and Legitimacy of the same year. The Weimar writings deal primarily with constitutional law and state theory as the site of the political, and although they are polemical through-and-through, they are the least sentimental of Schmitt’s career since, at this point, he is neither aggressively on the offensive nor passive-aggressively on the defensive. Nevertheless, as I shall argue in the thesis, they are no less metaphysical but implicitly rely on a philosophy of history, albeit a less explicit one than that of his post-war writings. Of the Weimar texts, only On Dictatorship (1921) and Political Theology (1922) are properly decisionist, with Schmitt gradually transitioning toward institutional or ‘concrete order’ thought. The Schmittian concept of sovereignty, therefore, belongs in the context of his early 1920s production. These texts will be the core material for my discussion in the following thesis, which will draw on texts from different periods only insofar as they serve to contextualize or put into perspective this early engagement with sovereignty.

His second phase is the most difficult to characterize because it is the object of the most intense controversies in Schmitt commentary (including his self-commentary) and because of his shifting relationship with the NSDAP, in which he held a central position until 1936, where he was accused of opportunism and reduced to a peripheral role.\textsuperscript{77} Part of the texts are explicitly propagandistic and pro-regime, while others are deliberately esoteric and indirect in their polemical direction. To the first kind belongs his essay “The

\textsuperscript{77} Mehring 2009a, 378ff.
Führer Protects the Law” (1934) and his infamous leading role in the 1936 professors’ convention of the National Socialist Association of Legal Professionals under the title “Jewry in Jurisprudence”.78 To the latter belongs most prominently his 1938 book on Hobbes, The Leviathan in the State Theory of Thomas Hobbes, which Schmitt and his followers would later attempt to white-wash as a silent act of subversion against the regime; utterly unconvincingly, since the book is openly anti-semitic and criticizes Hobbes’ state theory for not being totalitarian enough on account of allowing a distinction between state religion and private beliefs.79 Common to both types of text is their strong concrete political engagement, overshadowing and undermining the theoretical content. These texts cannot be read independently of their historical context. This phase is therefore primarily interesting for historical and bibliographical reasons. Theoretically, it represents the collapse of Schmitt’s Weimar work, from the ruins of which he begins to build his authorship anew after the war.

The third phase of Schmitt’s writings might best be understood under the headline of a ‘Christian Epimetheus’, as he dubs himself in the self-pitying notes from his time as a prisoner in Nürnberg 1945-1947, published in 1950 as Ex Captivitate Salus. Epimetheus, in Greek mythology, is the brother and polar opposite of Prometheus, the rebel. He looks back at history rather than toward the future and is scorned for his hesitance and passively observing stance. This pseudonym encapsulates the most important aspects of Schmitt’s post-war writings: First, the attempt at controlling his own reputation by painting himself as a political outcast and passive observer. Second, the renewed emphasis on theology and theological terminology for political analysis. And third, and relatedly, the turn to explicit philosophy of history with concepts such as the ‘Marian image of history’ and the ‘katechon’ as the withholder of eschatological forces. The writings of this period, especially The Nomos of the Earth, resume and unfold some of the central traits of the Weimar writings, such as the problematic origin of legal norms and their relation to metaphysics.

78 Schmitt 1934; Nationalsozialistische Rechtswahrerverband 1936.
However, Schmitt’s new positioning decidedly shifts the context and emphasis of his analysis: Gone is his belief in the sovereign as the guarantor of legal stability, and instead we find a world-historical battle between the forces of acceleration and the katechontic institutions retaining them. The katechon, therefore, cannot simply be taken as the immutable symbol of Schmitt’s philosophy of history and transferred to his early writings. The philosophy of history of sovereignty must be reconstructed from its proper context in the early Weimar period.

I concur with Balke that political theology is a differentiating rather than a unifying centre of Schmitt’s work. Yet, as opposed to Balke’s study, the present thesis is not interested in the differentiation of Schmitt’s thought throughout his career. As stated in the beginning, while it approaches its subject through a reading of Schmitt, it is not intended as a thesis about Schmitt. Rather, it is interested in a specific concept of sovereignty as expressed in the book Political Theology and draws on his other writings only insofar as they may serve to contextualize and clarify this concept. It does not assume that ‘sovereignty’ to the late Schmitt, who had denounced the decisionism of his younger self, means simply the same as in the early work.

With so many problems then, why Schmitt? The importance of Schmitt lies in his localization of the questions of the theory of state not in a register of governmental normality but in its opposite: the register of the exceptional. When discussions of sovereignty and the form of politics repeatedly arise out of situations of crisis, we should make those exceptional situations the point of departure for a conceptualization of such forms. Many scholars of political theory have been drawn to Schmitt on account of this displacement, setting him apart from liberal theories of state since, as Andreas Kalyvas has it, “the specificity of liberal constitutionalism is to ignore the extraordinary”. Schmitt’s uncomfortable problematization of the liberal state represents a possibility of immanent critique since the substance of his theory is always the legal institutions holding liberal society in place, whether in the form of constitutional or international law. Yet, his intention, perhaps with the exception of

80 Kalyvas 2008, 179.
his most propagandistic texts from the Third Reich, was not to abolish the liberal state but rather to save it from its own deficiencies. He was first and foremost a jurist who believed in the power of the state to uphold order through law, even if he was also a conservative, a Fascist, and an opportunist, in rapid succession. For Schmitt, the point of facing the exceptional head-on was to restore and enforce the norm. Nevertheless, we may choose to remain with the exceptional and retain the question: What is anomalous within the norm? What is the antinomy of the nomos?

For a thesis engaging with Schmitt to distance its own position from his is nothing new. Indeed, it has become somewhat of a trope of left liberal scholarship to think ‘with and against’ Schmitt, as Chantalle Mouffe asserted in her introduction to the anthology The Challenge of Carl Schmitt. “The strategy is definitely not to read Schmitt to attack liberal democracy, but to ask how it could be improved. To think both with and against Schmitt – this is the thrust of our common endeavour.” According to Mouffe, Schmitt is “an adversary, but an adversary of remarkable intellectual quality, and one from commerce with whom we could benefit”. I do not share this approach. Of course, it goes almost without saying that we should not simply adopt Schmitt’s theory, lock, stock and barrel. Yet, to think ‘with and against’ him seems to imply a view on this theory as a reservoir of free-floating concepts and ideas from which we may pick and choose – claiming the ‘good’ ones for ourselves and rejecting the ‘bad’. For instance, in this view, Schmitt may ‘challenge’ liberalism to repoliticize itself by incorporating the friend/enemy distinction as a principle of ‘agonistic’ politics while leaving aside the political existentialism and nihilist implications inhabiting this formula. This would seem to amount to that occasionalism which Schmitt both criticized and was himself unwittingly an example of. Instead, I propose to insist that his theory in toto is

81 Mouffe 1999a, 6.
82 Mouffe 1999a, 1.
fundamentally flawed and to think through its flaws, pushing his concepts to their limits in order to expose the fundamental contradictions of political theory which they strive, but fail, to solve. In this way, rather than following the liberal ideal of including the adversary by rationalizing the irrational, we may dialectically unfold the conflictual foundation of irrationality.

CHAPTER OUTLINE

The thesis is organized into three parts. The first delimits the problematics and stake of the discussion on sovereignty, the second uncovers philosophy of history and crisis theory as the context for the discussion, and the third builds on the two previous parts to develop the concept of crisis sovereignty as well as point beyond it.

In part I, I set the limits of the discussion by demarking sovereignty; first as a problem and then as a concept. Chapter 1 focuses on sovereignty as a problem, asking why it is even a phenomenon worthy of the extensive disputes which have surrounded its nature, function and even existence since the beginning. To demonstrate the skepticism regarding the relevance of the issue, I first reconstruct the debate between Schmitt and his contemporary Hans Kelsen, who from a Neo-Kantian viewpoint argued that sovereignty was a fiction and as such irrelevant to juridical state theory. The problem which Kelsen denied, and which Schmitt sought to identify with the concept of sovereignty, I argue, was the problem of Rechtsverwirklichung, the realization of law, that is, the mediation between law’s normativity and its enforcement. From this starting point, I compare two recent currents of political thought both seeking to address the problem which Schmitt uncovered, namely theories of constituent power and theories of law-constituting violence. I argue that the first assumes an original democratic legitimacy of sovereignty too readily, while the second tends to simply equate sovereignty with violence. Combining their insights, this thesis considers sovereignty as a problem of legitimization that mediates between normativity and violence by reference to a metaphysics of crisis as the necessary condition of the modern state.
Chapter 2 turns to sovereignty as a concept. While the Cambridge School has approached sovereignty as a historically contested concept, I argue that part of the reason for this contestation is that the concept is itself constitutively contradictory and should be analyzed as such. To understand the meaning of sovereignty, we must understand how the concept contradicts itself. The chapter therefore leaves aside the canon of sovereignty theory to concern itself with three seminal attempts to conceptualize concepts as non-self-identical. The first of these is closely related to Schmitt’s own methodology, to which it owes a great deal: It is Reinhart Koselleck’s theory of counterconcepts as oppositional conceptual pairs, whereby one political concept defines itself against its polemical counterpart in an asymmetrical relation, which must therefore be understood as part of the constitution of the main concept itself. The second is Jacques Derrida’s deconstruction, which approaches conceptual contradiction not as an external tension between multiple concepts but as internal to the concept itself; deconstruction thus sees inconsistency as a fundamental feature of language and the analysis of concepts by necessity as aporetic. Whereas deconstruction focuses on difference and subsumes contradiction to aporia, the third puts contradiction at the center of conceptual analysis: This is Theodor Adorno’s negative dialectics, which sees contradiction as the logical extreme of non-self-identity as well as the only possibility of conceptual thought to reach beyond itself toward social conflict. While the present thesis analyses the concept of sovereignty primarily through a dialectical lens, the aim of the chapter is neither to disprove Koselleck and Derrida nor subsume them to dialectics but to draw on all three concepts of concepts in order to gain a nuanced understanding of political concepts as non-self-identical and contradictory.

Part II focuses on crisis theories and contextualizes the discussion historically, placing Schmitt’s theory of sovereignty in philosophical discussions on modernity and the state. In chapter 3, I reconstruct a tradition of conservative philosophies of history as a counter-narrative to Löwith’s classical secularization theory. Since Löwith, ‘philosophy of history’ has been defined as a utopian belief in progress, transferred from Christian eschatology into secular Enlightenment philosophy. Against this, I argue that conservative thinkers of history
and political philosophy such as Jacob Burckhardt and Juan Donoso Cortés developed their own philosophy of history understood as the belief that modern history is shaped by a specific structure of historical time, namely crisis. Whereas Löwith saw Burckhardt’s historiography as the exit from philosophy of history, I trace the contour of Burckhardt’s own philosophy of history, which paints modernity as a crisis invariably escalating toward catastrophe – the final dissolution of modern European culture. This secular anti-philosophical philosophy of history is mirrored in Donoso Cortés’s Catholic anti-eschatological eschatology, which demonstrates the apocalyptic character of conservative crisis theory. I place Schmitt’s theory of sovereignty in this tradition, arguing that it essentially emerges from a context of eschatological philosophy of history, yet that it also breaks with the conservative pessimism of Burckhardt and Donoso Cortés insofar as it theorizes the sovereign decision as a counterforce of crisis which is co-originary with modern crisis temporality itself. In a final, broadening section, I contrast this with Schmitt’s post-war theory of ‘katechontic’ history, arguing that the misconceived fusion between his earlier and later philosophies of history stands in the way of uncovering the specific relationship between sovereignty and crisis of his early work.

Chapter 4 examines how crisis temporality functions in Schmitt’s theory in comparison with that of Thomas Hobbes. Through a reading of Schmitt’s Hobbes interpretation, developed in an ongoing exchange with historian of political philosophy Leo Strauss, I argue that the concepts of state of nature and state of exception in parallel ways integrate crisis temporality in the foundation of the state. In 1920s Weimar, Strauss as well as Schmitt saw in Hobbes a related spirit who conceived of the English Civil War at the end of the European Religious Wars as the natural condition of man, who must continuously be saved from self-destruction by the integration of this crisis in the structure of the sovereign state. Strauss explicitly theorized Hobbes’ intervention as the constitution of modernity through a series of crises, while Schmitt drew inspiration from him for his own project in the wake of the First World War. Yet, Schmitt’s historical situation was not simply identical to that of Hobbes, and neither is the concept of the state of exception identical to that of the state of nature. While Hobbes was still able to believe in natural right as based in a
common metaphysics shared by all rational humans, Schmitt saw the collapse of Europe as the result of fundamental metaphysical disintegration, and thus his state of exception cannot be understood as a feature of natural law but rather arises out of a normative vacuum.

Part III combines the insights of Part I and II on sovereignty and crisis time. Chapter 5 unfolds the concept of crisis sovereignty through a close-reading and critique of Schmitt’s *Political Theology*. I argue that the defining term of Schmitt’s theory of sovereignty, exception, should not be understood either in the juridical sense, as a legal institution, or in the historico-philosophical sense, as crisis, but rather as both simultaneously and alternately, giving rise to a dialectical relation within the foundation of sovereignty. This constitutive dialectic has been largely overlooked, in part because Schmitt himself, in a performative attempt at consolidating the sovereign power to guarantee the order of law, neglects its metaphysical side for the benefit of the juridical formalism of decisionism. Yet, if we accept Schmitt’s emphasis on the state of exception as a legal institution, we run the risk of overstating the power of sovereignty while also overlooking the proper source of its claim to legitimacy. Crisis is, I argue, both the source of and a continuous threat to sovereignty, which can neither do without nor ever ultimately tame the metaphysics of modern crisis temporality. Linking this analysis with contemporary debates on crisis and sovereignty, I then discuss how the concept of crisis sovereignty may allow us to understand the chasm between interpretations of crisis as a tool of government on the one hand and interpretations of expressions of sovereign power as a crisis of the nation state system on the other.

Chapter 6, finally, turns the argument of the preceding chapters around to investigate how the notion of sovereignty, in an inverted move, has come to inform a historico-philosophical notion of modernity as crisis time. Examining and comparing the examples of Koselleck’s and Agamben’s crisis theories, I argue that they presuppose a centralized and decisionist personal power of the sovereign as the locus of modern politics and motor of crisis. In Koselleck, the crisis emanates from the empty center of the lost sovereign power of decision, which has been repressed by Enlightenment philosophy and its ideal of historical progress. To Agamben, conversely, the crisis consists not in a deficit but
in a surplus of decision as a result of the totalitarian tendency of a sovereign logic permeating every area of life. Both of them, however, see the crisis as a paradigmatic mark of modernity while simultaneously diagnosing their own time as a uniquely intense situation: the permanent crisis. Between them, they illustrate the structure of a range of theories analyzing our contemporary as a time of universal crisis. To denaturalize this narrative and gain a critical distance, I turn to Walter Benjamin’s double critique of sovereignty theory and the historico-philosophical category of modernity. While Benjamin has been integrated into the tradition of sovereignty theory by Agamben and others, I argue, we may, on the contrary, undo this entanglement and enlist his thought in the critique of crisis sovereignty.

A NOTE ON TRANSLATIONS

In the thesis, I have had to amend many translations as well as retranslate many passages from Schmitt and others. There are two main reasons for this. First, jurisprudence as a science consists in part in conflicts over the interpretation of concepts and, as such, terminological accuracy is a core feature of its methodology. Such accuracy is often lost or diminished in translation, not least because German law and English law belong to two different traditions, that is, Roman and common law respectively, and therefore differ in what terminology is available to them. It is extremely difficult, for instance, to translate the concept ‘Recht’ into English with any consistency since it denotes both ‘right’, ‘law’ and the order of law respectively. Often, these different meanings are in direct contradiction with each other, so that when Schmitt speaks of ‘Recht’, for example, he means the principle of jurisprudence in a foundational sense as opposed to positive laws. This is lost if the translation renders ‘Recht’ simply as ‘law’, as it often does. Law retranslated into German would be ‘Gesetz’, which to Schmitt is the opposite of Recht, or legality in contrast to legitimacy.

Second, many translations of Schmitt’s works are simply not very good. His central works came out in English in the period immediately after his death
and have not been revised in accordance with the great amount of research that has accumulated since then. Furthermore, although Schmitt is as widely read and interpreted as many left-wing thinkers belonging to critical theory or post-structuralism, there is no critical edition in the original language wherein revised English editions might find support. There are thus many inconsistencies, imprecisions and mistakes in texts such as the English version of Political Theology. Indeed, such translation errors may have contributed to the relative obscurity in the English reception of some of the topics examined here. For instance, ‘geschichtsphilosophisch’ is translated as ‘philosophical-historical’. Admittedly, there is no good translation for this very German term, but in cases where rephrasing as ‘philosophy of history’ is impossible, ‘historical-philosophical’ would at least be preferable, if one does not choose the more accurate neologism ‘historico-philosophical’, as I have chosen to do, following Roitman.

In order to enable the reader to check my references, I have chosen to follow the existing translations as closely as possible, amending them when necessary and retranslating when amendment proved insufficient. Both amendments and my own translations are indicated in the notes, and I also provide references to the original so the reader can check the appropriateness of the translations.
PART I: SOVEREIGNTY AS PROBLEM AND CONCEPT
1. SOVEREIGNTY AS PROBLEM: LEGITIMACY AND THE REALIZATION OF LAW

Why ask the question of sovereignty? As a theoretical concept, it is perhaps the most abstract in the terminology of state theory, and, as a political concept in public discourse, it is used more often as a slogan than as any definable category, rendering its meaning obscure though pathos laden. As Hent Kalmo and Quentin Skinner write, the concept of sovereignty is contested to the point where commentators have argued that it is irrelevant for political analysis and thus should be simply left behind in order to make space for more practical lines of inquiry.\(^1\) At least since the beginning of the 20\(^{th}\) century, voices have been raised to declare its obsolescence.\(^2\) Some see state sovereignty as an outdated category in the face of globalization with its world-market and transnational conflicts.\(^3\) Andrew Arato has developed a theory of ‘post-

\(^1\) Kalmo and Skinner 2010.
\(^2\) Bartelson 2010.
\(^3\) Vogl 2015.
sovereign constitution making’ to rid constitutional law of this concept, while others, such as Richard Tuck, have shifted the weight away from a sovereignty-free jurisprudence and toward a political theory of governance. And Michel Foucault, famously, declared it time to cut off the king’s head in political philosophy, focusing instead on a complex web of power technologies within institutions. Sovereignty is indeed obscure; it is difficult to observe or locate and elusive both as a phenomenon and as a concept. Why concern oneself with such an intangible notion rather than more immediately observable matters such as the administrative practice of the state apparatus, the juridical mechanisms of the legal system or the physical enforcement of laws through the monopoly on violence? After all, these are all very important topics in the study of state power.

Schmitt’s answer was that sovereignty was a liminal concept – a Grenzbegriff. We should read this qualifier in a double sense: Sovereignty is liminal in the sense of being a fringe topic at the periphery of normal governmental and juridical process, certainly, but also in the sense of delimiting the political, the state, and law. If it is obscure, then it is because it is the necessary condition of political and juridical science and thus escapes the terminology which can only come after its assertion. He made this point in a reply to the prominent neo-Kantian legal scholar Hans Kelsen, who had argued against the need for the concept of sovereignty for jurisprudence. The category of sovereignty, Kelsen claimed, was a conceptual chimera engendered by the muddling together of a sociological and a juridical notion of the state. Jurisprudence to him was a science of pure normativity which could be studied without any reference to some origin of the legal system in sociological conditions. In contrast to this position, Schmitt brought forward the theory of sovereignty as a way of addressing the mediation between norms and social reality, or the problem of Rechtsverwirklichung, the realization of law.

In this chapter, I will develop the concept of sovereignty as a problem of the realization of law. This problem, I shall argue, is one of legitimization: How

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4 Arato 2016; Tuck 2015.
5 Foucault, Fontana, and Pasquino 1980, 121.
is the transition from pure normativity to an enforceable order of law legiti-
mized? In the second half of the chapter, I will examine two contemporary
strains of thought which have taken up this problem from Schmitt once more,
yet sought alternative answers. The first is the theory of constituent power,
which focuses on the power of the people as the origin of the sovereign realiza-
tion of law, providing it with democratic legitimacy. The second and to a
certain degree opposed position is the literature focusing on the realization of
law as a moment of violence, ruling out any such democratic legitimacy and
focusing instead on the necessary entanglement of law with violence. Whereas
the theory of constituent power assumes a democratic origin of law, this liter-
ature assumes an authoritarian origin of law. Both, however, raise and analyse
sovereignty in interesting ways as the problem of the legitimacy of the origin
of law. Nonetheless, rather than drawing from their respective theories of sov-
ereignty, I shall draw from their insistence on this problem as the most
enlightening approach to the study of sovereignty. First, however, I will return
to the debate between Kelsen and Schmitt in order to situate the discussion
and open up the problematic.

Kelsen and the Fiction of Sovereignty

In his 1932 book *Legality and Legitimacy*, Schmitt criticizes the tendency of
legal normativism to identify legality with legitimacy within the liberal constitu-
tional state or, as he calls it, the legislative state. In such a view, he argues,
right (*Recht*) is reduced to positive law (*Gesetz*), and the justification of force

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6 Schmitt 1932. According to Schmitt, the term ‘*Rechtsstaat*’, commonly though problem-
atically translated as ‘constitutional state’, is a meaningless qualifier of the liberal
parliamentary system since any state is a *Rechtsstaat* insofar as all states claim to institute
law (*Recht zu verwirklichen*), Schmitt 1932, 19. This view on the concept is shared by
Kelsen, though for opposite reasons: According to Kelsen, ‘state’ is simply another word
for *Recht* or the legal system, meaning that any state is a *Rechtsstaat* – and the claim
that the state institutes law is meaningless since it is itself nothing but law, Kelsen [1920]
1928, 24–27.
to its legality. Here, we come upon a problem of translation which is not easily solved: Normally, the German ‘Recht’ would translate roughly to ‘law’, but this would precisely blur the distinction between Recht and Gesetz that Schmitt is trying to make. Recht in German can mean right or law respectively, yet also it can also mean both of these collectively in the abstract sense of the sphere of justice. We may in some cases translate it as the ‘order of law’, yet this excludes its reference to Rechtfertigkeit or justice, that is, legitimacy rather than legality. The ambiguous meaning of Recht is thus central to the problematic of legality/legitimacy as sketched by Schmitt. The ideal he criticizes is a ‘closed system of legality’ without reference to any source of legitimacy.7

Already in Political Theology, the prominent neo-Kantian legal scholar Hans Kelsen was the main object of a similar criticism. In a thesis published in 1920, The Problem of Sovereignty and the Theory of Public Law, Kelsen had argued for precisely such a closed system of legality when analyzing the concept of sovereignty from the point of view of his ‘pure theory of law’. Law or Recht, he claims in the book, is an ‘independent system, especially different from nature’, and its study must abstain from considering anything beyond its field: “For the purity rendering any science possible consists precisely in remaining within the limits defined by its object and method”.8 Adhering strictly to a neo-Kantian epistemology, Kelsen delimits the knowledge potential of jurisprudence by reference to its object, the law, and thereby excludes anything beyond law – such as the extralegal sources of law – from consideration. This also means that the problem ‘what is law (Recht)?’ lies outside the boundaries of jurisprudential inquiry. Just as the logician can never define truth, Kelsen

7 Schmitt 1932, 8. Written in 1932, Legality and Legitimacy is clearly invested in a heated and politically explosive debate about the imminent threat of national socialism to the Weimar constitution. Schmitt himself, in a 1952 commentary on the text, would later retrospectively claim that it was an ‘outcry’, a ‘protest’ against and an ‘exorcism’ of the vulnerability of the Weimar constitution to a ‘legal revolution’, see Schmitt 1958, 345. For a critical contextualization of the text’s political investment and Schmitt’s anti-socialist, authoritarian bias, see McCormick 2004. What is of interest here is not the positive claims of Schmitt’s theory but rather the problem of legitimacy he identifies within the liberal state, much in the same way as he did in the early 1920s.

argues by referring to Kant, and the biologist can never define life, the jurist searches in vain for a determination of the scientific object ‘law’. Jurisprudence is a ‘world for itself’, and law is its uncircumventable precondition.9

Building on this premise, Kelsen dismisses the problem of sovereign power as a pseudo-problem. From the perspective of jurisprudence, he claims, it makes no sense to speak of a sovereign state, since the concept of state is synonymous with law (Recht): ‘state’ simply means norm or the order of law, that is, the law considered in its totality. Sovereign simply means ‘highest’, and the sovereign state is the highest normative order, which cannot be derived from any other norm. The observer (the jurist), therefore, presupposes that specific order to be the highest underivable norm.10 The problem only arises when jurisprudence hypostasizes the concept of sovereignty as a sovereign subject and begins to conceive of the state as a legal person. Jurisprudence, like the sorcerer’s apprentice of Goethe’s poem, is haunted by its own creation.11 It should be noted that Kelsen is not only rejecting a conception of the sovereign as a natural person, i.e., a monarch or head of state, but specifically as a legal person. Juridical persons, he argues – including physical persons12 – are always personifications of legal norms. In most cases, this personification is justified since the person represents a specific section of the normative order, for instance as defendant, complainant, prosecutor etc. But the would-be person of the sovereign must be the personification of the normative system in total and therefore serves no purpose. The physical person can be said to have rights and obligations because the content of these is given by the behaviors of humans, but the state does not correspond to any such natural reference and therefore can have no rights or obligations.13 Thus, sovereignty, in any

12 Kelsen uses ‘physical person’ to designate the legal aspect of the individual human being, whereas ‘juridical person’ can be any form of personification, for instance of an organization. The physical person, however, is as much a legal fiction as other juridical persons since it abstracts from all aspects of the human being which do not concern the law.
other sense than as the order of law, is pure fiction and only serves to confuse juridical state theory.

In a certain sense, of course, it is reasonable for constitutional jurists to limit their occupation to their own field by considering only the strictly legal aspects of a problem. Kelsen, however, does not simply distinguish between intra- and extralegal questions but, more importantly, argues that different sciences, by virtue of their difference in scientific object, are prevented from communicating with each other. Specifically, the concept of ‘state’ in a sociological-naturalistic sense is to him something completely separate from the concept of ‘state’ in a juridical-normative sense and, thus, sociological research is committing a fallacy of category when attempting to apply its methods to the context of law.\textsuperscript{14} Sociology has a confused concept of the state insofar as it considers it a ‘social fact’, i.e., a Kantian ‘thing in itself’ rather than a scientific object \textit{produced} by the specific scientific method of study. Jurisprudence must consider the state not in its being (\textit{Sein}) but rather as belonging to the sphere of ‘ought’ (\textit{Sollen}), which is purely normative and without reference in factuality. From this it follows that Kelsen not only delimits jurisprudence as the science of pure normativity but also prohibits other sciences from examining possible links between the normative and the factual, such as the source of law in social reality. The question of sovereignty as \textit{constituent power} is thus preemptively rendered invalid. Such a line of inquiry, Kelsen tirelessly repeats, is a ‘metaphysical realism’, a quest for ‘substance’ and ‘condensed metaphors’\textsuperscript{15}, the offspring of confused scientific minds hunting for ghosts.

In \textit{Political Theology}, Schmitt openly directs his critique at Kelsen as the main representative of legal positivism, and this debate is a long established topic in the literature on his theory of sovereignty.\textsuperscript{16} Indeed, many central claims made in the book read as direct reactions to what Kelsen argues in \textit{The Problem of Sovereignty} and other texts from the same period. Against Kelsen’s dismissal of a concept of sovereignty distinct from law (\textit{Recht}) as a purely

\begin{itemize}
\item \textsuperscript{14} Kelsen [1920] 1928, 10.
\item \textsuperscript{15} Kelsen [1920] 1928, VI, 19.
\item \textsuperscript{16} Strong 2005; Schmitt and Kelsen 2015; Meierhenrich and Simons 2017, chaps 8, 18, 19.
\end{itemize}
metaphysical and therefore irrelevant concern, Schmitt holds that we cannot understand law in its foundation without recurring to metaphysics. And against Kelsen’s sharp distinction between sociology and jurisprudence, Schmitt argues that we must understand the relationship between politics and metaphysics as a ‘sociology of juridical concepts’. In a response to Kelsen, he writes:

To obtain in unadulterated purity a system of ascriptions to norms and a last uniform basic norm, all sociological elements have been left out of the juristic concept. [...] Using this procedure, Kelsen arrived at the unsurprising result that from the perspective of jurisprudence the state must be purely juristic, something normatively valid. It is not some reality or a thought-construct alongside and outside the legal order. The state is nothing else than the legal order itself, yet (that this is the problem apparently causes no difficulty) conceived as a unity.

Although this critique may seem excessively harsh, and Schmitt does have a propensity for polemics, it is actually a fairly accurate representation of the conclusion Kelsen himself draws from the premises of his pure theory of law:

*Here*, the starting point, which the reader must accept, is the following fundamental and surely indisputable position: that the state – insofar as it is the object of the study of law [Rechtserkenntnis], insofar that a theory of state law [Staatsrechtlehre] exists at all – must be of legal nature, i.e., must be the order of law itself or a part of the same precisely because nothing except the law can be conceived in ‘legal’ terms [rechtlich], and to conceive of the state in legal terms (which must be the meaning of state law theory) can mean nothing else than to conceive of the state as law [Recht].

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19 Kelsen [1920] 1928, 11–12, emphasis in original, my translation. A more standard translation of ‘Staatsrechtlehre’ would be ‘constitutional theory/doctrine’, but since Kelsen is
Kelsen excludes any extra-legal meaning of the concept of sovereignty by claiming that jurisprudence can conceive of nothing but the legal. Strictly speaking, this is not a circular argument, since he repeatedly points to the fact that he is merely setting the limits for *juridical thought* as a discipline which must keep to the field of research defined by its methodology. However, as Kelsen also prohibits jurisprudence from communicating with other disciplines – such as sociology – it is indeed unsurprising that he can define the state in purely legal terms, that is, *as law* without any reference to reality outside of law. By returning to Kelsen, we can thus uncover the meaning of Schmitt’s ‘sociology of juridical concepts’. When Schmitt, in the third chapter of *Political Theology*, writes that “all significant concepts of the modern theory of the state are secularized theological concepts”, he qualifies this conceptual approach by referring to his approach as a sociology of juridical concepts. This would seem to imply a Weberian examination of the socio-historical role of juridical concepts, yet, in practice, his methodology belongs rather to the fields of political theory and jurisprudence than sociology. Taken in the context of the debate with Kelsen, this programmatic statement represents not so much a developed methodology as a rejection of the call to confine the theory of state and sovereignty to the strict boundaries of jurisprudential standard terminology. The concept of sovereignty, as Schmitt argues at the outset of his book, does not belong to any one sphere but is rather a *liminal concept*, a concept that delimits the sphere of the legal. Thus, the precondition of jurisprudence, the existence of which Kelsen acknowledges but excludes from his analysis, is precisely sovereignty in the metaphysical, ghostly sense which he dismisses.

Specifically, Schmitt claims in the parenthesis quoted above that Kelsen thereby brushes aside the problem at the roots of the entire discussion of sovereignty: How to meaningfully conceive of a plethora of various and diverse laws as a single and indivisible unity in the form of the state? Why even distinguish between the concepts of state and laws if the former is only the total sum explicitly discussing the relation between state, law, and constitution, I have chosen the admittedly more awkward, yet also more direct translation ‘theory of state law’.

of the latter? As Stanley Paulson notes, the interest in unity is actually a trait common to the two scholars: Both concern themselves with the unity of the order of law. However, whereas the unity of law to Kelsen is a necessary premise for his system, without which jurisprudence would be nonsensical and thus no longer worthwhile, to Schmitt it is a problem that continuously challenges juridical thought as well as political practice. It is not enough to locate the unifying principle in a ‘basic norm’ as the highest reference point for the entire system of norms, since this only postulates the identity between legal plurality and normative unity rather than demonstrating how such an identity comes to be. To Schmitt, it is a question of legitimacy. Even the legislative state, he argues in *Legitimacy and Legality*, inadvertently seeks recurrence in legitimacy through legality: “one must not overlook the fact that the parliamentary legislative state, with its ideal, closed, and gapless system of legality of all state action, developed a thoroughly distinctive system of justification”. This system of justification is legality itself, that is, rather than dispense with the principle of legitimacy entirely, the legislative state and its theorists paradoxically argue for the legitimacy of the legal system by reference to its legality. Schmitt quotes Max Weber on this: “the most widely prominent form of legitimacy today is the belief in legality”. Any system must justify itself, and thus the system of pure legality does not escape legitimacy but rather only raises legality to a source of legitimacy in itself.

**Rechtsverwirklichung**

Schmitt’s issue with Kelsen’s theory of pure law, then, is not that it misrepresents law but rather that it dismisses its fundamental problem altogether: that of the relation between legitimacy and legality. Already in his early Weimar works, this is a question concerning the realization or actualization of law; in

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21 Paulson 2017, 511–12.
German, ‘Rechtsverwirklichung’. Kelsen, on the other hand, specifically banishes the concept of realization from jurisprudence. In a discussion of Hugo Krabbe’s *Doctrine of the Sovereignty of Law*, he criticizes its author for operating with a double concept of realization as the purpose of the state: realization of law and realization of consumption [*Genuss*], where the former corresponds to legislation and the latter to administration. Both are, in reality, only the single process of using and producing laws, Kelsen argues: “‘Realization’ as pure fact in any case falls outside the framework of juridical-normative understanding”.24 When Krabbe draws this concept into his argument, Kelsen maintains, he is making the mistake of confusing formal law with the material content of law, that is, the normative with the descriptive. This leads Krabbe to abandon unwittingly his initial thesis of the sovereignty of law (*Rechtssouveränität*) and reach the misleading conclusion, based in a hypostatization, that the state *creates* the law. “If the state *engenders* the law [*Recht*], then the state is precisely – same as in the teaching of the theory of state sovereignty – the source of law, and thus the state and not law is sovereign.”25 Again, the concept of the realization of law according to Kelsen introduces an inadmissible distinction between the state and law, which renders the state incomprehensible to jurisprudence since the latter can only know that which lends itself to legal terminology.

Schmitt’s polemics against Kelsen both in *Political Theology* and other works can be reconstructed as the attempt to revitalize the question of *Rechtsverwirklichung*. Indeed, it is a problem that remains central throughout his life’s work, and later texts such as *The Nomos of the Earth* center on it. In order to understand its own foundation, jurisprudence – contra Kelsen – must concern itself with the realization of law: “The form of law [*Rechtsform*] is ruled by the idea of law [*Rechtsidée*] and the necessity of applying a legal notion to a factual situation, that is, by the realization of law in the widest

sense."\(^{26}\) The basic question of jurisprudence, which is itself a question belonging to the realm of political philosophy, is thus how to relate the legal ideal to the real, or how to mediate between \textit{Sollen} and \textit{Sein}. The specific form of law within a specific state depends on this relation between an idea and its materialization. What is important to Schmitt is precisely the creation of law, insofar as this act of creation itself co-determines the internal structure of the created. Any juridical decision, he argues, entails a creative moment of transformation since it can never be derived completely from its legal premises. Even the wrong decision, \textit{because} it is wrong, ‘contains a constitutive moment’, in that it visibly contradicts a preexisting norm and thus causes a displacement within the legal system.\(^{27}\) Yet, the sovereign decision is decision in an ‘eminent sense’, and thus the concept of sovereignty quintessentially expresses the relation between the order of law and its inherent reference to an original act of creation.

As Jean-François Kervégan argues, this is the point at which philosophy of law by necessity transgresses its border with political philosophy, as the theory of normativity leads to the fundamental question of the “good regime or the ultimate ends which the political order must serve”\(^{28}\). To have recognized the inextricable link between the juridical and the political, he claims, is Schmitt’s merit over Kelsen. The problem of the realization of law is necessarily linked with the question of the legitimacy of law. Kelsen was able to sidestep legitimacy in favour of legality by bracketing the intersection of jurisprudence and politics in the issue of the realization of law. But, as Schmitt shows, the problem

\(^{26}\) Schmitt [1922] 2009, 35, my translation. The English translation of the UCP edition completely distorts this point: ‘\textit{Rechtsform}’ is translated as ‘legal form’, ‘\textit{Rechtsidee}’ as ‘legal idea’ (that is, \textit{any} legal idea), and, worst of all, ‘\textit{Rechtsverwirklichung}’ becomes ‘the self-evolving law’. Why would Schmitt even concern himself with sovereignty if the law was self-evolving, one might ask? Furthermore, when Schmitt states that the idea of law needs a specific ‘\textit{Formung}’ (formation), this in the English becomes simply ‘form’ – i.e., the opposite of what he is arguing, namely that the idea only gains form through external formation. It seems that the concept of \textit{Rechtsverwirklichung} is so foreign to Anglo-American jurisprudence that it resists representation in English. As a result, this central argument is lost to readers of the translation.


\(^{28}\) Kervégan 2011, 164.
returns every time the ‘closed system of legality’ proves unable to sustain itself, as was the case in the Weimar republic. Rather than dismissing it like Kelsen, other liberal thinkers, such as Hans Blumenberg and Jürgen Habermas, have taken up the challenge from Schmitt, attempting to re-establish legitimacy from within the liberal legal system, though without putting an end to the discussion.29 Although Weimar is an illustrative example, Kervégan suggests, Schmitt’s critique is not only relevant for a state in crisis but points to an inner aporia in the constitution of the normally functioning liberal state: There is always a political ‘surplus value’ of the legal which cannot be captured in purely legalistic terms.30 Jurisprudence therefore cannot limit itself to the sphere of the legal, if it wishes to know the source and nature of its object, but must become political philosophy.

Peculiarly, Kelsen himself, in his preface to the thesis, declares that the force driving the different jurisprudential disciplines forward must be an implicit ‘impulse toward unity’. The unity of knowledge (Erkenntnis) is not just a matter for philosophy but for all the sciences, and thus, ‘philosophy of law must be immanent to jurisprudence’.31 Yet, the aim of philosophy of law, we may object, must be to challenge the concepts of jurisprudence, to question their internally harmonious systematicity and uncover their hidden implications and unconscious premises. Kelsen, however, contents himself with acknowledging the fact of such sources of juridical thought outside jurisprudence itself: “Only an uncritical dogmatism would believe that a system of positive law without presuppositions is possible. In the end, the only important thing is: to be conscious of the – relative – a priori of this system.”32 Thus,

29 Kervégan 2011, 159–60, 165–69. Habermas bases the legitimacy of legality in neither the form nor the content of laws but in legal procedure. In order to not reduce legitimacy to the pure fact of legality, he distinguishes between the empirical procedure and its ideal reconstruction. However, since the distinction legitimacy/legality relies precisely on the relationship between empirics and ideality, legal procedure cannot be abstractly reconstructed independently from its real process, and thus his argument leaps between the actual and the ideal, which it was supposed to reconcile, Kervégan 2011, 167–68.

30 Kervégan 2011, 169 ff.
31 Kelsen [1920] 1928, VI.
32 Kelsen [1920] 1928, VIII.
jurisprudence has to recognize that its conditions of possibility lies outside itself, but as soon as it has realized this, it can limit its concern to the immediate ‘a priori’ premises of its own field. Who then may legitimately question the presuppositions which jurisprudence itself is obliged to accept?

Ultimately, Kelsen’s criticism of state sovereignty also includes a political concern. To consider the state, rather than the law, sovereign, he argues, is to posit the state as free, i.e., as an autonomous power (Gewalt) unbound by law. The state theory of law essentially attempts to conserve within liberal constitutionalism a reserve of monarchical authority: “It is the attempt of German state theory, which has been politically successful but a failure according to legal logic, to conserve an element of monarchical absolutism even where a formal constitution [konstitutionelle Verfassung] is in force”. There is more than a little truth to this, and Schmitt himself, with his enthusiasm for the office of Reichspräsident, is a prime example of this political investment in the theory of sovereignty. To acknowledge this, however, does not solve the problem of legitimacy which the theory of sovereignty addresses. It does challenge the adequacy of the sovereign solution, as I shall return to below – but the problem remains. Perhaps we may take Kelsen’s vehement rejection of the theory of state sovereignty based on its political implications as illustrative of the general discomfort with asking the question of sovereignty. It seems that by asking this question, we are precisely addressing an element of absolutism within constitutionalism which is understandably highly upsetting to liberal state theory.

**Constituent power or violence?**

The problem of sovereignty, then, has to do with the realization of law. If the function of sovereignty is to institute law, then the nature of sovereignty consists in the way law is instituted. One line of research which has addressed sovereignty as a way of instituting law is the literature on ‘constituent power’

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spearheaded by Andreas Kalyvas with his work on the politics of the extraordinary. Theories of constituent power often rely heavily on Schmitt, especially his *Constitutional Theory* (1928), although they approach the subject from a perspective of democratic foundations. Some are critical of Schmitt’s decisionism, while others, such as Kalyvas, insist on reinterpreting him as a democrat and follows Andrew Arato in characterizing Schmitt’s “concept of sovereignty as ‘revolutionary-democratic’ hinging on left-wing radicalism”. Constituent power denotes the source of the extraordinary political ability or right to found a constitution; a political act operating outside of institutionalized politics and constitutional law itself. Constituent power precedes and punctuates constitutional law. In this sense, it is the power which allows the realization of law.

According to Kalyvas, “constituent power is the truth of modern democracy” in both a historical and an analytical sense. On the historical side, he argues that the conceptual history of constituent power is “co-original and co-eval” with the theory of popular sovereignty. Constituent power is a democratic form of the realization of law in that it has its roots in a philosophical doctrine of the people as the source of all political power. On the analytical side, he notes an “elective affinity” between constituent power and democracy insofar as they involve collective acts of self-legislation. Following Kalyvas, we can speak of constituent power only in the sense of a power from below, i.e., a massive popular demand for a new or revised constitution. Although he follows primarily the historical link with popular sovereignty to argue this necessary link between constituent power and democracy, Kalyvas often identifies ‘sovereignty’ generally and abstractly with constituent power – that is, any form of sovereignty, popular or otherwise. It is the merit of Schmitt, he writes, to have shifted the concept away from “authority of command to the concept of

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35 Kalyvas 2008, 115. The notion of Schmitt as a radical democrat seems to be more a projection of Kalyvas’s own project than any faithful reading of Schmitt. It is entirely contingent on Kalyvas’s equation of sovereignty with the will of the people, which ignores Schmitt’s explicit claims to the contrary and suppresses the extremely problematic character of his concept of ‘people’.

36 Kalyvas 2018, 87.
sovereignty as the creative, founding act of the constituent power”.

This allows him to reconstruct any mentioning of sovereignty in Schmitt’s writings as popular sovereignty and thus equal to constituent power. This identification of the two concepts is common to the theories of constituent power: Martin Loughlin, for instance, quotes Schmitt on characterizing constituent power as a liminal concept, even though the latter is in fact writing about sovereignty and not *pouvoir constituant*.

The literature on constituent power thus seeks to solve the problem of the realization of law which was opened by the Kelsen-Schmitt debate on sovereignty by basing this founding act in the democratic legitimacy of the people’s will. Kalyvas writes: “Precisely because this concept of sovereignty recalls the normative ideal of political autonomy at the center of modern democratic theory, it points to a distinctive theory of political legitimacy, which focuses primarily on the making of higher law. Participation in the founding defines the modern experience of democracy.” He is speaking here specifically of democratic regimes, yet on the other hand argues that this concept of democracy is the basis of all regimes because their foundings “emanate from the constituent power of the people”. Every realization of law depends on the consent of the people who would otherwise revolt or refuse compliance. This, however, does not mean that every regime form is legitimate but rather that, since every regime *depends* on democratic participation for legitimacy, the degree of legitimacy of the regime is proportional with the degree of participation.

One difficulty with the theory of constituent power is that it appears to displace rather than resolve the problem of unity which was so central to the Kelsen-Schmitt debate. It relies on Hannah Arendt’s notion of power, which

37 Kalyvas 2008, 90.
38 Loughlin 2014, 218. Antonio Negri, in contrast, writes of sovereignty and constituent power as opposites – but in the sense that the former collects all the negative and the latter all the positive connotations of the same event, namely a ‘constituent act’, Negri 1999, 22.
40 Kalyvas 2018, 99.
she defines in contrast to violence: “Power and violence are opposites; where the one rules absolutely, the other is absent.”\textsuperscript{41} Power, according to this tradition, is the creative and legitimate force of the many, whereas violence is the repressive force of the one (or few). Power, according to Arendt, “derives its legitimacy from the initial getting together” of people acting “in concert”.\textsuperscript{42} Yet, the getting together to act as one is precisely the problem of unity raised by the question of the realization of law. A multitude of people in the plural may certainly act as one in a spontaneous manifestation of a common cause, but this does not in itself amount to a constitution, a state, or a people in the singular. Such a political unity implies either universal consent or the repression of dissidence. And even if we accepted that majority equals legitimacy, Arendt’s notion of legitimacy assumes that power is equally distributed, an assumption which ignores both human biology and history.\textsuperscript{43} Her theory explains how a collective may form, but its claim to constituent legitimacy is not self-evident.

Importantly, however, the authors of constituent power have contributed to uncovering sovereignty as a question of the realization of law rather than simply supreme princely power. They have argued that it is a matter of legitimacy, that is, of how the mediation between power and normativity is legitimized. One crucial contribution of this tradition has been its focus on the perpetuity of this question within the state: The realization of law is not merely a punctual, originary event but a continuously recurring issue. Kalyvas has argued that the ‘politics of the extraordinary’, which draws from the constituent power of the people, returns at three democratic moments of politics: before the state as insurrection and constitution making, within the state as normal legislative procedures, and on the fringes of the state as spontaneous popular mobilization. However small the scale, in every moment of politics extralegal forces intervene to change the law and thus realize it anew. Analyzing the

\textsuperscript{41} Arendt 1970, 56.
\textsuperscript{42} Arendt 1970, 52.
\textsuperscript{43} Incidentally, the assumption of the equality of faculties in mankind is the basic principle of Thomas Hobbes’s theory of the social contract, Hobbes [1651] 1996, 86–87.
dynamics of council democracy, Benjamin Ask Popp-Madsen has argued for the possibility of institutionalized constituent power, that is, the inclusion of exceptional politics in normal political procedures. The example of council democracies, he argues, demonstrates that the creative energy of constituent power in a revolutionary moment does not necessarily stagnate in the rigid form of institutionalized politics but can be perpetuated within the normal order. These authors, of course, focus on how democratic self-organized impulses from below can be allowed to continuously reshape political institutions in order to avoid the reproduction of institutionalized imbalances of power. However, from a completely different perspective, the continuation of the realization of law within the normal order of law is precisely what is at stake in Schmitt’s concept of sovereignty: It is not about some original act of creation but rather the need for continuous recreation in order to restore and retain the normal order.

Joel Colón-Ríos has argued that Schmitt explicitly differentiated between sovereignty and constituent power. He takes his starting point in the confusion around the concepts of commissarial dictatorship, sovereign dictatorship and sovereignty in the commentary on especially On Dictatorship (1921), Political Theology (1922), and Constitutional Theory (1928). Dictatorship in Schmitt’s terminology, Colón-Ríos argues, is not identical to sovereignty in either its commissarial or its sovereign form, although they are often read as more or less synonymous. Dictatorship in its Roman form, in the sense Schmitt uses it, is always ultimately commissarial since it is legitimized by a single commission and ends with the fulfilment of its purpose. The difference between commissarial and sovereign dictatorship is that the former is tasked with reinstating a previously existing legal order, while the latter is authorized to constitute a new order, that is, to introduce a new constitution. Both, however, are limited to their respective task and must do only what serves the completion of this task. In contrast, sovereignty knows no such limits. It is the source of political power and the origin of the commission of both the commissarial

45 Colón-Ríos 2020, chap. 9.
and the sovereign dictator: “A sovereign, in this sense, is more than a sovereign dictator. It is an entity that, like an absolute price or a sovereign people, can arbitrarily exercise constituent and constituted powers in the absence of any commission.”\textsuperscript{46}

According to Colón-Ríos, then, sovereign dictatorship is Schmitt’s term for constituent power, while sovereignty is the issuer of this power. In the first instance, this may sound like a less democratic concept of constituent power since it is identified with dictatorial force. Yet, the dictator acts on commission for another source of legitimacy, the sovereign, which may be, in Colón-Ríos’s words, an ‘absolute prince or a sovereign people’. In the absence of absolutist monarchy, Colón-Ríos often writes simply of ‘the people’ interchangeably with the sovereign. The people does not wield constituent power itself but lends democratic legitimacy to the constituent act of the sovereign dictator. In juridical terms, he explicates, constituent power is a power de jure, while sovereignty is a power de facto.

Another influential but very different contemporary approach to the question of the realization of law is the study of its relationship with extra-legal violence. This approach differs from the literature on constituent power not only in its basic assumptions but also in its aims: It does not seek to discover a way in which law may be constituted to give it democratic legitimacy but rather questions the possibility of legitimacy of law at all. It builds on the Weberian notion of state power as the monopoly on violence and takes its starting point in Walter Benjamin’s 1921 essay “Toward the Critique of Violence”, in which he distinguishes between law-positing and law-preserving violence or power (\textit{Gewalt}).\textsuperscript{47} The concept of violence, Benjamin argued, only makes sense in relation to law and justice: There is no violence outside the normative order.

\textsuperscript{46} Colón-Ríos 2020, 242.
\textsuperscript{47} The German ‘\textit{Gewalt}, as must always be noted in discussions on this text, may mean both violence and power as well as authority in the sense of legal or legitimate power, Derrida [1989] 1992, 6. The essay resists systematic translation because Benjamin uses the word in all these senses, and it would be impossible to use any of the corresponding English terms consistently. This places Benjamin in direct opposition to Arendt, who insists on the opposition between violence and power.
On the one hand, he criticizes natural law for considering violence a natural occurrence, something which has no ethical value in itself, that can be judged as legitimate or illegitimate depending on whether or not it serves to secure the natural rights and aspirations of humanity. Positive law, on the other hand, is right in differentiating between different kinds of violence according to their relation to law. However, its criterion of distinction is misplaced: It separates legal from illegal violence based on the historically established legal order. This relativizes the normative aim of law as such and undermines its link with justice, that is, its claim to legitimacy. Instead, Benjamin argues, we should categorize violence according to the way it affects law as such: Either it preserves an already existing order of law or it breaks with this order and thus posits a new or altered one.\(^{48}\) Violence and law must be analysed in constellation since neither can exist without the other. The problem of the realization of law becomes the problem of its relationship with violence.

This approach has been most systematically taken up and pursued, it could be argued, by the philosopher of law Christoph Menke. He describes the problem as the paradox of law: On the one hand, law is the opposite of violence, while on the other, law itself is violence.\(^{49}\) Law – in the abstract sense captured by the German *Recht* as the sphere of justice – promises to end violence, but it can do so only against a complex background of both historical and present violence in the name of law. This means that law is by definition contradictory and cannot be defined in unambiguous terms: “If the unity of law involves a contradiction, then law inevitably eschews any simple conceptual determination. Thus, law is characterized by an internal antinomy that must be taken into account from the outset.”\(^{50}\) The contradiction which Menke notes springs from the problem of *Rechtsverwirklichung*, which Schmitt identified and Kelsen rejected: the mediation between the normative ideal of the legal order and its sociological existence. Law itself, Menke argues, introduces the distinction between the legal and the extra-legal. But whereas Kelsen claimed that there


\(^{49}\) Menke 2018c, 9; translated in 2018b, 3–75, cf. 3.

\(^{50}\) Menke 2018b, 209.
could be no point of contact between these opposed spheres, Menke argues that, between the normative and the non-normative, only enforcement, that is, violence, can mediate.\(^{51}\)

In a reply to a critic, Menke argues against the objection that the violence of the state is only a peripheral phenomenon within a predominantly peaceful normative order and therefore of little significance for our understanding of law: Violence is central, Menke retorts, because law as a normative system is distinguished from ethics precisely through the way it relates to “attitudes of non-, even anti-normativity” and is thus defined by “the possibility of their ongoing persistence”.\(^{52}\) That is, if we disregard the way law enforces its ethical ideals in social reality – through violence – then we misrecognize that which makes it law as distinguishable from moral philosophy. The question of the realization of law through violence is to Menke the question of the form of law and as such essential to understanding what law is, regardless of whether or not it may seem peripheral from a practical perspective. The inner contradiction between non-violent normative ends and violent anti-normative means belong to the nature of what law is and sets it apart from other social forms.

Although this approach casts doubt on the possibility of legitimacy in the realization of law, Menke does not ultimately reject law. Instead, he argues for a transformative potential of law through a continuous process of self-reflection. In this context, he picks up Benjamin’s concept of the ‘Entsetzung’ of law, a term which is sometimes translated as ‘suspension’ (or, in the new critical edition of “Toward the Critique of Violence”, as ‘de-posing’) but which Menke prefers to render as ‘relief’ of law. Entsetzen in the verbal form means literally to dis-place, to take something out of its proper place, but more commonly to put someone out of their mind in the sense of appalling or horrifying them. The derived noun Entsetzung; however, means the dismantling of something, like a degradation in rank or, in the military sense, as a relief of a siege. To Benjamin, it means a revolutionary power which in a suggestive but unfortunately rather vague sense breaks the mythical circle of law-positing and law-

\(^{51}\) Menke 2018c, 41–42.

\(^{52}\) Menke 2018b, 216.
preserving violence. According to Menke, translating it as ‘suspension’ misses its mark insofar as it subsumes it under Schmitt’s sovereign exception, where the law retreats while the state remains. The relief of law, he argues, does not aim at suspending law in order to preserve the legal order in a Schmittian sense, nor does it mean to abolish law and replace it with the unlawfulness of anarchy. Instead, it must relieve law from state power but without “separating law’s justice from law’s violence; rather, it must aim to enact their mutual entanglement in a different way”. Law without violence, Menke argues, is impotent, and thus the end of violence would also mean the end of the normativity promised by law. In this way, he retains the internal antinomy through which he defined law. The possibility of an emancipatory law, he continues, hinges on the self-reflection of law on its relationship with violence – that is, rather than repressing its violent foundation, law must continually be made aware of it in order to use its transformative potential. It is the non-identity of law with itself, Menke concludes, which enables it to break with its own continuum of violence and strive to live up to its normative promise.

While the authors of constituent power seek a democratic origin of law, Menke and other writers of the Benjaminian tradition argue for an authoritarian origin of law. Democratic legitimacy, therefore, cannot be found in this origin. In the end, however, although Menke rejects any single source of legitimacy for the realization of law, as opposed to the theory of constituent power, he still seeks to find a method of its legitimization. His solution is for law to reflect critically on and problematize its own necessary relationship with violence so as to avoid falling victim to it. The aim of the critique of law is its legitimization, yet this can never be final but must continue indefinitely since law remains internally antinomian and thus prone to deteriorate into illegitimate violence. However, this method of legitimization also appears problematic. It assumes that critique comes from within law itself without identifying the institutions or positions responsible for carrying out this task. Furthermore, it seems to juxtapose critique and violence as two forces of equal strength without theorizing what kind of power critique would have to be to

53 Menke 2018b, 223.
counter violence, which is, according to Menke himself, the only possible force capable of the realization of law. And, finally, it assumes that normativity is the true purpose of law, which therefore only degenerates into repression if it becomes blind to its dependence on violence – in other words, as a political collective, according to Menke, we all agree on the norms pursued by law, and the only enemy of this normativity is ‘violence’ in the abstract. Repression is repression of all as one, which leaves no theoretical space for power relations, oppression or lines of conflict.

Combining the insights of the authors of constituent power with those of law-instituting violence, we can say that sovereignty belongs neither in the sphere of pure normativity nor in the sphere of pure violence. If we, like Kelsen, limit our discussion to consider law only in its ideal form as a set of norms, then sovereignty disappears; not from political reality but from scientific sight. On the other hand, sovereignty would seem equally irrelevant if we consider it to be merely identical with violence. Why would we need such an obscure juridical construct to describe state violence, which is, after all, a sociological and often easily observable phenomenon? As Dimitris Vardoulakis writes in a critique of Giorgio Agamben, his theory of sovereignty precludes political action precisely because it identifies sovereignty with violence and ignores its element of legitimacy or justification.\textsuperscript{54} If sovereignty is merely a logic of violence, then any subversive act against this logic only reproduces it in an eternal repetition of violence. Identification of sovereignty with violence implies ignorance of its proper socio-juridical form. To understand the way sovereignty enables violence, it is necessary to identify the link it establishes between violence and normativity, or the sociological and the juridical in Kelsen’s terms.\textsuperscript{55}

\textsuperscript{54} Vardoulakis 2018, 30–31.

\textsuperscript{55} The discussion in this section on the relationship between legitimacy and violence in regard to sovereignty is partly inspired by Søren Mau’s categorization of forms of power in his recent Mute Compulsion. Mau distinguishes between three forms of power. The first two are the classical forms of power within the Marxist tradition, violence and ideology, where Mau follows a strong tradition of identifying violence as “the distinctive form of power pertaining to the state”, Mau 2023, 58 and ff. To these two, Mau adds a
In summary, while sovereign power may be outside the constitution, it nevertheless belongs to its definition to be in some way related to the constitution. If it were simply a power de facto with no relation to power de jure, then any extra-legal power would be classifiable as ‘sovereign’. In other words, only in constituting a legal order does sovereignty constitute itself as sovereign. This implies that it cannot act completely arbitrarily but only in a way which makes possible the formation of law. Sovereignty, therefore, is a question of the realization of law. Menke, in a reflection on Schmitt, distinguishes between two moments of sovereignty: “The sovereign attitude ends with a definitive decision – this is the decisionistic moment. It begins, however, diagnostically and reflectively, with a radical question concerning the normality which is assumed. A realization of law is sovereign when it puts itself in question, when it puts this question to itself.”\(^5^6\) Of course, Menke here gives Schmitt’s concept of sovereignty a democratic twist when he defines its most sovereign act not as the decision but as the questioning of itself. Yet, his interpretation points to the tension within sovereignty: that the concept represents both a solution to the realization of law and a re-problematization of its question.

Using the Kelsen-Schmitt debate as a key to open up the controversy surrounding sovereignty – its function and relevance as an analytical concept – I have argued that it is a question of legitimacy, and that this legitimacy hinges on the way sovereignty realizes law by mediating between normativity and power. We cannot understand sovereignty purely in terms of normativity and third form, the economic power of capital, or what he calls ‘mute compulsion’, following Marx. I find Mau’s categorization instructive; however, in the case of sovereignty, it is important not to confuse it with the state. Sovereign power is a very abstract, very ideal juridico-political notion in contrast with the quite concrete and material force of the state. If sovereign power was simply violence, the state would have no need for it – it already holds sufficient organs of this form of coercion. I refrain from speculating here whether sovereignty is a special form of power separate from the three mentioned by Mau; suffice to say that the important thing to examine is the way it mediates between normativity and force, or ideology and violence, rather than conforming to one of these.

\(^{5^6}\) Menke 2006, 183.
justice, but nor can we understand it purely in terms of violence and state power. There would be no point to sovereignty if it was exclusively a matter of physical force, since the state may perfectly well exercise that form of power without the peculiar and liminal juridical construct of sovereignty. The problem of sovereignty, as Schmitt noted, is the problem of traversing the chasm between actual power and legal power. In order to illustrate this mediating function, I have given a comparative analyses of two opposed approaches to sovereignty, namely theories of constituent power and law-positing violence respectively. While they both follow Schmitt in identifying sovereignty as the locus of the realization of law, constituent power does this from a perspective of legitimacy, while the literature on sovereign violence focuses on the illegitimate force at the core of law. I position my study somewhere in between these two approaches, examining sovereignty not as essentially legitimacy, nor essentially force, but as the *legitimization* of the enforcement of a normative order.

However, as opposed to both Kalyvas and Menke, I do not assume an ideal universal normativity as part of the essence of law – on the contrary, the present critique of sovereignty does not concern itself with the actual legitimacy of law per se but rather its legitimization. My aim is not to identify an ultimate source of democratic legitimacy for sovereignty, as in the literature on constituent power, nor to construct a critical method of self-reflection as an ongoing process of legitimization, as does Menke, and nor is it to brush aside sovereignty as simply violence. I do not wish to solve the problem of the realization of law in order to legitimize sovereignty but rather to analyse how the concept of sovereignty responds to the problem of the realization of law. In the thesis, I shall argue that sovereignty as conceptualized by Schmitt can only legitimize the realization of law by locating the source of legitimacy in a specific philosophy of history. This philosophy of history understands modernity as crisis time. In part II, I analyse this philosophy of history in order to return to the question of sovereignty as a problem of legitimization in part III. First, however, I turn to an analysis of the conceptual structure of sovereignty in the next chapter. In accordance with the above discussion of the problem of the realization of law as the chasm between its normative and its enforcing side, I
propose to treat the concept of sovereignty as a contradictory concept. Corresponding to the problematic nature of the sovereign constitution is a problematic concept which can be understood, not by attempting to rid it of contradiction, but, on the contrary, only by taking contradiction seriously as part of its conceptual constitution. The following chapter discusses different conceptual theories focusing on the non-self-identity of concepts and ways of analysing them.
The concept of sovereignty is a conflictual concept. Although a terminus technicus of state theory, it is not used descriptively in a politically neutral sense but rather always invested in some political project, whether this is the protection of the national state or the claim to independence from some imposing force. It is also conflictual in the sense of being contested, as expounded by Hent Kalmo and Quentin Skinner: Throughout the history of the concept, it has escaped clear definition, and commentators have disagreed on all its central features, such as whether it is properly a political or legal concept, whether it belongs to constitutional or international law, who is the bearer of sovereignty, etc.¹ The appropriate approach to examining the concept as contested would be to submit it to a genealogy, as Skinner does. Yet, the concept is also conflictual in the sense that it is in conflict with itself. It is not only ambiguous

¹ Kalmo and Skinner 2010.
or complex, making it the object of diverging interpretations, but also consti-
tutively *contradictory*; its function being to unify conflictual multiplicity. The Cambridge School approaches the contestedness of the concept of sovereignty as a historical fact. Adding to this, I propose to examine contradiction as the defining feature of its logical constitution.

In the course of the thesis, I will investigate the relation between the double meaning of the central term of sovereignty according to Schmitt – the exception – and sovereignty’s conflictual link with legitimacy. But first, we may ask, how to analyze conflict through the lens of a contradictory concept? How does such a concept function? In this chapter, I consider three different approaches to conceptualizing the non-self-identity of concepts. These approaches do not assume an unproblematic relation of correspondence between a concept and that which it denotes but rather see the absence of such a link as central to the meaning of the concept. Firstly, I discuss Reinhart Koselleck’s theory of counterconcepts, then Jacques Derrida’s deconstruction, and finally Theodor Adorno’s negative dialectics. All three approaches represent attempts at conceptualizing the role of conflict, inconsistency or incompatibility within concepts or conceptual constellations. Yet, they rely on different assumptions about the nature of concepts and lead to different interpretations of how concepts work.

In the case of Koselleck, his concept of counterconcepts is explicitly developed in continuation of Schmitt’s sociology of juridical concepts and theorized as an analytical tool for the historiography of his conceptual history. Therefore, it lends itself to extraction and use for a discussion of the nature of political concepts. In the cases of both Derrida’s deconstruction and Adorno’s negative dialectics, however, it is already somewhat of a philosophical faux pas to treat them as general conceptual theories, let alone lifting specific concepts from their context to generalize and utilize them in another. Derrida likes to put any characterization of his own thought as ‘deconstructive’ or ‘deconstructionist’ in quotation marks,\(^2\) thus distancing himself from deconstruction as a school of thought and using the term only in the sense of a *specific* act on a specific text

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2. SOVEREIGNTY AS CONCEPT

or discourse. Adorno, for his part, is (in)famous for insisting on the complex and almost untranslatable form of his writing as indispensably intertwined with the content.³ The form of his major work, *Negative Dialectics* (1966), is thus dialectical in itself in the sense that is pushes the abstraction of a method from its practical application to the limits of its possibility – to simply adopt it for a different practice would thus be to ignore its self-critical aim. Drawing from these thinkers a theory of the concept in the abstract, or a concept of concept, appears to defeat the purpose of their critique.

However, this chapter does not aspire to develop a general conceptual methodology from Koselleck’s, Derrida’s, or Adorno’s texts; nor from some amalgamation of them all. Since the thesis proceeds through conceptual analysis, I would not wish to lay down the rules of its key concepts in advance. The constellation of their dynamic interrelation will be for the subsequent examination to map. Instead, I wish to open a discussion of how we may work with something as intuitively objectionable as the notion of a concept in contradiction with itself; in this context, specifically the concept of sovereignty. By comparing these three important thinkers of non-identical conceptual thought, I hope to demonstrate the richness of such a contradictory understanding of the concept as well as a nuanced approach to its critical analysis.

KOSELLECK’S THEORY OF COUNTERCONCEPTS

Perhaps the most obvious approach to the conflictuality of a Schmittian concept would be to interpret them according to Reinhart Koselleck’s theory of ‘counterconcepts’. As Niklas Olsen notes, Koselleck’s theory builds on Schmitt’s own precept that “every political concept is a polemical concept”.⁴ Schmitt writes: “All political concepts emerge from a specific contradiction of foreign or domestic political affairs, and, without this contradiction, they

³ See, for example, Adorno 1966, 27; Martin 2006, 48–49.
⁴ Olsen 2013, 48–49; Schmitt 1930, 5.
remains nothing but meaningless abstractions prone to misunderstandings.”

The sense of political concepts thus consists in their placement in a conflictual constellation, and they can only be properly understood by considering their relation to this conflict. This applies to political phraseology, which to Schmitt implies all concepts of the order of the state, including jurisprudence. The theory of polemical concepts is in line with Schmitt’s concept of the political as based in a friend/enemy distinction. Concepts in general may gain their meaning from nonpolemical sources, but since ‘the political’ is reserved for antagonistic dichotomies, the political content of concepts may only be understood by identifying the enemy relation they express. This is valid for concepts like “sovereignty, liberty, constitutional state [Rechtsstaat] and democracy”, among others.

According to this concept of political concepts, if we wish to understand what ‘sovereignty’ means, we would have to identify, first, the political conflict from which it has emerged, and, second, the specific stake in the conflict which it serves.

Koselleck adopts from Schmitt the fundamental principle that political concepts are constitutively polemical and must be analysed according to their antagonistic orientation. Yet, he moves beyond Schmitt insofar as he systematizes this basic assumption for historical analysis, while also slightly changing the definition of polemical concepts, which he terms ‘counterconcepts’. One divergence from Schmitt is that Koselleck explicitly talks of counterconcepts as conceptual pairs. While the polemical concept in Schmitt always implies an enemy, he nowhere explicitly states that it must have a complementary, polar opposite concept. Schmitt often speaks of an ‘opponent’ (Gegner) to the concept but not of a ‘counterconcept’ (Gegenbegriff), and the opponent might as well be the person or position at which the polemical concept is directed rather than an opposing concept.

On this point, Koselleck is much clearer: According to him, the concept gains its concrete content by its opposition to a counterconcept, which does

5 Schmitt 1930, 5, my translation.
6 Schmitt 1930, 5.
7 For example, Schmitt 1930, 17.
not always remain the same over time or across contexts. The German ‘Bürger’, for instance, can be the inhabitant of a city as opposed to countryside dweller, it can be a national citizen as opposed to a foreigner, or it can be a bourgeois as opposed to a proletarian. In each case, the meaning of Bürger changes according to the relation of opposition in which it is placed. Thus, it is the counterconcept of the concept in question which defines its meaning. By asking ‘cui bono’, who this concept benefits, we are able to unpack its political content.\(^8\) Counterconcepts, Koselleck explains, are asymmetrical in that they are always discriminatory toward the opposition, and, therefore, the designation of the other will always differ from their self-designation. The function of the counterconcept is to deny recognition and ostracise the other. The counterconcept strives to universalize one’s own position and exclude the opposing position. Thus, the self-designation ‘the people’, for instance, as a pseudo-universal category may be used to exclude specific groups from taking part in the community. On the other hand, Koselleck claims rather boldly, counterconcepts are necessary for the formation of self-identifying groups with capacity for political action. The conceptual pair of counterconcepts is not only descriptive but constitutive of political unity as a function of division.\(^9\) In this regard, Koselleck remains faithful to Schmitt’s definition of the political.

Unlike Schmitt, however, Koselleck’s theory of counterconcepts is explicitly integrated in the methodology of conceptual history which he develops. As such, its function is to map the historical constellation of concepts rather than make them available to us as analytical tools. Insofar as Koselleck’s conceptual history is oriented toward the present, it serves to expose the multilayered meanings of different historical periods and settings resonating in the contemporary use of a concept or, what he calls, the ‘contemporaneity of the noncontemporaneous’ (Gleichzeitigkeit des Ungleichzeitigen).\(^10\) Paradoxically, Koselleck’s historical understanding of concepts in some text passages leads him to prohibit conceptual history from using concepts. Instead, he

speaks of ‘technical terms’ as a third linguistic form next to words and concepts. His encyclopaedia of conceptual history, Geschichtliche Grundbegriffe, is built on ‘social and political terminology’ rather than words or concepts, the latter being its scientific object.\textsuperscript{11} This approach, then, conceives of concepts only as objects of analysis and not as a medium of understanding.

This also exempts Koselleck’s own, very rich reservoir of inventive concepts from being investigated according to their polemical opposition to counterconcepts. There can be no doubt, however, that Koselleck’s use of the concept ‘counterconcept’ is itself polemical – in line with its prefiguration in Schmitt. The latter’s doctrine of the polemical nature of political concepts was directed at what he saw as liberalism’s claim to neutrality: the idea that there could be such a thing as a politically neutral state serving as a framework for political discussion. Against this, Schmitt argued that ‘neutrality’ was itself a polemical concept aimed at making the theoretical opponent appear to be politicizing. Koselleck, on his part, targets what he deems utopian political ideologies, such as Enlightenment humanism and socialist or communist anticapitalism. When he writes of the exclusive universalist tendencies of counterconcepts, his critique is directed at these ideological currents. In Koselleck’s view, the moral universalism of Enlightenment becomes totalitarian through its inbuilt exclusion of its opposite, and a historical line can be drawn from this embryotic tendency to the totalitarianism of the Third Reich, as well as the parallel, exclusive universalisms of East and West during the Cold War. In this way, he accuses the Enlightenment tradition, with its emancipatory ethics, of being an accomplice of 20\textsuperscript{th} century totalitarianism. Thus, the meta-political concept of ‘counterconcept’ is itself not politically neutral but invested in a struggle over history and historical culpability.

Certainly, it would be possible and indeed fruitful to analyse the conflictual concept of sovereignty as a counterconcept. As mentioned, Schmitt explicitly counts it among his examples of polemical concepts, and it is an important term in Koselleck’s work as well, with one of the longest articles of the Geschichtliche Grundbegriffe being on ‘state and sovereignty’ (although written

\textsuperscript{11} Koselleck 1972, XXIV; [1972] 2011, 22.
by Hans Boldt, not Koselleck). According to Skinner, the idea of state sovereignty originally emerged as a counterrevolutionary reaction to the ideology of popular sovereignty in the French Wars of Religion and the English Revolution of the 17th century. The concept may be, and has been extensively, analysed historically according to the political conflicts in which it played different roles for different fractions with different opponents in mind. To name a specific asymmetrical constellation in which it took part, Thomas Hobbes contrasted the biblical beast Leviathan as a symbol of the sovereign with the Behemoth as a symbol of revolution or civil war. Using this example, we could choose to analyse the historical development of the concept of sovereignty as a counterconcept to revolution.

For the present study, we might examine Schmitt’s concept of sovereignty according to the positions which he seeks to counter. This might be the constitutionalism of legal positivists such as Hans Kelsen, it might be Max Weber’s theory of disenchantment, or it might be the political anarchism of Mikhail Bakunin. Indeed, this study partly makes use of such an approach. Neither Schmitt’s political nor his juridical or historical writings can be understood without taking into consideration the ‘enemies’ he is striving to conquer, whether political or theoretical. It is essential to keep in mind the polemical component of Schmitt’s concepts; not just in order to position him within a debate but to identify the problems to which the concepts respond. This is especially important in the case of sovereignty. Yet, the merit of the counterconcept approach, which is the clarity with which it identifies such positions within a conflictual constellation, is also its limitation. It locates the conflict between relatively well-defined opposing viewpoints, but it does little to unpack the conflictuality within the concept itself. In this study, it is my hypothesis that the concept of sovereignty is in conflict with itself and that this self-conflictual character drives a dynamic which is key to understanding the function of the concept for the theory of state. In order to draw out this form of conceptual conflict, it is necessary to look to other concepts of concepts.

Another way of approaching concepts as contradictory, and a way that would immediately appear applicable to the present subject, might be a deconstructive reading. Jacques Derrida has dealt with questions of justice, law and sovereignty in dialogue with Schmitt on several occasions and extensively in the 1994 book *The Politics of Friendship* and the lecture series *The Beast and the Sovereign* held in 2001-2003, but perhaps most importantly in the 1989 paper *Force of Law*, presented and published in the context of the conference “Deconstruction and the Possibility of Justice”. In it, Derrida presents a deconstructive reading of the concept of justice in its relation to a constellation of other concepts, such as law, legitimacy, right, force, authority, power, and violence. Here, Derrida, remarkably and against what he perceives as the common understanding of deconstruction as disinterested in ethics, claims that deconstruction is constitutively linked with justice, without which it could not exist.

The possibility of deconstruction, Derrida argues, is dependent on the simultaneous possibility and impossibility of the deconstruction of justice: “[T]he paradox that I’d like to submit for discussion is the following: it is this deconstructible structure of law (*droit*), or if you prefer of justice as droit, that also insures the possibility of deconstruction. Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible.” Justice ‘in itself’, however, conditions deconstruction no less than law since there would be no motivation for the deconstructive displacement of legal concepts without the possibility of justice. Thus, “deconstruction takes place in the interval that separates the indeconstructability of justice from the deconstructibility of droit (authority, legitimacy, and so on)”. Deconstruction, Derrida seems to suggest, is motivated by a desire to judge and justify, both in a theoretical and a normative sense, yet what necessitates the deconstructive approach, as one which does

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not claim to give definite answers, is the impossibility of final judgements and justification.

Derrida’s analysis of the double nature of justice – as both *droit* (law/right) and justice in the ideal sense – thus points to a contradiction within the concept. Yet, this contradiction cannot be viewed simply as a logical fallacy or semantic obscurity which might be done away with through terminological clarification. Rather, the contradiction is at the heart of the lesson which may be deconstructively produced from the concept. A term more common to Derrida would perhaps be ‘aporia’. In a lecture from 1992, he identifies ‘contradiction’ as a subcategory of aporia, which he understands as the experience of a limit to thought, an impasse. There are three kinds of aporia: The first consists in coming upon an uncrossable border or a code which can only be deciphered by an unknown key. The second is the absence of any border, thus impeding differentiation and preventing opposition. And the third is the contradiction, which Derrida understands as a ‘milieu’ prohibiting any movement or passage at all, so that “there is not even any space for an aporia determined as experience or step of the edge”.17 Contradiction in this understanding would be the extreme form of an aporia, making the aporia itself impossible as a figure of thought. To Derrida, the experience of the aporia is central to deconstruction: It represents an imperative to think in a way that does not strive to abolish the aporia by solving it but, rather, to remain *stuck* in order to think “according to the aporia”.18 Significantly, in a sort of summarizing review of his own past reflections, he refers to an earlier exposition of his, according to which “deconstruction is explicitly defined as a certain aporetic experience of the impossible”.19 In this deconstructive processing of the experience of aporia, contradiction is one moment among others in the movement of the aporia which “recurrently duplicates itself interminably, fissures itself, and contradicts itself without remaining the same”.20 Thus, to insist on

20 Derrida 1992, 16.
speaking of contradictions in the case of Derrida is perhaps imprecise, if not completely off the mark. Contradiction should be understood here not as opposition but rather as a series of dynamic inconsistencies. Deconstruction, then, concerns itself with contradictions, not in order to solve them, nor to map their more or less stable relations or turn them into a system in the Hegelian sense through a logic of the negation of the negation, but rather to destabilize conceptual thought. Thus, a given conceptual contradiction is never fully dispersed, but, as Derrida writes elsewhere, it is traced in the same movement which erases its trace:21 It is displaced rather than dispersed.

In *The Beast and the Sovereign*, Derrida himself takes aim at a “prudent deconstruction” of the “dominant, classical concept of nation-state sovereignty.”22 He begins this deconstruction by defining sovereignty in terms of self-identity: “The sovereign, in the broadest sense of the term, is he who has the right and the strength to be and be recognized as *himself, the same, properly the same as himself*.”23 This would seem to place the concept of sovereignty, like that of justice, in a special relation to deconstruction, which consists in a radical challenge of all claims to self-identity. The political relevance of sovereignty, Derrida appears to suggest, is the form which it gives to itself, namely, that of identity rejecting any internal difference or divergence. Whereas he accepts the indeconstructible nature of the notion of justice as a motor of the deconstructive act, sovereignty’s claim to absolute self-identity invites deconstruction. In this case, it is the self-constituting rejection of deconstruction which makes sovereignty characteristically deconstructible. Although language is generally deconstructible to Derrida, in the sense that he perceives deconstruction as the movement of language or the text itself rather than a method of the reader, the concept of ‘sovereignty’ would seem to hold a special, if not privileged, position. Because its function is the institution of the self-identity of the supreme origin of law, it is imminently self-contradictory. Whereas justice is the indeconstructible driving force of justice, precisely

22 Derrida 2009, 1:75.
because it does not demand identity but rather invites us to question such notions, sovereignty as the claim to absolute self-identity is the model of contradiction.

For the present context, it is worth noting that, according to Derrida, there is no opposite to sovereignty: “In a certain sense, there is no contrary of sovereignty, even if there are things other than sovereignty”.24 Nothing opposes sovereignty as its antithesis. This would mean that the concept has no counter-concept, contrary to both Schmitt’s and Koselleck’s thesis that concepts are politicized through their opposition to another concept, as well as Schmitt’s explicit claim that sovereignty belongs to this category of concepts, as mentioned above. Derrida does not discuss the possibility of revolution as the ‘Behemoth’ to the ‘Leviathan’ of the state, commenting instead that, ‘in politics’, sovereignty is never countered by claims to non-sovereignty but rather to other forms of sovereignty, such as the sovereignty of smaller states against imperial ambitions of larger states, or popular sovereignty against state sovereignty etc. However, we might raise the question as to whether such practical political usage of the concept is the proper context for its analysis or whether sovereignty is not rather a very unpractical, very ideal, very principal concept of philosophy of law, in which case it would perhaps be relevant to place it in opposition to an equally ideal concept, such as revolution.

In any case, and most importantly here, the claim that sovereignty has no contrary does not prevent the concept from being contradictory. In fact, this is central to Derrida’s argument: The first step in a deconstruction of sovereignty, he argues, is to recognize that sovereignty is not countered by something other than itself but rather by other forms of sovereignty. These competing and conflicting forms expose the untenability of the claim to self-identity since the political life of sovereignty plays out precisely through these conflicts. Thus, it only exists in and through its own division, which contradicts the conditions of its concept: “A divisible sovereignty is no longer a sovereignty, a sovereignty worthy of the name, i.e. pure and unconditional.”25

24 Derrida 2009, 1:76.
deconstruction of the concept of sovereignty is, as always, already to be found in embryo in the concept itself. Here, we find a sketch of what a deconstructive approach to the conflictuality of a political concept such as sovereignty may look like. It differs from Koselleck’s theory of counterconcepts in that the conflict is not located between contrary terms but rather within the central term itself, and in that this self-contradictory nature of the concept becomes a source of instability rather than an enforcement of a binary opposition. For the present study, it is important to bear in mind both the polemical implications of the use of political concepts in specific contexts and against specific, although perhaps unspecified, opponents and the possible self-contradiction or, we might say, non-sovereignty of such concepts.

In his deconstructive engagement with the philosophical tradition, or metaphysics, Derrida focuses on a fundamental naïveté of philosophical discourse, which is the naïve belief in philosophical discourse itself as a medium by which we may attain non-contradictory truth.26 This naïveté, however, is both the pitfall and the condition of possibility of philosophy as such. Discussing Derrida’s reading of Plato’s *Philebos*, Rodolphe Gasché writes: “What Derrida is pointing out here is an inconsistency on the level of philosophical argumentation that cannot be mended, but that nevertheless makes it possible to obtain the desired authoritative results. The very success of Plato’s dialogue hinges on such inconsistencies.”27 Derrida is not out to solve or dissolve the contradictions or inconsistencies of the philosophical tradition but rather to examine them as philosophy’s necessary structural condition. In this sense, we must view the conflictuality of concepts not as clear-cut contradictions between conceptual pairs but rather as characterized by a constitutive instability allowing them to engender meaning through the dynamic displacement of fault lines. Non-contradiction of the philosophical discourse is not only impossible; it is also undesirable.

Deconstruction thus has a complex relationship with contradiction since contradiction sometimes appears as the most basic form of aporia or

26 Gasché 1986, 125.
27 Gasché 1986, 126.
inconsistency yet, at other times, as a simplification or stabilization. In his lecture on aporias, Derrida speaks of the aporia as a ‘nondialectizable contradiction’ and warns against “giving in to any dialectic” in the “Hegelian or Marxist sense” (albeit without explaining what this ‘sense’ entails). It would seem that contradiction is a term ‘haunted’ by dialectics, as Derrida would say, thereby repeatedly provoking him to delimit his own understanding of it against the dialectical ‘other’. This is not merely a matter of philosophical rivalry: The term aporia is, in fact, more accurate for what Derrida is aiming at, which is inconsistency, displacement, and instability rather than opposition; the latter being only one form of the non-identical. Whereas dialectics has contradiction as its one and central principle, deconstruction differentiates even this as one among a multiplicity of aporetic experiences.

**ADORNO’S CONCEPTUAL DIALECTICS**

The dialectical approach to conceptual contradiction, however, has not remained confined to the Hegelian system. According to tradition, dialectics should, perhaps, logically come before deconstruction in the present exposition of positions since deconstruction reacts to dialectics and is often explained in opposition to dialectics as that which it is not. For instance, Gasché explains that deconstruction handles contradictions by a technique of ‘inscription’ in an infrastructure, which must not be confused with the Hegelian notion of ‘position’ or *Setzung* being “the determination of one with regard to an Other, or to something in contrast with it”; on the contrary, inscription “refers to an irreducible reference to Other, anterior to an already constituted subject that presupposes this reference as well as that which such a subject constitutes

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29 Indeed, even the writings of Hegel himself have not remained within the limits of such a claustrophobic ‘Hegelian system’, as is abundantly exemplified in newer Hegel reception. See, for instance, the works of Patrick Eiden-Offe, as well as Rebecca Comay and Frank Ruda, which interpret the form of Hegel’s texts as an openness pointing beyond the confinement of the system, Eiden-Offe 2021; Comay and Ruda 2018.
through positioning”. We may question whether this last point is so very different from what Hegelian dialectics claims against earlier idealism. Yet, even so, dialectics is more than Hegelianism, and its 20th century proponents dealt with similar problems of irreducible non-identity, as did deconstruction.

Common to thinkers of critical theory is a rejection of the assumptions that dialectics must necessarily involve progress and the sublation of the negative in affirmation. Walter Benjamin, for instance, spoke in anti-progressive terms of a dialectic ‘at a stillstand’ or ‘in arrest’ [im Stillstand]. To him, the important thing about dialectics is its arrest of thought as part of the thinking process: It is a ‘caesura’ in the movement of thought, introducing spontaneity rather than the automatism of progress. And, to Theodor Adorno, the act of negation only reintroduces negativity rather than sublating two negatives in a positive third. In this sense, he radicalized the contradiction as the core of dialectical thought by retaining it rather than resolving it through a progressive ascent of reason.

Among the Frankfurt thinkers, Adorno most explicitly and most systematically worked with dialectics as a way of analyzing social issues but also as an approach to understanding the structure and dynamics of concepts. For that reason, I focus on his negative dialectics in the following. This may not seem an obvious choice since Adorno never addressed sovereignty as an object of analysis. When he uses the term ‘sovereignty’ or ‘sovereign’, it is generally in an aesthetic sense as an attitude of art or a certain experience of subjectivity. Benjamin, on the other hand, was interested in Schmitt’s theory of sovereignty and integrated elements of it into his theory of Baroque art in The Origin of the German Trauerspiel. Newer readings of the interaction between Benjamin and Schmitt have assimilated the former in the canon of sovereignty thought (although I believe his interest in the topic has been greatly exaggerated in the commentary). Benjamin, however, was a cultural historian, and his dialectics

30 Gasché 1986, 158.
31 Benjamin 1991a, 577, 578, 595.
32 Especially Weber 1992; Derrida [1989] 1992; Agamben 1998; 2005a. Daniel Loick argues that Benjamin, in his essay “Toward the Critique of Violence” (1921), has in mind the political construct of sovereignty, even though he does not use the term. Loick’s
provides a method of approaching cultural artifacts as materializations of history rather than as a method of analyzing the concepts that we use to understand this history. Adorno, on the other hand, concerned himself extensively with the dialectics of concepts, unfolding and examining the implications of treating them as constitutively contradictory. His dialectics may, therefore, help us to analyze sovereignty as a contradictory concept, even if he did not himself carry out this analysis.

In *Negative Dialectics* (1966), Adorno writes:

Contradiction is not what Hegel’s absolute idealism was bound to transfigure it into: it is not of the essence in a Heraclitean sense. It is the index of the untruth of identity, of the conceived adding up to the concept. (...) Contradiction is nonidentity under the aspect of identity; the primacy of the principle of contradiction in dialectics measures what is heterogeneous in identity thought [*Einheitsdenken*]. As identity thought [*es*] collides with its limit it exceeds itself. Dialectics is the consistent sense of nonidentity. It does not begin by taking a standpoint.33

Like Derrida, then, Adorno rejects Hegel’s romanticizing of the contradiction as a moment of a totality that realizes itself through the dynamics of antithesis and sublation. Dialectics, in his version, does not seek to replace identity thought with a new ontology of contradiction; rather, as he phrases it, contradiction is the ‘index’ of the untruth of identity. The contradiction is already there in existing philosophy, not as a flaw but as the measure of what is fundamentally wrong in the structure of thought seeking identity. Dialectics does not introduce contradiction but rather brings out the heterogeneous inherent to the system. This is why identity thought can be brought to ‘exceed itself’

interpretation, however, rests on the assumption that sovereignty is identical with “politically legitimated and socially monopolized violence” (Loick 2019, 89–91), placing him among the theorists of sovereignty as violence, which I discuss in chapter 1. In chapter 5, I shall argue that Benjamin’s critique is not a theory of sovereignty but rather a critique of the philosophy of history underlying sovereignty thought. For a critique of Agamben’s Schmittian Benjamin interpretation, see also List 2020.

through the dialectical intensification of its inner contradictions. In this sense, dialectics is only the rigorous and ‘consistent’ form of identity thought, taking nonidentity serious rather than seeking to do away with it.

This also means that Adorno’s rejection of the philosophical system as the form of thought does not entail a rejection of systematic thought. Instead, he systematically exposes the impossibility of the system through the exposition of contradiction as the logical expression of non-identity. In this sense, negative dialectics is an ‘anti-system’ or, as Susan Buck-Morss characterizes it, following Adorno, a “logic of disintegration”. Against those who would argue that this systematic disintegration of the system could just as well proceed by differentiation rather than contradiction, Adorno retorts that such objections amount to “blaming the method for the fault of the matter”. Difference takes the form of contradiction when dialectics holds a mirror to identity thought. It is the demand for unity which leads thought into contradiction with itself, he argues, since difference must necessarily come into confrontation with that which would seek to integrate it and thereby render it non-different to the whole. To insist on differentiation rather than contradiction as the mode of thinking non-identity would be to remain wedded to the dogma of unity in thought, thereby merely replacing the self-identical One with a totality of parts. This would be the dialectical objection to deconstruction: It subsumes contradiction under aporia, reducing contradiction to only one form of non-identity rather than its logical extreme. In contrast, contradiction in dialectics is a conceptual means of ‘breaking the spell’ of the concept; the only possibility of a tear in the self-contained system.

Contradiction to Adorno also has to do with the way the concept relates to the non-conceptual. Derrida and Adorno fundamentally agree that we are always ‘in’ language. Yet, they differ in their emphasis on this point, and this difference decidedly shapes their view on the task of philosophical discourse and the function of concepts. Derrida, for his part, stresses the inescapable

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34 Martin 2006, 49–50.
35 Buck-Morss 1977, chap. 4.
condition of language for thought: “There is not a transgression, if one understands by that a pure and simple landing into a beyond of metaphysics, at a point which also would be, let us not forget, first of all a point of language or writing.” The interpolation is a phrase typical for Derrida: ‘Let us not forget’, demonstrating the central importance of continuously reminding ourselves of our thrownness into language, to use a Heideggerian term. The emphasis here is on the impossibility of leaving language and, therefore, of facing language as the place of thought and as such indistinguishable from thought itself. Adorno, on the other hand, stresses the importance of the gap between the concept and the non-conceptual for the constitution of the concept: “It is part of the meaning [of concepts] that they will not let themselves be satisfied with their own conceptuality, although they – by integrating the non-conceptual as their meaning – tend to assimilate it and thus remain ensnared in themselves.” What the concept means, then, is in part its inability to express what it means. Thus, concepts must always be analyzed as failed concepts. The failure of concepts to reach non-conceptual reality should not be accepted as an inevitable fact but rather precisely be made the object of philosophical investigation. Derrida would hardly disagree that the important thing about concepts is their inconsistency with themselves, yet, in Adorno, this inconsistency is explicitly related to their problematic relation with the non-conceptual or non-discursive.

To Adorno, the concept is contradictory in a double sense. First, the concept contradicts itself because it is in opposition to its own content, namely, the non-conceptual. This is what he means when he says that the conceived does not ‘add up’ to the concept: The concept is like a mathematical problem of a conceived ‘x’ which does not add up to the terms of the equation. The concept is thus non-identical with itself. Second, however, this non-identity of the concept does not spring from the nature of language itself but relates to

38 Adorno 1966, 21. This is my translation; the corresponding passage in the English edition, although clumsily translated, can be found in Adorno [1966] 2004, 12. For a scathing, yet appropriate, critique of this translation, see Rose 1976.
the contradictory condition of the object. If thought has to be contradictory, it is because reality is so too. Therefore, dialectics can be neither purely a question of conceptual method nor purely of reality, according to Adorno: “Not a method: for the unreconciled object—lacking precisely the identity surrogated by the thought—is contradictory and barricades itself from any unanimous interpretation. (…) Not something simply real: for contradictoriness is a category of reflection, the thinking confrontation of concept and object.”39 In this way, the dialectical thought of critical theory establishes a necessary link between conceptual contradiction and social conflict. To think the contradiction is to think in terms of conflict. Yet, as Buck-Morss notes, the Frankfurt thinkers did not believe that conflict could be solved by sublating the contradiction: “(…) because the contradictions of society could not be banished by means of thought, contradiction could not be banished within thought either.”40 The conflictual condition of sociality conditions the contradictory form of thought, which cannot escape contradiction as long as thought happens in a context of conflict. Dialectical thought is, by necessity, invested in political critique.

For the present context, a dialectical understanding of political concepts would imply an approach to the concept of sovereignty as the identity of opposites. Of course, this identity would itself be contradictory insofar as the opposites contained within the concept are not reconciliated but rather retained in their opposition. Such an approach suggests that the reason why the concept of sovereignty remains problematic or ‘contested’, in Kalmo and Skinner’s term, is because it is itself the failed attempt at a conceptual sublation of a social conflict: The notion of sovereignty is supposed to create unity where there is none, but this attempt at harmonization itself only leads to an intensification of non-identity, transforming it into its extreme in the form of contradiction. Analyzing sovereignty as a dialectical concept in this way adds a new dimension to the insights which may be gained from conceptual history and deconstruction. Whereas Koselleck’s notion of the counterconcept places sovereignty in a series of asymmetrical historical conflicts over the form and

40 Buck-Morss 1977, 63.
power of the state, and Derrida’s deconstruction of the concept challenges its claim to self-identity by demonstrating its aporetic inconsistency, Adorno’s negative dialectics would allow us to analyze the contradictory nature of the concept as the logical result of the social or historical conflict which it strives, but fails, to dissolve. In this sense, it mediates between conceptual history’s emphasis on social conflict and deconstruction’s emphasis on conceptual aporia, claiming that the logical form of contradiction necessarily corresponds to social antagonism.

The parallelism between conceptual and socio-historical opposition is especially pronounced in a central aspect of dialectics, namely, the notion of recoil or ‘Umschlag’, meaning a sudden turn or reversal of something into its opposite. Daniel Loick, who perhaps comes the closest to developing an explicitly dialectical theory of sovereignty in the tradition of critical theory, interprets the dialectical recoil in terms of historical irony. Irony, according to Loick, is a specific form of failure whereby “precisely those means which were supposed to ensure the success of the act have undermined the condition of its success”.41 Or, the other way around, the means employed to exclude a certain outcome themselves bring about exactly that outcome. The irony of sovereignty is, to Loick – arguing like Christoph Menke from a starting point in sovereignty as violence (see chapter 1) – that it ultimately incorporates the violence which it promises to exclude. This interpretation aligns with Adorno and Max Horkheimer’s early seminal work, The Dialectic of Enlightenment (1947), in which they argue that Enlightenment ideology intensifies the ideal of rationality until it reaches its breaking point and recoils into irrationality: “The dialectic of enlightenment is culminating [schlägt um] objectively in madness.”42 Dialectical recoil or culmination in this context means the (ironic) transformation of some historical tendency into that which it had identified as its opposite. In other words, it is a dialectical structure of history, although not a dialectical progress in the Hegelian sense. However, the figure of recoil may also characterize dialectical thought. This is how the notion is used, for

41 Loick 2019, xviii, 72.
instance, in the following passage from Minima Moralia (1951): “If a dialectician always marked the dialectical recoil (Umschlag) of a thought which advances beyond itself by putting a ‘however’ (aber: however, but) in front of the caesura, then the literary schemata would punish the unschematic intent of what is being discussed with untruth.” Here, it is the thought which recoils and not its object. It is important to retain this dialectical reversal, Adorno argues, without attempting to bridge the gap between opposites by relating them through the mitigating conjunction ‘however’, as if one term would moderate the other rather than inverting it. The difficulty in thinking dialectically consists precisely in accepting and retaining that the concept may recoil from one of its contradictory terms to the other, thereby juxtaposing extremes rather than counterbalancing them.

The notion of recoil is thus a central feature of the structure of Adorno’s dialectical argumentation. The fact that this figure is to be found at both the level of what is thought and at the level of thinking demonstrates how dialectics necessarily links conceptual contradiction to extra-conceptual conflict. The dialectical approach to concepts is, ultimately, in itself contradictory in that it proceeds immanently yet rejects the self-contained unity of what is dialectically criticized from within: “The limit of immanent critique is that the law of the immanent context is ultimately one with the delusion which it has to break through.” Dialectics thus points beyond itself. By systematically developing the contradiction of its concept to the breaking point of the conceptual, it orients itself toward extra-conceptual conflict and makes this the vanishing point of the dialectical examination of the contradiction. For the analysis of political concepts, this approach bears the important reminder that political conflicts may not be replaced with theoretical dilemmas as questions to be solved

43 Adorno [1951] 1971, 106, translation: www.marxists.org/reference/archive/adorno/1951/mm/ch02.htm, parentheses in translation. The statement is imprecise according to Horkheimer and Adorno’s own terminology since it cannot be the dialectic that ‘umschlägt’ but rather the dialectic consists in the Umschlag of one of its antithetical moments into its opposite. The translation apparently seeks to amend this imprecision by rendering ‘schlägt um’ as ‘culminates’.

discursively, even if the analysis remains within the realm of political thought. The aim of the thesis should thus not be to rid the latter of contradiction but rather to expose the contradiction as the proper conceptual representation of a conflictual sociality.

**Conclusion**

This chapter has reflected on different ways of approaching concepts as non-self-identical, whether in the form of counterconceptual polemics, deconstructible aporia or dialectical contradiction. It has not been the intention to choose one among these approaches, to place them in a sort of evolutionary line from naïve to self-conscious, or to amalgamate them into a single unified concept of concepts. The above considerations are intended to illustrate how something which appears initially paradoxical – a concept in conflict with itself – can give rise to a richness of different perspectives on the functioning of concepts; all based in some form of non-identity. In chapter 5, I shall develop crisis sovereignty as a dialectical concept, emphasizing the contradiction between extremes as the core of sovereignty’s function as a political institution. Yet, this does not mean that the concept of sovereignty is not also polemical or aporetic – it is both, and bearing this in mind may serve to nuance the analysis.

A secondary aim of these reflections would be to avoid letting the thinker under scrutiny influence his own reception too heavily. This is especially a danger in the case of Schmitt, who spent a great deal of his time and energy in the post-war years trying to stage his own position in intellectual history.\footnote{Laak 1993.} Too often his self-characterization – as a scholar of jurisprudence, as a Catholic theological thinker, as a classic political philosopher – is taken at face value. The polemical colouring of his theorems are noted and commented upon but only insofar as he himself has theorized political concepts as essentially polemical. The friend/enemy distinction becomes the lens through which his works are read. The above considerations invite the reader to think contradiction
differently than the way it is immediately presented in Schmitt’s theory of sovereignty, creating a – often only implicitly present – distance in the present thesis between material and observation. The border separating the contradictions acknowledged by Schmitt from those he ignores or suppresses is indistinct, and it must be continuously retraced so as to not let him be the sovereign decider over the lines of conflict.

Finally, as stated in the introduction, this thesis does not intend to be a Schmitt study. Rather, it focuses on the development of the concept of crisis sovereignty in the context of a constellation of other concepts such as exception, modernity, legitimacy, and power, and in its constitutive contradictoriness as a dialectical concept. The above considerations on the structure and workings of such concepts would serve to deliver the concept not from its textual, philosophical, or historical context but rather from the monolithic confinement of ‘Carl Schmitt’; if not as a biographical person then as a self-contained oeuvre, a system applicable to, but independent of the surrounding world. Contradictory concepts are difficult to grasp and difficult to retain. They take on a life of their own as motors of contradictory and conflictual developments. The aim, then, would be to follow the concept, not its originator, to see where it leads.
PART II:
HISTORICO-PHILOSOPHICAL TRAJECTORIES
When Carl Schmitt defines the sovereign as he who decides upon the exception, this is not simply a juridical definition; nor are the concepts of sovereign, decision and exception confined to the sphere of constitutional theory. On the contrary, these central concepts mediate between his explicitly developed political philosophy and its implicit precondition in an engagement with philosophy of history. Schmitt’s decisionist theory of sovereignty could not have emerged in just any period of time and is not applicable to any era whatsoever, but it is inherently intertwined with an experience of modernity as crisis temporality. The sovereign state is borne out of crisis and must continuously return to the problem of crisis in order to reconstitute itself. The concept of sovereignty is thus a polemic intervention in a problematics external to the narrow limits of public law and corresponds to a specific view of history, which I shall lay out in the following.

It was Karl Löwith who most famously reconstructed modern philosophy of history as the transference of eschatological temporality from Christian theology into secular thought, although in this he was inspired by Schmitt and
preceded by the young Jacob Taubes.¹ According to these theorists of secularization, providence was replaced with progress, redemption with emancipation, and divinity with humanity, yet the linear teleological movement toward an end goal remained the same. However, while the fulfillment of this end goal had previously rested in the hands of God, it now became the task of revolution; history of philosophy is necessarily interlaced with politics. In this chapter, I sketch the outline of a historico-philosophical tradition in direct opposition to the narrative of revolutionary eschatology as constructed and criticized by Schmitt, Löwith and Taubes. I argue that the eschatology narrative of modernity is not a prerogative of Enlightenment progressivism but rather belongs to its conservative counterpart, which sees in progress only a march toward the destruction of societal order. A prominent representative of this anti-eschatological apocalyptic, though he denied believing in any principle of world-history, was Jacob Burckhardt, whom Löwith declared to be the first to depart with philosophy of history as such. While Burckhardt’s influence on the Zeitgeist of early 20th century thought cannot be overstressed, the rather liminal figure of Juan Donoso Cortés may have impressed lesser upon the general public, yet it had a much more direct impact on the thought of Schmitt. Between them, they represent the conservative take on the crisis temporality of modernity.

Like Burckhardt and Donoso Cortés, Schmitt develops his implicit philosophy of history in an explicit attack against any philosophy of history, and thus he stands on the shoulders of their paradoxical anti-eschatology. However, whereas the two prophets of the apocalypse, Burckhardt and Donoso Cortés, gazed into the horizon of a European civilization inevitably approaching its end, at least in the early 1920s, Schmitt still believes in the possibility of the modern state. Parting with the resignation of his predecessors, he centers his

¹ Developed in Meaning in History, Löwith 1949. Jacob Taubes’ dissertation on Occidental Eschatology was published as early as 1947, however, this was heavily inspired by Löwith’s 1941 book, From Hegel to Nietzsche, Taubes [1947] 1991; Löwith [1941] 1995. For a short and concise characterization of Löwith’s influence on the reception of modern philosophy of history, as well as its theoretical and political deficiencies, see Krogh 2020, 3–9.
own understanding of modernity on the concept of the sovereign decision. In a normative and metaphysical vacuum, the decision is, for him, the empty form which allows a transcendent principle of order to be reinstated at every moment. In line with his conservative predecessors, he sees modernity as the dissolution of order, yet it is precisely because modernity is constitutively disorder that it necessarily contains within its concept a call for a principle of order, hence the necessity of decision as a prerequisite of modern social organization. The historico-philosophical link between decision and crisis temporality is therefore a core element and premise of his theory of sovereignty.

In the following, I first examine the eschatological structure of Jacob Burckhardt and Juan Donoso Cortés, analyzing their theoretical convergences and disparities in order to trace the contours of a conservative philosophy of history based in a view on modernity as crisis temporality. I then place Schmitt in this tradition, showing how his political theory reacts to this specific understanding of modernity as its metaphysical basic assumption. In the Weimar era stage of his thought, however, Schmitt differs from Burckhardt and Donoso Cortés in his positive outlook for the sovereign state: Crisis may still be countered by decision, and modernity consists in this tension mediated by the state as the guarantor of order. In a final section, I then turn to the post-war reorientation of Schmitt’s eschatology away from decisionism and toward the concept of ‘katechon’ to demonstrate, through contrast, the specific relationship between the theory of sovereignty and crisis temporality contained in his state theory of the Weimar years.

BURCKHARDT’S ANTI-PHILOSOPHICAL PHILOSOPHY OF HISTORY

The conservative philosophy of history of modernity is centered on an experience of crisis as the decisive characteristic of temporality. To this tradition, the French Revolution constitutes the original sin of modernity, marking a double movement of revolutionary politics and Enlightenment philosophy. The conservative counter-tradition thus takes shape as a reaction against both: against
the political ideal of emancipation and against the philosophical ideal of historical progress. While much separates the secular German historian Burckhardt from the devoted Catholic Spanish statesman Donoso Cortés, they are united in their attack on what they perceive as the negative eschatological force of their adversaries. Paradoxically, however, they both found themselves compelled to express this critique in terms of a higher principle of history. This principle mirrors, yet turns on its head, the eschaton of progress.

Burckhardt (1818-1897), in the opening pages of his *Reflections on World History*, decidedly denies any place for a philosophy of history in historical science: “We shall, further, make no attempt at system, nor lay any claim to ‘world historical ideas’ (...). Above all, we have nothing to do with the philosophy of history. The philosophy of history is a centaur, a contradiction in terms, for history co-ordinates, and hence is unphilosophical, while philosophy subordinates, and hence is unhistorical”.2 This rejection of any philosophy of history is, however, not merely a non-philosophy but itself an anti-philosophy of history. It refers to a specific version of philosophy of history, namely the idea that world history progresses uniformly according to a single principle,3 be it idealist or materialist, which was especially associated with the lasting impact of Hegelian dialectics on all branches of German Geisteswissenschaften, the academic humanities. Burckhardt’s book was posthumously published in 1905 and collected a series of lectures held in 1868-1872 under the title “On the Study of History”.4

Philosophy of history is a centaur in that it seeks to replace the ordering of facts of historical science with the subsumption of these facts under a unifying principle, that is, an end-goal of progress. On the theoretical side, Burckhardt’s target is Hegel and the Hegelian view of history as a coming to self-consciousness of the world spirit, guided by the principle of reason. In particular, Burckhardt rejects the idea of a continuing historical liberation of man, whereby every epoch reaches a higher level of freedom than its predecessor.

3 Cf. Löwith’s definition following Burckhardt, Löwith 1949, 1.
4 The book title was added by the publisher, Burckhardt’s nephew Jacob Oeri.
What he rejects is thus, in the words of Karl Löwith, an *eschatological* view of history as a redemptive progress toward the end of all history. On the political side, this ideal is represented in revolutionary movements seeking to end an epoch of repression and enter into a new epoch of freedom. With the French Revolution, Europe had entered into an era of uncertainty under the looming threat of revolutionary breakdown, disintegration and the loss of tradition. Against this will to renewal, Burckhardt insisted on the continuity of history and its foundation in an unchanging nature of man. “The personal motive of his study of history and of his almost desperate clinging to continuity was a passionate reaction against the revolutionary trend of his age”.\(^5\) Furthermore, the theoretical and political sides to Burckhardt’s polemic were connected; to him, Hegelian teleology was not only descriptively wrong but actively encouraged political desire for change.\(^6\) The rejection of philosophy of history, therefore, does not imply an abstinence from reflection on the nature of history. “Actually, as Burckhardt well knew from the example of Ranke, to deny the possibility of a philosophy of history is in effect to affirm another philosophy of a particularly Conservative sort”.\(^7\)

To Löwith, Burckhardt is thus the anti-eschatological thinker par excellence. Yet, paradoxically, his polemic against the revolutionary eschatologists itself takes on a tone of apocalyptic pessimism. Burckhardt may not be a prophet of the eschaton in the sense of divine redemption, but he does foresee the coming of historical end times as a ‘prophet of doom’.\(^8\) He does not applaud the dissolution of history, but he sees the signs of decadence foreboding the apocalypse. Nature, Burckhardt ominously concludes in his introduction, may be brought to destruction by outer factors, but history paves its own way to downfall. And when it has completely outlived itself, any outside trigger will be enough to push it over the edge.\(^9\)

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\(^5\) Löwith 1949, 22.
\(^6\) Mommsen 1983, 462.
\(^7\) White 1973, 237.
\(^8\) Mommsen 1983.
Burckhardt’s own reflections on the nature of history revolve around the concept of crisis. The crisis takes on many forms in his account, yet in its ‘true’ form it is generally conceived as a convulsion of the political and social foundation of a society.\[10\] Burckhardt concedes that it is possible that “crises drive forward the coming of something great, but it may be the last”.\[11\] Especially in the form of war, a crisis may purify a society and strengthen the existing social order, since “only real power can guarantee a peace and security of any duration, while war is the assertion of real power, the peace of the future lies in such a war”.\[12\] The war is a productive form of crisis, since it removes superfluous elements of society and consolidates tradition, while facilitating the cultural integration of new tendencies in the old.\[13\]

In contrast to the war between nations, the revolution within a society is bound to become a ‘failed crisis’. The quintessential example of this is the 1789 French Revolution, which thrived on a combination of “a utopia in the educated and an accumulated treasure of hatred and revenge in the masses”.\[14\] Whereas the war returns us to tradition in order to prepare us for the new, revolution emerges from a resentment toward the totality of the past, ignited by phantasmagoric illusions about a pure, pastless future. Burckhardt is neither willing nor able to explain the origin of this thirst for revenge among the common people, as he consistently avoids questions of the material conditions for social conflict.\[15\] Ultimately, he shrugs, an ‘urge for great change’ belongs to the nature of man, and if for no other good reason, people will revolt out of boredom. And as soon as the ‘Zeitgeist’ of resentment has taken on, it takes little effort for philosophers and demagogues to ignite the flame of insurrection, which will then spread like a wild fire under the empty slogan “Things must change”.\[16\]

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Yet, the rebellion against history and continuity will not bring real change, Burckhardt contends. As revolutions are purely destructive, they follow a circular pattern rather than lead to the construction of anything new. At first, the revolt destabilizes the social order and makes the state vulnerable to outside threats, thereby inviting declarations of war. These additional layers of conflict and factors of insecurity then lead to a period of fatigue, wherein the powers of the old order (police and military) organically and without noticeable resistance reconstitute themselves. This may give rise to a military regime; however, this is only a transitional form on the way to the return of a monarchy of the despotic sort. Through despotism, the state is then finally able to re-erect all the institutions against which the revolutionaries originally rebelled, but which they now welcome with desperate relief. Burckhardt’s vision of crisis thus follows a circular model from revolution over despotism to restoration. Contrary to intensions, the rebellion does not lead society into future redemption but rather returns it to an older, even more authoritarian system of repression. This is a recurring topos among the conservative thinkers on history, which we shall meet again in Donoso Cortes and Schmitt: Society needs a small dose of despotism in order to vaccinate it against absolute despotism, and, conversely, the promethean demand for liberty will inevitably bring about its own antithesis.

The concept of crisis is central to this anti-progressive counterrevolutionary vision of history, yet it is not a theoretically well-developed or neatly defined concept. On the one hand, the ‘true crisis’ may lead to the foundation of a lasting social order, though these ‘true’ crises are extremely rare, and Burckhardt mentions no example more recent than the migration period of the 4th-6th Centuries. On the other hand, the much more common failed crises, though guided by a wish for change, bear no potential for actual historical change whatsoever – and it is around these that Burckhardt’s crisis analysis revolves. The nature of the difference between these two crises is not explained, though it is clear that any sort of popular revolution belongs to the latter

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18 Koselleck 1982, 639.
type and is, in fact, its prototypical manifestation. On the one hand, crisis is a trans-historical meta-concept, and, on the other hand, it specifically characterizes the epoch beginning with 1789, the ‘Age of Revolution’.\(^{19}\) On the one hand, Burckhardt mocks those Enlightenment philosophers who pretend to predict the future, while, on the other hand, he himself foresees the coming catastrophe at the horizon of his time.\(^{20}\)

Furthermore, to this non-philosophical philosophy of history belongs a specific *temporality* of crisis. In addition to the circular movement of historical time, the crisis also accelerates the course of events: “The world process is suddenly accelerated in terrifying fashion. Developments which otherwise take centuries seem to flit by like phantoms in months or weeks, and are done away with.”\(^{21}\) In the crisis, time appears to fly by, as events unfold in rapid succession, but Burckhardt does not perceive this speeding up of history as a sign of progress. Rather, the acceleration of time implies a loss of firm ground and a break with continuity. In the attempt to do away with the past, modernity loses the foundation of tradition on which it stands. This view of time in modernity is not unlike those famous words in the most revolutionary of texts, the *Communist Manifesto*, whereby “all that is solid melts into air”, as bourgeois society is continuously revolutionized from the inside and all relations to the old swept away.\(^{22}\) Only, in Burckhardt’s case, it is a vision of horrors to come and not a window of opportunity for emancipation. The revolution wields great historical energy, but what the revolutionaries fail to see, in Burckhardt’s view, is that this energy is tearing apart European culture from the inside, rather than bringing it into a new epoch.\(^{23}\)

In spite of his distaste for philosophy of history, Burckhardt’s late writings thus incorporate a typical image of modern conservative philosophy of history, with all its contradictions, and one that paints an important backdrop for Schmitt’s state theory. It is substantially reactionary in that in every aspect it

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\(^{19}\) Burckhardt 1988, 279.

\(^{20}\) Burckhardt 1988, 279.


\(^{23}\) Cf. Hinde 2000, 12.
reacts to the philosophy of history of progression and revolution, and at every step it poses a counter-image to these perceived enemies. Its central concept is the crisis, which Burckhardt sees as the paradigmatic form of historical consciousness of his own time and simultaneously identifies with the threat of revolution. In a letter, he writes: “I know too much about history to expect anything from the despotism of the masses but a future tyranny, which will mean the end of history.”24 Accordingly, this conservative philosophy of history takes the shape of an anti-eschatological eschatology. The revolutionaries are driven by a false ideal of change as a force of history – but, precisely because of this mistaken conviction, they are driving this same historical change forward, thereby acting as a catalyst of crisis. The crisis, however, will not bring emancipation but rather a return to pre-modern despotism. In this sense, Burckhardt is simultaneously a critic of any notion of eschatology and himself a prophet of doom.

**Donoso Cortes’s anti-eschatological eschatology**

Schmitt opens his collections of essays on the Spanish conservative and catholic statesman Juan Donoso Cortés (1809-1853) thus:

> Europe has taken three major blows to its roots: the European civil war of 1848, the conclusion of the First World War in 1918 and the global civil war between world citizens of the present. Every time, these world historical events have brought about a sudden discussion of Donoso Cortés in all of Europe. Every time, his name sounded in the echo of catastrophe. Yet every time, this lasted only for a moment, only for a terrifying second of danger, as the seal broke and the mind opened itself toward the secret.25

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24 Quoted in White 1973, 237.
25 Schmitt 1950, 7, my translation. Remarkably, though unsurprisingly, Schmitt does not count the outbreak of two world wars among the major blows against Europe but rather
Donoso Cortés wrote the majority of his political works – which for a large part took the form of speeches to assemblies and letters to men of great political influence – in response to the wave of revolutions sweeping across Europe in 1848. Like Burckhardt, he held the crisis of revolution to be the quintessential structural event of modernity, yet, unlike Burckhardt, he did not hesitate to counter the philosophy of history of the revolution with his own, explicitly eschatological historical teleology. As Schmitt notes, Cortés saw in the fractures of a divided civilization the divine sign of the coming catastrophe; the end of historical time. It is not difficult to see why this conservative apocalyptic vision would so fascinate Schmitt; his description of the attraction of Donoso Cortés might just as well be applied to his own legacy as an extreme thinker of extremes.26

Although Donoso Cortés was first and foremost a diplomat and political rhetorician, his arguments consistently center on the necessary structure of historical development and the signs of the times foreboding the future. He is therefore no less a philosopher of history than a political thinker. His account of historical time is based on a Christian eschatological development toward apocalyptic end times but, like Burckhardt’s, directed against any concept of progress. The revolutionary year of 1848 represents to him a complete symptomatology of a European society coming apart. At the same pace as Christianity is losing its function as a societal stabilizer, more and more political force is needed in order to keep a collapse at bay, and this means that “(...) everything points to a near and fateful crisis. Everything announces a cataclysm that has never before been seen by men.”27 This eschatological linearity toward the end is to him a constant factor of history, but the epidemic of their end results and aftermath, which were, of course, the defeat and decline of Germany in both cases.

26 In fact, it has been argued that Schmitt projects his own affirmative theory of dictatorship onto Donoso Cortés, and that this misrepresentation has distorted the reception of Donoso, cf. Cortés Fox 2013. The issue here, however, is not a reconstruction of Donoso Cortés but his influence on Schmitt, regardless of Schmitt’s capability as an intellectual historian.

revolution serves as an accelerator, centrifugally ripping the fabric of society apart. In the pessimist worldview of Donoso Cortés, this development can neither be prevented nor paused but only delayed for a limited time.

Like Burckhardt, Donoso Cortés sees the revolution as the prophetic sign of societal breakdown and philosophy as the source of revolution. He perceives the history of Christian Europe as a gradually intensifying dichotomy between two competing civilizations, namely, the Catholic and the philosophical. As the philosophical civilization is gaining the upper hand and forcing back Catholicism, society is declining toward the final catastrophe where man can no longer save himself: “I think it is proved and evident that evil always triumphs over good here below, and that the triumph over evil is something reserved to God personally”. Philosophy of history leads to socialism, and socialism to the triumph of evil. Donoso Cortés’s eschatology is not a prophesy of the coming kingdom of God but rather the apocalyptic vision of revolutionary socialism’s destructive force. The Antichrist, Donoso Cortés explicitly writes on several occasions, has taken material form in the figure of Pierre-Joseph Proudhon.

Furthermore, regarding philosophy of history, Donoso Cortés does not separate between liberalism and socialism: Continental liberalism, he claims, necessarily leads to socialism. Here, as in Burckhardt, the root of all evil lies in the historico-philosophical ideal of progress associated with the French Revolution and – to its conservative observers – manifested in every revolutionary political movement. In Donoso Cortés’s view, what separates socialism from liberalism is not its politics but rather its coherence as an explicitly atheist anti-theology, as opposed to the vaguely Christian moralism of the latter. Socialism, therefore, represents a direct attack on the state and its divine authority, while

the ‘discussing class’ of the bourgeoisie unknowingly undermines it from the inside.33

While Schmitt only gained an interest in Burckhardt from the late 1920s onward, Donoso Cortés was, from the beginning, one of his most important inspirations and would remain so throughout his scholarly life. What fascinated Schmitt the most was Donoso Cortés’s theory of dictatorship as an inherent and necessary condition of the state. Here, as mentioned above, dictatorship is viewed not as a form of state among others, nor as a political end in itself, but rather as a minimal moment of despotism preventing the absolute despotism of anarchy: "(...) the choice does not lie between liberty and dictatorship; if that were so, I would vote for liberty, just as all of us here would do. The problem, and my conclusion, are as follows: we have to choose between the dictatorship of insurrection and the dictatorship of government".34 Donoso Cortés’s apocalyptic vision shows a post-revolutionary anarchy, which will inevitably result in the rise of a new “gigantic and colossal tyrant, universal and immense; everything points to it”.35 Like Burckhardt, that is, he sees a new despotism as the only possible outcome of revolution, and the antidote against this outcome is a smaller, preventive dose of dictatorship. Yet, as opposed to his German contemporary, Donoso Cortés subscribes to a decidedly and explicitly linear eschatology rather than any cyclical pattern of escalation.

Schmitt’s collection of essays on Donoso Cortés in Pan-European Interpretation was published in 1950 and contained four texts: the final chapter from Political Theology (1922), two essays from 1927 and 1929 and one from 1944. Among them, the 1929 essay on “The Unknown Donoso Cortés” is the most critical. Here, Schmitt argues that there is an irresolvable contradiction between the apocalyptic theological view of history in Donoso Cortés’s writings and his concrete political diagnosis of the problems of his times. Despotism, Schmitt claims, needs no eschatological explanation; in fact, this political-

33 Schmitt 1950, 77.
theological liaison only serves to muddle the ‘real and necessary’ eschatology.\textsuperscript{36} However, in the 1950 foreword to the publication, Schmitt emphasizes that his late-1920s pieces were written in a time of relative stability and carry the mark of this naivety. In the early Weimar years, as well as the post-war period, Schmitt would not so readily dismiss the eschatological prognosis of his conservative-catholic role model.

In summary, Jacob Burckhardt and Juan Donoso Cortés are two very different observers of 19th century modernity. While Burckhardt was a more or less an areligious and apolitical historian, Donoso Cortés was a devoted Catholic and public diplomat who corresponded with important political figures throughout Europe. While Burckhardt dismissed the thought of any world historical principle, Donoso Cortés made bold claims on the eschatological structure of historical time and developmental necessity. Nevertheless, they also shared common grounds on which Schmitt would later make his first steps toward a theory of sovereignty. Both identify politically engaged philosophy of history as the origin of decline, while, on the other hand, both also implicitly or explicitly conceptualize their critique in terms of their own philosophy of history. Both predict the coming of catastrophe, and both point to the revolution as its cause. Both construe modernity as essentially a temporality of crisis, and both identify crisis with revolution and revolution with the end of historical time as we know it.

Yet, above all, what they have in common is a paradoxical tension within their view on historical time. In Burckhardt, this paradox takes the form of an implicit philosophy of history directed against the idea of any philosophy of history. In Donoso Cortés, we have an anti-eschatological critique of progress based in a Catholic eschatological view on historical time. This paradoxical foundation of their thought leads to recurring contradiction in their arguments. As even Schmitt notices, Donoso Cortés’s political analysis often appears to go in the opposite direction of his catholic theology.\textsuperscript{37} It is a fundamental ambivalence in the Christian historiography of this Catholic diplomat, as well as of

\textsuperscript{36} Schmitt 1950, 76.
\textsuperscript{37} Schmitt 1950, 75–76.
any affirmative eschatology, that it identifies the eschatological force of history with revolutionary progressivism while at the same time claiming the final victory of Christ over the Anti-Christian rebellion in the apocalypse. To Schmitt, this only adds to the attraction of Donoso Cortés: His philosophy of history is eschatological without being anti-historical.\textsuperscript{38} Thus, while both thinkers vehemently criticize the progressive ideal, they also both develop a determinist schemata of a negative progression toward a catastrophic end of history.

Nevertheless, there is also a crucial difference between these two conservative thinkers, which consists in the way they respond to this tension. Burckhardt remains an observer of the crisis of modernity and withdraws into pessimist resignation. Although Donoso Cortés’s prognosis is just as bleak and often presented in even more melodramatic imagery, he continuously sought to counter the eschatological acceleration of modern decadence through political means. To him, the inevitability of the crisis does not exempt us from political engagement with history but rather faces us with the ethical imperative of \textit{decision}.\textsuperscript{39} Every individual must decide between the dictatorial order of monarchy and the total despotism of anarchy, between Catholicism and atheism, and ultimately between good and evil. What matters is not so much the effect of this decision on history but rather the ethical disposition of this decision itself and the devotion to the unity of divine and earthly authority it expresses. While Donoso Cortés introduces the decision into his political theory, it therefore remains an underdeveloped ethical category rather than a structural moment of philosophy of history. In the works of Schmitt, however, the decision becomes the pivotal historico-philosophical concept.

\textbf{Schmitt’s conservative crisis theory}

In the 1940s, Karl Löwith famously rewrote the history of modern European philosophy as a secularization of eschatology into an atheist-humanist teleology

\textsuperscript{38} Schmitt 1950, 105.

\textsuperscript{39} Schwaiger 2001, 232–33.
of progress. Beginning with Burckhardt as the point of exit from this tradition, and from there moving chronologically backward, Löwith traced philosophy of history from its culmination in Hegel and Marx through its first conceptualization in Voltaire and its prehistory in the Church fathers back to its Hebrew-Christian biblical roots. This thesis appears to lend itself to a combination with Schmitt’s political metaphysics, as has been the case in both right and left Schmittians such as Hanno Kesting, Reinhart Koselleck and Jacob Taubes. To these authors, the Enlightenment ideal of humanist progress as a world-historical principle exposes itself as a totalizing and therefore totalitarian metaphysics of emancipation. Whereas modern philosophy viewed itself as the breakthrough of scientific rationality, it was actually only transposing a theological dogma of faith into secular terms. To the tradition after Löwith, ‘philosophy of history’ as a label is identical to this secularized theology.

In the above, I have sketched the contour of an oppositional tradition to the one Löwith and followers characterize as secular eschatology. Jacob Burckhardt did not just part with what he saw as a historical determinism of progress but rather conceptualized his opposition in historico-philosophical terms, thus implicitly developing an alternative principle of history. The title which his publisher gave to his posthumously published historiographical reflection, *World-Historical Reflections*, may conflict with his own explicit denial of the possibility of such reflections, yet it nevertheless accurately describes Burckhardt’s actual line of argument. Burckhardt and Donoso Cortés represent two strains of the anti-progressive philosophy of history, which Schmitt called the tradition of the counter-revolution. Although they both developed their view on history in contrast to the teleological eschatology of humanism, and despite their significant differences, they both saw modernity as an epoch of crisis, and they both construed modern history as directed toward apocalyptic end times; the coming of the final catastrophe.

This counter-revolutionary tradition is the framework in which the political thought of the young Schmitt began to unfold. While Burckhardt was only

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40 Löwith 1949.
41 Müller 2003, 109; Taubes 1987, 8–10.
admitted into his personal canon later on, his reflections on history had been received with great interest upon their publication in 1907, and Burckhardt was and remained a canonical outsider at the center of attention though in the periphery of scientific consensus. Donoso Cortés, on the other hand, was a direct reference point for Schmitt and an important inspiration throughout his work, although he remained a rather liminal figure in Schmitt’s academic surroundings. Between them, they illustrate the anti-eschatological apocalyptic philosophy of history at the foundation of Schmitt’s political theory.

Existing studies on Schmitt’s view on history deal primarily with his post-war writings on the restructuring of international law, the paradigmatic change from the Eurocentric international state system to a new global norm, and the leitmotif of the Paulinian concept of ‘katechon’. I shall return to this concept in the final section of this chapter. Here, however, I will first argue that Schmitt’s work was shaped from the beginning by an engagement with historico-philosophical questions. Already before the publication of any of his better known works, Schmitt took an interest in philosophy of history and its implications for politics. His first engagement with philosophy of history takes the form of a piece of satire from 1918 with the title “The Buribunks. Attempt at a philosophy of history”. The essay describes a fictional scientific discipline, buribunkology, which is a self-referential branch of history carried out by the Buribunk people themselves and chronicling the annals of ‘Buribunkentum’ or buribunkism. One of the two main characteristics of Buribunk society is that every individual must meticulously keep a diary, which then becomes the material of buribunkological archivists. This practice of self-historicizing is the meaning of Buribunk existence, and individuals thus live their lives toward the unification of a single, self-fulfilling world-historical universalism. The other

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42 From the 1929 book version of *The Concept of the Political* at the latest. The 1927 journal article of the same title does not yet mention Burckhardt. Schmitt 1927; 2009.
43 Mommsen 1983.
44 Cf., for example, Lievens 2017; Hoelzl 2010; Grossheutschi 1996; Mehring 1996; Müller 2003, 104 ff.
main characteristic is an oversized mouth as the physical result of the excessive spiritual engagement with the past.

Schmitt also uses the term ‘Wiederkäuer’, or ruminant, alluding to Friedrich Nietzsche’s image of a way of life obsessed with history in which one continuously digests the past without ever turning to new experiences in the present; like an animal continuously chewing on the same piece of fodder devoid of nutrients.\footnote{Nietzsche [1874] 2009, 10–11.} In his essay \textit{On The Use and Abuse of History for Life}, Nietzsche criticizes the archival way of conducting historical research, which only ever indiscriminately accumulates data while ignoring the question of the meaning of history for the present. Schmitt thus invokes this canonical critique of the chronicler while simultaneously slightly changing the emphasis: In his account, it is not the endless collection of data itself that constitutes the delusion of his contemporaries but rather the belief that history as a metaphysical principle can replace theology, and that man fulfills his destiny by taking part in this historical metaphysics. In the footnotes, the unnamed buribunkological author of this parodic essay repeatedly denounces the ‘unbelievable claims’ of a certain Schmitt insisting that the core of modern spiritual life remains the Christian tradition.\footnote{Schmitt 2005, 455.}

Throughout the years, Schmitt remained attached to this comic trifle from his youth. In 1973, he sent it to Reinhart Koselleck, who initially received it with polite interest but kept returning to it and eventually made it his material for a 1981 lecture, subsequently published as an essay.\footnote{Koselleck and Schmitt 2019, 252–57; Koselleck [1982] 2003.} In 1991, he writes in a letter to Helmut Quaritsch:

As I once again turn my attention to Schmitt, the utopia of the “buribunks” appears ever more important to me. Here, the dissociation of irony clarifies all fronts: against the philosophy of history of German idealism, against any and all transcendental philosophy in favor of, with
reservations, scholastics, against any historicism and any belief in progress (...)\(^{49}\)

According to Koselleck, “The Buribunks” contains all Schmitt’s most important historico-philosophical and political considerations in embryotic form. Its importance and clarity consists in the way Schmitt positions himself against a series of enemies: idealist philosophy of history, transcendentalism, historicism, and the dogma of progress. In short, the target is the idea of any secular principle of world-history, and Koselleck thus implicitly locates Schmitt’s theoretical point of departure within the tradition of anti-philosophy of history described above.

Koselleck reads Schmitt from the viewpoint of the German implosion in 1945 and the ensuing ‘permanent crisis’ of the Cold War’s global ideological split. He therefore tends to interpret Schmitt’s intellectual development as a self-fulfillment toward the conclusion of his later thought, thereby ignoring the important ruptures and reassessments which this development passed through. Schmitt’s writings are acutely receptive to the historical situations in which they emerged. In particular, the transitions from the Weimar period to his time in the NSDAP, and from there to the Cold War, marked points of change in his theory as well as his politics. As we shall see in the section on the concept of the katechon, this also applies to Schmitt’s view on history. Nevertheless, Koselleck rightly points to Schmitt’s early interest in philosophy of history and his negative self-positioning. The buribunk text demonstrates that his state theory developed against the backdrop of a political engagement with philosophy of history and that his early 1920s writings on sovereignty and decisionism should be viewed in light of this broader philosophical interest.

The essay is a parody but, as the Schmitt biographer Reinhard Mehring writes, its ‘historico-philosophical investment’ is a serious matter.\(^{50}\) Already here, Schmitt diagnoses the decadence of modernity through the replacement of theological transcendence with positivist normlessness. The essential aspect

\(^{50}\) Mehring 2009b, 76.
of buribunk existence, he recounts, is that it “has found a timely form of religiosity while rigorously maintaining pure positivism and an unavering faith in nothing but matters of fact”. In Koselleck’s view, this critique targets not only the “entire intellectual foundation of modernity” but also the contemporary political problem of “Lenin and the Communist Party”. Idealist philosophers of history of the 19th century, as well as Bolshevik revolutionaries, all belong to the canon of buribunkology. Schmitt’s parody thus amounts not to a dystopia but rather to a negative utopia; a sarcastic idealization of the ideal of progress. To him, philosophy of history is just as determined by this utopian ideal as history is shaped by the secularization of metaphysics.

This early polemic against historicism and its philosophical prerequisites sets the framework for Schmitt’s first state-theoretical works aimed at a broader public. In Political Romanticism from 1919, he locates the origin of the romantic character of bourgeois modernity in the historical replacement of a transcendent God by the two secular principles of humanity and history. These two ‘demiurges’ are originally opposed insofar as humanity represents a revolutionary ideal of the future while history maintains a conservative bond with the past. In Hegel, however, they are synthesized into the historico-philosophical principle of world spirit, which is then brought back down to earth by Marxism posing the proletariat as the human carrier of the task of fulfilling history’s end goal. As was the case in Burckhardt and Donoso Cortés, Schmitt draws a direct line from modern philosophy of history to the threat of socialist revolution.

However, Schmitt is not merely a product of 19th century conservatism. In a 1924 review of Schmitt’s 1919-1922 publications, Hugo Ball notes:

In comparison with his predecessors, Schmitt’s work reveals an obvious difference. Bonald and de Maistre as well as Donoso Cortés came from Catholic nations in a time where the ideological worldview may have

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51 Schmitt 2005, 463.
CRISIS SOVEREIGNTY

been shaken to its foundations but not yet shattered and completely devastated. Their point of departure is a firm legal structure, kept alive by the restauiration of the monarchy in the case of Bonald and de Maistre, by the counterrevolutionary tradition in the case of Cortés. The theological state is contested, but not destroyed.55

Donoso Cortés would hardly concede that the crisis of his times was merely a historical potential which had yet to materialize. From the viewpoint of crisis, every preceding crisis was only ever partial and belonged to the prehistory of and building toward the final and absolute existential challenge faced by the present. Nevertheless, every crisis has its own particular historical character, and Ball is right to emphasize the specificity of Schmitt’s diagnosis of his times.

In 1919, Schmitt’s view on modernity was already framed by the First World War, the Russian Revolution of 1917 and international socialism, the German Revolution of 1918/1919, and finally the first staggering steps of the already feeble Weimar Republic. As Walter Benjamin would later write, in only four years the war had rendered Europe almost unrecognizable to its own inhabitants: “A generation that had gone to school on horsedrawn streetcars now stood under the open sky in a landscape where nothing remained unchanged but the clouds and, beneath those clouds, in a force field of destructive torrents and explosions, the tiny, fragile human body.”56 There was a sense of finally having been left all alone in the world with no transcendent or transcendental guiding principles. Schmitt ascribed the cause of this crisis to a process of immanentization which had taken place in the 19th century. Along with the atheism of modern philosophy of history and the anarchism of revolutionary movements, the technologization of metaphysics ran as an undercurrent.

In Political Theology, Schmitt traces this metaphysical development toward immanence throughout the history of the modern state. Since the sovereign is the political equivalent to God, and the state of exception to the miracle, the

state in its decisionist origins corresponds to the metaphysics of theism. With Enlightenment, however, the miracle is repressed by a mechanist view of nature, and God is banished from this world. With deism, Schmitt claims, the legal form of the constitutional state is established: In the same way that God can no longer break the rule of natural law through miracle, the sovereign is no longer permitted the ability to break human law by emergency means.\textsuperscript{57} The French Revolution marks the final break with theology and its corresponding political structures. If the breakthrough of modern natural science had allowed a deistic God a residence outside of his own creation, like the mechanic installing but not operating the machine, then “the machine now runs by itself”.\textsuperscript{58} The mechanistic \textit{Zeitgeist} of post-revolutionary Europe reduces the state to machinist administration rid of political subjectivity. To designate this development, Schmitt uses the terms technological, economic and immanent interchangeably. In the 19\textsuperscript{th} century, nature as well as politics come to be dominated by a paradigm of immanence: “To the conception of God in the seventeenth and eighteenth centuries belongs the idea of his transcendence vis-à-vis the world, just as to that period's philosophy of state belongs the notion of the transcendence of the sovereign vis-à-vis the state. Everything in the nineteenth century was increasingly governed by conceptions of immanence.”\textsuperscript{59}

The historico-philosophical meaning of this transformation depends upon the core thesis of the concept of political theology: that concepts are not merely historically transferred from the sphere of theology to the sphere of political institutions; rather, every epoch is dominated by a paradigmatic metaphysics that determines the basic structure of politics. To Schmitt, this means that we can only understand how politics works in a specific society by analyzing the metaphysical assumptions underlying the institutional foundation of that society. Christian theology is only one among many such metaphysical systems and is continuously challenged by competitors. While Schmitt clearly prefers the theology of the Catholic church, not least because of its historical durability

\textsuperscript{57} Schmitt [1922] 2009, 43.
\textsuperscript{58} Schmitt [1922] 2009, 52.
and uniting force in Europe, his ‘political theology’ is, as Friedrich Balke has argued, a ‘Gegenwärtsbegriff’; a concept imbedded in and directed toward his present, which he found to be the most adequate response to a specific historical situation.\(^{60}\) Accordingly, there is no such thing as an a- or post-metaphysical politics. The replacement of transcendence with immanence is not the end of metaphysics but only the transition to a new metaphysical regime; and Schmitt’s critique of the immanence paradigm of his times is not that it lacks metaphysics but rather that it elevates the absence of metaphysics to its most basic metaphysical principle.

In Schmitt’s view, this denial of metaphysics leads to a constitutive invisibility of political form, which again leads to political instability. If society is prevented from gaining insight into the fundamental framework of political agency, then it cannot be expected to take the necessary steps to secure its institutions. This is the reason why modern philosophy of history to Schmitt, as to Burckhardt and Donoso Cortés, equals social revolution. In \textit{Roman Catholicism and Political Form}, he writes:

One of Karl Marx’s seminal sociological discoveries is that technology is the true revolutionary principle, beside which all revolutions based on natural law are antiquated forms of recreation. A society built exclusively on progressive technology would thus be nothing but revolutionary; but it would soon destroy itself and its technology.\(^{61}\)

The technological ideal of immanence is revolutionary because it posits the destruction of order as the ordering principle of society. In repressing the transcendental principle of God and sovereignty, modernity gradually erodes its own social foundation. Marx was right in searching for the end of capitalism and the capitalist state in the development of productive forces; only, in Schmitt’s view, the end of modern societal order means not emancipation but

\(^{60}\) Balke 1996, 33.

the end of any form of society as such – or, as his admired Donoso Cortés had predicted, the erection of a new, universal dictatorship with a plebeian stamp. Schmitt thus shares the pessimist view of Burckhardt and Donoso Cortés on modernity as a crisis temporality wherein the deterministic optimism of philosophy of history leads to the necessary destruction of modernity itself. Only, in this sense he is, indeed, as Jacob Taubes never tired of repeating, an ‘apocalyptic prophet of the counter-revolution’. Schmitt was not an apocalyptic prophet in the Paulinian sense, striving toward an eschatological end-goal of history; nor did he wish for emancipation from the bonds of constitutional law through sovereign dictatorship. Yet, like his conservative predecessors, his world-view is fundamentally dependent upon a cataclysmic, anti-progressive vision of modernity which determines both the impulse for and the framework of his theory of sovereignty. Ironically, although his declared enemy is Enlightenment philosophy of history, culminating with Hegel and resulting in the revolutionary politics of communist politics from Marx to Lenin, he is only able to counter this threat in terms of his own, negatively developed philosophy of history.

Since this is not Schmitt’s self-described aim but only the necessarily implied precondition for his project, any attempt at a systematic reconstruction of a Schmittian philosophy of history of the interwar period would be futile. Nevertheless, he does not succeed in steering clear of a historico-philosophical controversy but rather inscribes himself in a conservative tradition of anti-eschatological eschatology which defines itself in contrast to the progressivist eschatological tradition. The latter was first systematically described by Löwith,

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62 Taubes 1987, 7 ff.
63 As Kervégan convincingly demonstrates, the sovereign decision on the exception should not in itself be seen as a governmental paradigm – as is the case in Agamben – but rather as the necessary condition for order, Kervégan 2011, 138–39. I shall return to the function of the decision in the following section.
65 Indeed, it is often futile to seek to systematize Schmitt as he is not a systematic thinker but rather purposefully ornaments his arguments with aphorisms full of enigmatic surplus-meaning, the deciphering of which is left to the reader, see Balke 1996, 15; Müller 2003, 8–9.
yet its unity is assumed as a premise in the works of both Burckhardt and Donoso Cortés, and in extension Schmitt. Alongside the modern tradition of emancipatory progress, we thus find a counter-tradition which is not exactly anti-modern, since it accepts the revolutionary force of modernity as its necessary condition, but rather radically reevaluates this temporal principle as a deterministic advance toward catastrophe rather than redemption. It is not the apostle Paul of the letter to the Romans but the outcast soothsayer Cassandra who is the patron of this tradition.\textsuperscript{66}

However, as Hugo Ball already noted, Schmitt positions himself differently in relation to this catastrophic prophecy of modernity than his two predecessors of the counter-tradition. While Burckhardt resignedly awaited the end, and Donoso Cortés could see no other option than the postponement of the earthly apocalypse through the conserving force of Catholicism, the young Schmitt still believed in the possibility of an order based in the modern European state system. To prevent this system from being eaten away from the inside, it must continually return to its origin in the constitutive force of sovereignty. This force consisted in the sovereign decision.

THE DECISION AS A CATEGORY OF PHILOSOPHY OF HISTORY

By undermining the metaphysics of transcendent sovereignty, philosophy of history and its politicized counterpart in revolutionary socialism threatened not only a specific state apparatus but the European state system as such, Schmitt believed. Yet, at the same time, he envisaged the form of the modern state precisely in terms of a counter-measure against destabilizing forces. The formative principle of this state was the sovereign decision, mediating between the metaphysics of crisis and the possibility of stable political institutions. In an early study, Christian Graf von Krockow has examined the role of the concept of decision in Weimar intellectual life through a comparative analysis of the

\textsuperscript{66} Schmitt 1950, 19.
works of Schmitt, Martin Heidegger and Ernst Jünger. The book is no great work of philosophy, yet it documents an important tendency of the time: the attempt at founding personal and political authenticity in the concept of decision. To Jünger, the decision takes the form of devotion to heroic battle in works such as the war memoir *Storm of Steel* (1920). To Heidegger, it consists in anticipatory resoluteness, or the being-toward-death, which counters the inauthentic existence of the ‘man’. And for Schmitt, of course, it represents the sovereign’s decision on the exception, instituting political order through authority. All of these accounts have an existentialist dimension tinged by a Nietzschean fascination with the sovereign self creating its own norms *ex nihilo* in a social situation of ethical inertia. In the case of both Heidegger and Schmitt, the decision has ontological significance.

The decision is the non-normative origin of normativity. Schmitt points to Thomas Hobbes as the first thinker of decisionism as attested by his dictum: *Auctoritas, non veritas facit legem*, according to which it is authority, not truth, that creates law. He takes this maxim to mean that the political *form* of the sovereign decision precedes any juridical *content* of the law. The merit of this decision is not referable to any justification:

> The decision becomes instantly independent of argumentative substantiation and receives an autonomous value. (...) The legal force of a decision is different from the result of substantiation. Ascription is not achieved with the aid of a norm; it happens the other way around. A point of ascription first determines what a norm is and what normative rightness is.

The legitimacy of the normative content ultimately refers back to a pre-normative fact of constituent authority. The constitution of the state, therefore, does not originate in any universal morality but rather in a normative vacuum; the lawless state of nature or war of all against all. Against Hans Kelsen and juridical positivism, Schmitt also argues that the normative system, once erected, is

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not self-reliant but must continuously refer back to this point of origin in normlessness.70

As I shall argue in chapter 4, Schmitt’s interpretation of Hobbes as a decisionist thinker is dubious at best and in fact reveals more about his own theory of state. Rather than Hobbes, one alternative source for the concept of decision appears to be Søren Kierkegaard, although Schmitt substantially transforms its ethical function. The influence of Kierkegaard is evident in *Political Theology*, where he is permitted the final words of the first chapter on the dependence of normality on the exception from the norm. Kierkegaard, like Schmitt, identifies the extreme case as the locus of truth, the decisive moment for any normative system.71 Furthermore, Schmitt repeatedly returns to the formula of the Kierkegaardian ‘either – or’ to characterize the constitutive intensity of the decision.72 This intensity, which relies on the power of the sovereign will to create a normative system ex nihilo, endows Schmitt’s theory with an existentialist trait, which is certainly nowhere to be found in Hobbes. Already in 1933, a commentator therefore described his theory of the political as an ‘existential philosophy’.73 Although Schmitt did identify as a political existentialist, he later complained in a letter to Koselleck that his own ‘ethics of nothingness’ had only been accepted by the public through its annexation by Heidegger.74

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70 On the relationship between form and content of the norm in Kelsen and Schmitt, see Kervégan 2011, 132 ff. Although both of them give primacy to form over content, Kelsen sees the normative form of *what ought to be* as independent of *what is*, while Schmitt refers the norm back to the pure fact of decision.


72 In early works such as *Dictatorship* and *Political Theology*, Schmitt tends to use this conceptual duality in a critical sense, targeting a naïve belief in the contrast between good and evil, normativity and normlessness, which does not question the origin of this contrast. Yet, it is clear that his own thought is influenced by this absolute irreducibility of the decision between two mutually exclusive opposites; not least with the theorization of the friend/enemy dichotomy, cf. Schmitt 2009.


74 Koselleck and Schmitt 2019, 297.
decision is therefore not a concept of state theory in the classical Hobbesian tradition but rather belongs to an existentialist ethics based in the primacy of the ethical form over its contents. In the existentialist tradition, this corresponds to the personal anxiety of existence in a normless modernity, while, in Schmitt, the decision is transformed into a political *sine qua non* of the modern state. In other words, just as the modern subject of existentialism claims its own subjectivity through the affirmation of the existential void as the locus of decision, the modern state must continuously engage with the nothingness of its own foundation in the crisis of modernity in order to constitute itself anew.

With this in mind, Schmitt’s insistence on a decisionist Hobbes may be revised to reveal the *figure* of Hobbes as the quintessential political thinker of modernity. To Schmitt, Hobbes is not just the first to theorize the modern sovereign state but furthermore incorporates the transition to modernity as a figure of transition from the religious civil wars and the end of the Holy Roman Empire to the dialectics of sovereignty in the crisis of modernity. Thus, sovereignty in its conceptual origin responds to the crisis at the origin of modernity. Schmitt historicizes this fact, identifying the epoch of modernity with the loss of metaphysics as a new metaphysical ideal. His solution to the crisis of this tendency toward dissolution is the historico-philosophical category of the decision because it is independent of any universal norm and, through an act of sovereign will, able to create a political form, which renders possible human control over historical events rather than simple acceleration or deceleration toward a definite end. While Hobbes was not a decisionist himself, to Schmitt he therefore represents the *decisionist moment* of modernity to which the state must perpetually return. The fact that the pandora’s box of modernity contains from the beginning the hope of decision is also what separates at least the early Schmitt from the conservative counter-tradition of philosophy of history described above. In contrast to the pessimist Burckhardt and the tragic crusader Donoso Cortés, Schmitt does see a possibility of order dialectically overcoming the modern apocalypse, and the principle of this possibility is the decision.
Whereas Schmitt in his early Weimar period did not explicitly develop a philosophy of history, his post-war writings turned away from state theory and toward a historical and philosophical orientation. The relatively few existing commentaries on his philosophy of history therefore tend to focus on the theory advanced in these later writings, which is sometimes used as a prism for interpreting Schmitt’s view on history throughout his career. However, already from the end of the 1920s, Schmitt’s attitude to the historical role of the sovereign state began to change. Toward the end of the Second World War, Schmitt’s view on modern Europe and the possibility of the state turns increasingly pessimistic, and the implosion of the German Reich as well as his own imprisonment in Nürnberg 1945-1947 consolidates the transformation of his historical thought. In his post-war writings, Schmitt’s interest in European sociopolitical history is deepened and accompanied by a much more explicitly developed historiography of modernity. His main work from this period is *The Nomos of the Earth* (1950), in which he traces the transition from the international state system of the ‘jus publicum europaeum’ toward the subsequent era beginning at the end of the 19th century and a completely new global ‘nomos’, a principle of the global political order, the character of which has yet to be determined. When Schmitt here describes the sovereign state as the core element of European international order, it is decidedly in the past tense. Accordingly, he reflects on the temporal and epochal changes related to the rise and fall of the sovereign state system. To this end, he employs new concepts belonging to philosophy of history, most importantly the theological concept of the *katechon*:

I do not believe that any other image of history than the katechon is possible for an originally Christian faith. The belief that a restrainer holds back the end of the world provides the only bridge between the notion of

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76 Agamben 2005b.
an eschatological paralysis of all human events and such a historical mightiness as that of the Christian empire of the Germanic kings.\footnote{Schmitt 2011, 29; translated in 2006, 60, translation modified.}

Here, the \textit{katechon} is associated with the theological foundation of the Holy Roman Empire, yet Schmitt repeatedly returns to the concept throughout his post-war writings, integrating it into his own thought on history. It appears in his works as early as 1942, although Schmitt himself claimed to have developed a ‘theory of the \textit{katechon}’ already in 1932.\footnote{Schmitt 1991, 80; cf. Grossheutschi 1996, 57–58.} However, whereas he uses the term in an ambiguous yet predominantly negative sense in his 1942 political commentary on the American entry into the war, “Unwilling Accelerators”, his employment of it in later texts gradually shifts to affirmation and an effort toward theoretical systematization.

The \textit{katechon} is a biblical concept brought into Christian theology by Paul the Apostle. In his First Letter to the Thessalonians, he reminds the congregation of the coming of the Lord, explaining that this day shall come as a thief in the night, but that those who live in the light of day will be spared and may look forward to salvation, thus urging them to live according to the will of God.\footnote{1 Thessalonians 5: 1-11.} In this way, he conjures an expectation that the eschaton is approaching, and that it will be immediately followed by the joyous event of the second coming of Christ. The Second Letter, then, picks up the thread of the first, moderating the eschatological longing of the congregation by describing the time between the end of human order and passage into a new, divine order. The second coming of Christ will be heralded by the rebellion against God on part of the ‘lawless one’, that is, the Antichrist or literally the \textit{anomos}, the absence of law. Only the triumph of lawlessness will bring about the final battle between good and evil, in which Christ will emerge victorious and his followers be redeemed from this world.\footnote{2 Thessalonians 2: 1-12.} It is therefore not obvious that the believers should wish for the coming of the eschaton \textit{just yet}. Paul thus curbs the eschatological longing of the devoted by describing an extended period of immense
suffering and chaos in between the epoch of human order and that post-historical time of divine order. While eschatological hope is directed toward a utopian beyond, the *katechon* redirects Christian life back to worldly matters yet links these to the perspective of redemption.

The introduction of the concept of *katechon* into Schmitt’s terminology rekindles his eschatological outlook and gives it a new direction. In an enthusiastic 1950 review of Löwith’s *Meaning in History*, Schmitt reads the book of his colleague as a confirmation of his own view on history; to him, it demonstrates that “paganism is incapable of historical thought, because it thinks cyclically”, reserving historical consciousness for Christian theology. The immediacy of the eschatological end, Schmitt here argues, makes the totality of Christian history, from the birth and crucifixion to the second coming of Christ, acutely present to the believers, confronting them with their own history in every moment. There is, however, a danger of ‘eschatological paralysis’, which would seem to make impossible any historical consciousness. Yet, Christian eschatology contains its own cure against such a point of *post-histoire* in the form of the *katechon*, which postpones the end indefinitely and thus extends historical time between the first and second comings of Christ. What this minor text demonstrates is that Schmitt’s concept of *katechon* does not replace his eschatology but rather transforms it. The later Schmitt’s concept of history, therefore, does not rest solely on the *katechon*, as is often assumed by commentators, but on the *eschaton-katechon* complex outlining historical time by simultaneously positing and suspending its end. If not for the eschatological framework of his philosophy of history, Schmitt would have no need for a concept of *katechon* at all. Historical time, which is to Schmitt first and foremost the container of political life, in his late works exists in the tension between *eschaton* and *katechon*, the coming of the end and its deferral, acceleration and deceleration. Crisis time thus remains as a problem, yet the theoretical solution is new. Chapter 6 includes a discussion on how the constellation *eschaton-katechon* has influenced later thought on permanent crisis inspired by Schmitt.

81 Cf., for example, Lievens 2017.
For the present context, what is worth noticing here is that the concept of *katechon* replaces the decision as the solution to crisis time. The emergence of this concept in Schmitt’s theory marks the point of impossibility of that which had previously been the final and only possibility: the sovereign decision. What changed for Schmitt was not the theory of the sovereign state but rather the historical perspective on its possibility. Because his writings after the war became much more explicitly focused on historico-philosophical issues, it is common to take these post-war writings as the starting point of Schmitt’s philosophy of history and ignore the implicit engagement with this line of thought in his early work. However, if the concept of *katechon* and the concept of the sovereign decision are muddled and merged into a single theorem, one misrecognizes the specific potentiality of crisis at the heart of his interwar work. It is therefore essential to understand the shift from his early to his late considerations on historiography and temporality; not in order to denounce his theory of sovereignty in favor of his later thought on the *nomos* of geopolitical ordering but rather to delimit the specific character of that decisionist theory of the relation between state of exception and sovereign decision which informs the concept of crisis sovereignty.

**Conclusion**

Schmitt’s political theology presents itself as a juridical theory of the sovereign state, yet the problem to which it responds is neither purely juridical nor purely theoretical. Rather, it must be understood as a polemical intervention responding to the problem of crisis as a paradigm of modernity. Whereas Löwith reconstructed a secular eschatological tradition, which transferred redemption into revolutionary emancipation through the ideal of progress, I have sketched the contour of that other side of the modern historico-philosophical coin, namely the conservative belief in a negative progress of destruction toward apocalyptic end times. Between the examples of Burckhardt and Donoso Cortés, we find a tradition of anti-eschatological eschatology, extending from a secular denunciation of any world-historical principles to a devout reassertion
of Catholic historiography, and from resigning pessimism to desperate hero-
ism.

Schmitt develops his own critique of progressive philosophy of history against the backdrop of this conservative tradition. His secularization thesis states not only that institutional concepts have historically been transferred from the sphere of theology to that of the state but also, and more importantly, that the structure of any political system is always dependent upon the domi-
nant metaphysical Zeitgeist of the society in which it exists. While the modern state initially corresponds to a theist belief in an almighty God capable of en-
forcing his law through its suspension, modernity’s very origin in the crisis of the Christian empire remains inherent to this new institution. With seculariza-
tion, modernity moves from theism over deism toward atheism, and this transformation is accompanied by a shift from transcendence to immanence. To Schmitt, however, this does not mean that metaphysics withers away but rather that the metaphysics of transcendence is replaced by a metaphysics of immanence. This is a paradoxical metaphysics, since it has, as its highest prin-
ciple, the abolition of metaphysics, and herein lies its force of societal erosion: The elevation of disorder to the primary principle of order necessarily pushes toward total breakdown and chaos.

However, the young Schmitt is not as pessimistic as his predecessors. Ra-
ther, he sees in the origin of sovereignty out of crisis its inherent ability to continuously transform crisis into order by way of the exception, as we shall delve further into in chapter 4. As a response to the permanence of crisis in modernity, he develops the concept of the sovereign decision as the mediating moment between chaos and order. Born out of nothingness, the decision cre-
ates the normative foundation of constitutional order ex nihilo by an act of sheer will on the part of the sovereign. This ethics of nothingness is essential to Schmitt because of his conservative view on the modern period as the dis-
solution of any universally accepted norm upon which a moral and legal community may be founded. The sovereign is precisely that authority perpet-
ually able to reinstitute a normative foundation in the era of normlessness and therefore, in origin, coincidental with the transition to modernity. To Schmitt,
the sovereign decision is both necessitated by and the solution to modern crisis temporality.

It is true that Schmitt turns away from his decisionist theory of sovereignty in his post-war writings and toward a more explicit focus on philosophy of history. The concept of *katechon* replaces the decision as a reply to modern crisis temporality, yet it does not mark a transition away from, but rather a transformation of his eschatological understanding of historical time. In this sense, crisis temporality constitutes a more constant factor of his political thought than the concept of sovereignty. In the present thesis, however, I am concerned not with Schmitt’s intellectual development but with his concept of sovereignty and its place in a historico-philosophical constellation with crisis. Therefore, I have brought the concept of *katechon* into the discussion only to demonstrate how this late engagement with philosophy of history is already present in embryo in the early sovereigntist writings and, through contrast, how the sovereign decision as a reply to crisis temporality differs from the mere defeatist notion of katechontic postponement of the inevitable, which is indeed more in line with the traditional conservative cultural pessimism of Burckhardt and Donoso Cortés. The specific relationship between sovereignty and crisis in the early Weimar works thus distinguishes Schmitt from traditional conservatism, and, maybe for this reason, he chooses to affiliate his own theory of state with that of Hobbes. This affinity is the subject of the following chapter.
[Bacon’s] wisdom is courtly wisdom of the cleverest sort, but it is no existential anxiety and sends no signal to refugees or evacuees. His despair appears to me less deep than that of Thomas Hobbes. I surely would not want to overstate its deepness. Yet from the position of my own situation I understand the deepness of Hobbes; this lets me admire and praise him. — Schmitt, 1948

In the posthumously published manuscript *Behemoth or the Long Parliament*, Thomas Hobbes lets the elder of his two fictional interlocutors, A, open the dialogue with the following remark: “A: If in time, as in place, there were degrees of high and low, I verily believe that the highest of time would be that which passed between the years of 1640 and 1660. For he that thence, as from the Devil’s Mountain, should have looked upon the world and observed the

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1 Schmitt 1991, 102.
actions of men, especially in England, might have had a prospect of all kinds of injustice and of all kinds of folly, that the world could afford (...).² Whereas the *Leviathan* was written at that ‘highest of time’, during the English Civil War and the period of the Long Parliament, the *Behemoth* was written after this in 1668. Yet, Hobbes does not claim the privilege of hindsight, and his younger character, B, laments having missed that moment of insight which the civil war provided. Through the spatial metaphor of highs and lows in history, Hobbes appears to suggest that there are different intensities of time allowing for different potentials of knowledge. Along a vertical scale, the crisis represents the highest point from which the world in general is best observed. In such times, humanity reveals its true nature, and thus political theory should proceed from this point of advantage. The crisis is thus epistemologically privileged; it teaches us something about human behaviour and social mechanisms which may remain out of sight in times of stability but are nevertheless constants of society underlying that same stability.

Why explore sovereignty through the lens of crisis? Why not study the state apparatus through an analysis of its smoothly functioning mechanisms? In this chapter, I justify the crisis approach to the concept of sovereignty by tracing its roots back to the state theory of Hobbes. In Hobbes, Schmitt recognized an original source for theorizing sovereignty in a state of crisis. The aim of the chapter, however, is neither to give an original interpretation of Hobbes’ philosophy nor philologically reconstruct the development of Schmitt’s Hobbes interpretation. Both of these aspects are part of the argument, but they are not its final destination. Instead, the chapter aims to demonstrate how the notion of crisis inherent to the concept of sovereignty reaches back to the early formation of the concept in its modern form and to explore how the concept transforms with different experiences of crisis.³ This inquiry will be carried out through an analysis of Schmitt’s engagement with Hobbes in the development of his own concept of sovereignty as based in the state of exception.

³ On the formation of the modern concept of sovereignty in the 17th century, see the introduction to Boldt 1990.
In order to unfold the transformation of crisis sovereignty from Hobbes to Schmitt, I will link them via Leo Strauss and a series of exchanges he had with Schmitt on the subject of Hobbes. Schmitt was a trained jurist but no more than an adept amateur in philosophy and intellectual history, whereas Strauss dealt much more explicitly and conceptually rigorously with implications of crisis as a historico-philosophical concept for Hobbes’ political philosophy. After a prologue on the concept of modernity, the chapter is structured in three main sections. First, I will revisit the dialogue between Schmitt and Strauss on Hobbes in the late Weimar period. Second, I will turn to Strauss’s theory of modernity as crisis temporality and his integration of Hobbes and Schmitt in this tradition. And third, I will give a comparative analysis of the concepts of ‘state of nature’ and ‘state of exception’ and situate them in relation to crisis.

In his 1938 book on Thomas Hobbes’ magnum opus, Schmitt writes that the biblical image of the Leviathan is not so much a metaphor meant to illustrate a thought as it is a “‘mythical symbol’ with an enigmatic richness of meaning”. The symbol reaches beyond that which it symbolizes. To Schmitt – and perhaps not just to him but to European political philosophy in general – Hobbes himself could be said to have become such a symbol. From Schmitt’s earliest work to his latest, Hobbes remains the most important figure of reference. This is, I shall argue in the present chapter, not only due to what Hobbes wrote but also to the singular situation in which he wrote and the nature of the problems to which his writings responded. As Leo Strauss noted in his 1936 book, *The Political Philosophy of Hobbes*, the latter “philosophized in the fertile moment” between the declining dominance of classicist theology and the advent of modern science in political thought. Hobbes was a figure of transition. In the precarious Weimar years between two world wars, Schmitt as well as Strauss saw in this figure a model for how one would have to address the fundamental problem of modernity: constitutive instability.

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4 Schmitt 1938, 9, my translation.
In the first chapter of his recent and monumental *This Too a History of Philosophy*, Habermas characterizes Schmitt and Strauss as two of four thinkers belonging to the “Crisis theories and tales of decline in philosophical great theories of the 20th century”; the other two being Karl Löwith and Martin Heidegger. To these thinkers, Habermas writes, “Modernity is the crisis.” Against them, he declares it his aim to show that what they diagnosed as disastrous was in reality steps of progress for philosophical understanding (*Erkenntnisfortschritte*). It is revealing of the superficiality of Habermas’s interpretation of Schmitt that he equates crisis with decline or ‘Verfallsfeschichte’. As we shall see in the following, while this might hold some truth in the case of Strauss, the crisis in Schmitt’s theory of sovereignty carries great political potential for the formation of the state. Yet, even though Habermas’ agenda is polemical, it speaks to the enduring influence of these thinkers of crisis that their visions of modernity remain a thorn in the eye to liberal rationalism. In fact, Habermas himself in the 1970s took part in the theorization of crisis as a condition of contemporary society in his seminal work on the ‘legitimation crisis’ of advanced capitalism. In 20th century German thought, crisis theory for a long time dominated the way modernity was conceptualized as a historical period.

In this chapter, as stated in the opening, I seek to establish a link between sovereignty and modernity as crisis time from Hobbes to Schmitt. I do not, however, wish to develop a theory of modernity. My aim is not to demonstrate that modernity is in fact defined by a new form of temporality characterized by crisis. For my argument, it suffices to unfold how the theory of sovereignty, from the beginning to the end of what has become known as the modern period, depends on assumptions, whether explicit or not, about the loss of old forms of social organization and an experience of the new as crisis. In other

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6 Habermas 2019, 40 ff.
7 Habermas 2019, 41.
8 Habermas 2019, 70.
9 Roitman 2014, 32–33; Gilbert 2019, 21, 154 ff.
words, this chapter does not commit to the theory of modernity of crisis but restricts itself to adopt a meta-perspective as observer of such ‘theories’ or worldviews.

To be sure, the idea of modernity as a special form of temporality or historicity has become suspect in later years; not least through criticisms of its eurocentrism. Kathleen Davis, among others, has pointed out the tendency of uncritically accepting the sharp, periodical separation of medieval from modern time, especially in the sense of a qualitative difference between a pre- or ahistorical medieval past and a historical, temporalized modernity. Periodization, she has it, is always political in that it is always directed at the present to provide a certain historical framework for the extant (geo)political conjuncture. The invention of a medieval, feudal past serves to separate between primitive and civilized peoples, both in time and space, as the primitives of the past mirror those of contemporary European colonies in modern times.10 When we accept the distinction medieval/modern as a pre-existing historiographic premise, we take for granted a narrative that arose from 16th-century legal struggles over the conceptual basis for sovereignty and subsequently took form in the period we have come to know as Neuzeit or modernity. However, if we confirm this self-image of modern, European bourgeois intellectuals as the only reality, Davis argues, we misrecognize the pluralism of both earlier historical self-narratives and competing contemporary perspectives.11

Taking Davis’s criticism on board, it is important to keep in mind that the image of modernity as crisis time, as outlined here, is merely such a self-narrative. In defence of the periodization medieval/modern, one may argue that it is not without material foundation in social developments of European history, such as the rise of the nation-state system, the gradual diminishing of political power of the church and, not least, forms of production. We may see colonialism, as Davis herself points out, as an epochal shift toward a qualitatively

10 Davis 2008, 1–5. Paradoxically, though not coincidentally, slavery was associated with obsolete feudal law, for example, in the works of Jean Bodin, at the same time as the colonial slave trade began to flourish, Davis 2008, 8.

different global trade system. But this is beside the point: The important thing is to be aware that the *specific* hegemonic characterization of modern life and norms, as opposed to feudal or primitive lifeforms, is not scientifically neutral, although this periodization presents itself as merely a useful tool for organizing historical knowledge. Otherwise, we risk universalising a specific European 20th-century perspective as the monolithic given of ‘Modernity’.

Strauss’s history of philosophy does conform to this monolith: Modernity to him is the time of the great European minds from Machiavelli and Hobbes onward. Yet, as an anti-modern conservative, he distances himself from this history by explicitly theorizing it as a self-narrative. To Strauss, modernity is not primarily the string of events taking place from the middle of the 17th century until today but rather a — philosophical — form of consciousness. ‘Modernity’ is a self-characterization given to a new form of political thought by its thinkers. Although he does not question the existence or periodization of modernity as a historical epoch, he is aware of its self-referential character. This is the first of two reasons for why Strauss is brought into this chapter: He theorizes the assumptions about modernity as crisis temporality, which the philosophies of Hobbes and Schmitt, I shall argue, rely on but seldom explicate. He does this while locating the crisis structure within the theories themselves. To Strauss, the crisis of modernity is closely linked with the tradition of liberal thought, which according to him includes Hobbes and Schmitt — for reasons to which I shall return below. The second reason is that he explicitly links Schmitt’s thought with that of Hobbes, and in doing so, as we shall also see below, he influences Schmitt’s own reflection on their intellectual affinity.

In the following, then, I investigate the indispensability of the idea of crisis for the formation of the concept of sovereignty from its early modern formulation in Hobbes to its 20th century version in Schmitt. This entails examining its continuity but also its transformation according to the different visions of the causes for and character of political crisis. I do this not through a historical genealogy but rather through a comparative conceptual analysis of the relation between crisis time and the theory of sovereignty in the works of the examined authors. In chapter 6, I shall return to the problem of how sovereignty informs modern self-conceptions of crisis time.
Already in Schmitt’s early seminal works *On Dictatorship* (1921) and *Political Theology* (1922), Hobbes played an important role. In the former, Schmitt adopts Hobbes’s dictum that “*Auctoritas, non veritas facit legem*” (“It is authority, not truth, that creates the law”) as the basic supposition justifying his theory of dictatorship as a constitutive necessity of the state.¹² And, in the latter, he claims that it is Hobbes, not himself, who is the originator of decisionism.¹³ This strong influence from and fascination with Hobbes would remain an important element of Schmitt’s works throughout his life. However, his systematic reception of Hobbes’s theory especially unfolded through an exchange with Leo Strauss, which began in the early 1930s. How the state theory of Hobbes came to be revived in a new form by a Nazi jurist and a Jewish philosopher in the Weimar era will be the subject of this section.

To Schmitt in the early 1920s, Hobbes was the thinker who most clearly saw the problem of the realization of law, which later positivists, such as Hans Kelsen and Hugo Krabbe, blatantly ignored. “The law gives authority”, Schmitt quotes John Locke, but what Locke fails to realize is that this does not specify to whom authority is given. The law can only state how a decision is made, i.e., provide the form of decision, and not who is to make the decision accordingly, i.e., provide its content.¹⁴ To Schmitt, this means that the law may be able to formulate itself, but it cannot give reality to its legal prescriptions; for that, an extralegal authority is needed. This is reminiscent of *Leviathan*, Chapter XV, when Hobbes writes that the laws of nature are only improperly called so since “Law, properly is the word of him, that by right hath command over others”.¹⁵ The so-called laws of nature can be deduced through the universal principles of self-preservation and reason, but they are merely ‘theorems’ or ‘conclusions’, Hobbes claims, if there is no commanding force.

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to give them material existence. For this reason, Schmitt calls Hobbes the “classical representative of the decisionist type” of juridical thought.\textsuperscript{16}

The realization of law may seem a marginal question from within a functioning legal system, but it became an issue for Schmitt at a moment of transition from Bismarck’s Constitution of the German Empire (1871-1918) to the Weimar Constitution (1919-1933), and during the interwar years when it did not appear so certain that the legal system would be able to uphold itself. Specifically, of course, Schmitt concerned himself with what would happen in the case of a national emergency and focused his analysis on the emergency regulations of the Weimar Constitution, as described in article 48. It would be misguided, Schmitt writes in his 1924 appendix on article 48 in his dictatorship book, to disregard the “abnormal situation of 1919” and its influence on the authors of the Weimar constitution: “The present situation is not so decidedly normal that one would be justified in doing so”.\textsuperscript{17} In Schmitt’s view, the precarious situation of the law in his own time forced him to reconsider the question of sovereignty as a problem of the realization of law (see chapter 1). It is of little wonder that, in order to face this challenge, he would turn to Hobbes as a thinker of the crisis of state. As McCormick notes, Schmitt’s characterization of Hobbes’s era of civil war might as well be said of his own present: A time where “all legitimist and normativist illusions with which men like to deceive themselves regarding political realities in periods of untroubled security vanish”.\textsuperscript{18} According to McCormick, the parallel that Schmitt sees between Hobbes’s project and his own is directly related to the parallel in their context. As I shall argue in the last section of this chapter, this, however, implies both similarities and differences that result in a displacement of Hobbes’s project in its adaptation by Schmitt. Nevertheless, it is clear that Schmitt sees in Hobbes a kindred spirit seeking to uncover the conditions of stability in a time of crisis.

\textsuperscript{17} Schmitt 1994, 222, my translation; cf. [1921] 2014, 189.
\textsuperscript{18} Schmitt 2009, 49; cited in McCormick 1994, 621, translation modified.
Like Schmitt, the ten years younger Leo Strauss was sensible of the critical situation, not just of the German state but of the foundations of state as such in the interwar years, and like him, he turned to Hobbes in order to understand his situation in politico-philosophical concepts. This preoccupation again led him to engage himself with Schmitt’s work on the political and its relation to Hobbes. In early 1932, Strauss wrote to Schmitt thanking him for his support in receiving the Rockefeller grant, which allowed him to leave Berlin for Paris. He added that Schmitt’s interest in his Hobbes research was the “most flattering and obliging affirmation” of his work that he could “ever imagine”.19 From the beginning, the correspondence between the two thus fundamentally rested on their shared interest in Hobbes as a common ground. A few months later, Strauss wrote and published a review of Schmitt’s *The Concept of the Political*, which had just come out in book version. As Meier points out, this review is among few writings by Strauss on contemporary authors rather than thinkers belonging to the classical or modern canon. And Schmitt’s book was the only one which the author would later admit he revised in response to a theoretical critique of its contents, namely that of Strauss.20

In his review, Strauss argues that Schmitt, out of necessity, problematizes liberalism from within. Whereas the author of the book tends to focus on the crisis of the liberal constitutional state, its critic considers liberalism more broadly as not only the dominating ideology of modernity but as the defining quality of modernity as such, and the crisis of liberalism therefore as the modern crisis. As mentioned, Strauss conceives of modernity as characterized by the self-conception of modern thought, and that, to him, is the dominant philosophy of liberalism. Insofar as Schmitt is himself thinking the political from within the context of liberal political thought, Strauss argues, he has only liberal concepts available for his critical enquiry, and this remains a constraint on his investigation.21 In this sense, Schmitt stands at the opposite end of the “age of neutralization and depoliticization” from Hobbes: At a point where

20 Meier 1988, 19, 14–16.
liberalism has reached its paradoxical climax, finally succeeding in naturalizing itself as the only form of state but thereby also dissolving itself as a political movement with political arguments. Strauss credits him with “restor[ing] the Hobbesian concept of the state of nature to a place of honor”, albeit in a “fundamentally different fashion” than Hobbes himself. In order to understand the problem of contemporary liberalism, Strauss notes, Schmitt returns to the author of liberalism, Hobbes, and rekindles his project by turning it on its head: “Whereas Hobbes in an unliberal world accomplishes the founding of liberalism, Schmitt in a liberal world undertakes the critique of liberalism.” Throughout the review, Strauss draws a number of parallels between the classical political philosopher and the contemporary legal scholar and finally concludes that a critique of liberalism, which is to him a critique of the modern crisis, is only possibly through a reinterpretation of Hobbes.

It may seem odd that Strauss, in his exile from fascism, would concur with the conservative jurist, and later prominent member of the NSDAP, in diagnosing the dominance of liberalism as the source of the contemporary political crisis. However, like Schmitt he saw liberalism as a neutralizing process of the state, whereby it had become unable to conceive of political opposition and rendered itself vulnerable to extra-parliamentary attacks. As McCormick argues, the “particular sociopolitical situation of Weimar – violence exercised by private groups, a widespread perception of technology as a ‘runaway’ phenomenon, and so on – rendered it a critical moment to reintroduce the issue of fear and the issue of science, and consequently to reformulate Hobbes and the intellectual foundation of the state”. The ‘critical’ in this critical moment of Weimar was its crisis, which the two thinkers saw as the sign of a deeper crisis within liberalism, the state, and modernity. Thus, as Altini notes, the renewed interest in Hobbes in the Weimar period is no coincidence; for Schmitt and Strauss, it was necessary to face the problems of their time.

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The return to Hobbes was, for both, a journey back to the beginning of the historical period leading to the crisis of their present. In Schmitt’s view, this beginning was the origin of the European nation state, and in Strauss’s, the origin of modernity as a way of social life; arguably, the two points of origin converged in Hobbes, representing a threshold between the middle ages and modernity, and between the chaos of the European Wars of Religion and the relative stability of the international state system under the *jus publicum europaeum*. In order to understand the way they conceived of this crisis, and how this conception came to shape Schmitt’s theory of crisis, we may therefore follow them in this venture. Something in Hobbes’s theory of state, and the way it reacted to his times as well as foreshadowed later political thought, appears to invite the crisis interpretation.

In his article on the state of exception in *Geschichtliche Grundbegriffe*, Hans Boldt writes this concerning the outcome of the religious wars of the 16th-17th centuries: “Out of the emergency, theoretically conceptualized as the ‘bellum omnium contra omnes’ of the state of nature, emerged the need for a fundamental reordering of public matters. More was at stake than just a punctual emergency intervention in the ‘same old’ legal system. The state itself, the ‘societas civilis’ in its entirety, became a product of emergency.” In this recount, Boldt refers both implicitly and explicitly to Hobbes as the theoretician of this new state form. Not only was the state of emergency introduced into legal language, he argues, but the state itself had to be founded anew on the idea of emergency (in German: *Not*, also meaning need or necessity). In his article on “State and Sovereignty”, however, Boldt describes how the concept of state only came to mean a national sovereign state in the contemporary sense in roughly the same historical period. This conceptual history suggests that the modern Westphalian state takes form in political thought at the moment it becomes a ‘product of emergency’ – that the concept of the modern state *is* the emergency state. This transformation of emergency into the order

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26 Boldt 1972, 347, my translation.
27 Boldt 1990, 1–2.
of the state was not least carried out by Hobbes, as Strauss and Schmitt recognized.

Yet, while Strauss applauded Schmitt for revisiting the Hobbesian project, he also raised criticism against his attempted solution to the inherent problem of liberalism. In *The Concept of the Political*, Schmitt famously argued that the political is defined by the fundamental distinction between friend and enemy, independently of all moral, aesthetic, or economic differentiations. Whereas Hobbes sought to end the enmity of the state of nature through the sovereign force of the state, Strauss argues, Schmitt affirms struggle as the essence of the political in his friend/enemy distinction. This, however, leads to a new form of neutrality: Schmitt has to acknowledge any political position, provided it clearly identifies a conflict, “that is, all decisions oriented to the real possibility of war”.28 In a subsequent letter to the author, Strauss expands on his critique: While the friend/enemy distinction may be the substance of the political, it cannot constitute the state; it is a necessary but not sufficient condition of the state. The political in this sense thus amounts to the ‘destiny’ of human nature, but it cannot create the social order necessary to mediate the consequences of that nature;29 in other words, Schmitt’s solution to the crisis of the liberal state preserves the crisis in a new form. According to McCormick, Strauss’s own subsequent work on Hobbes should therefore be read as a radicalization of the project launched by Schmitt.30

Schmitt, for his part, took note of Strauss’s commentary not only because it uncovered a weakness in his argument but also due to the way it formulated the problem on which his project centered. Heinrich Meier has reconstructed how changes made by Schmitt to *The Concept of the Political* between the 1932 and 1933 editions closely align with Strauss’s comments, suggesting that he not only took them to heart but revised his own reading of Hobbes accordingly.31 And while Schmitt mentions the “educated Jew” Strauss only in dry

31 Meier 1988, 42–43.
terms without any praise in his book on the *Leviathan*, it is worth noticing that he mentions him at all and indeed in an affirmative way in a book published after its author had already fallen out with the party. More importantly, however, the mutual interest between Strauss and Schmitt clearly stems from their agreement on the importance of Hobbes for rethinking the foundation of the state in a time of crisis. This fact alone makes an examination of Strauss’s interest in Hobbes important for the present context. The object of this chapter is ultimately neither an interpretation of Hobbes nor a historical account of the Strauß-Schmitt debate, yet both of these aspects may shed light on how the idea of modernity as crisis shapes the concept of sovereignty as we encounter it in Schmitt. For this purpose, let us now turn to Strauss and his analysis of Hobbes as a thinker of the crisis of modernity.

**STRAUSS: MODERNITY AS CRISIS**

That modernity is crisis time is a necessary premise for Schmitt’s state theory, but it is more explicitly theorized by Strauss. In a 1964 lecture on “The Three Waves of Modernity”, Strauss claims of the crisis of modernity: “That such a crisis exists is now obvious to the meanest capacities”. The uncertainty and upheaval of post-war times were to Strauss only further proof of the inherent character of modernity, which he had already identified. This crisis consisted in the lack of a sense of any universal values as the common ground of society: “The crisis of modernity reveals itself in the fact, or consists in the fact, that modern western man no longer knows what he wants – that he no longer believes that he can know what is good and bad, what is right and wrong.” The crisis of modernity, according to Strauss, consists in an ethical vacuum that leaves the individual without any direction in life and, by inference, the collective without any commonly accepted purpose for the community.

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This crisis, which is constitutive of modernity itself, is inherently linked with a crisis of modern political philosophy, Strauss’s argument continues. This is not because philosophy as an academic discipline is somehow epistemologically or ontologically privileged but because modernity is characterized by the way it rejects pre-modern conceptions of the political: Modern society understands itself in opposition to all forms of organization that came before it. The break with the pre-modern tradition of political thought fulfills itself in three ‘waves’, Strauss claims: The first, while properly speaking initiated by Niccolò Machiavelli, is most prominently associated with Hobbes and consists in the rejection of the notion that social order is pre-given, either by God or by the nature of the human being as a ‘zoon politicon’ in the Aristotelian sense. The second wave begins with Jean-Jacques Rousseau and reacts against the first by denying that there can be any such thing as human nature or “Naturell Condition of Mankind”, in Hobbes’s terms, independent of or unaffected by human history. The third, which is represented by Nietzsche, again reacts against the two previous by rejecting the possibility of either a natural or a historical solution to ‘the human problem’: A truly moral society cannot be realized either through a correct understanding of human nature or through historical reconciliation, because the individual is entirely free to choose his or her own values and, therefore, also left completely alone in the world; morality remains problematic. Of course, as with all periodizations, we could easily challenge this specific timeline, but what is more interesting is the way each

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35 Strauss spends much energy on the question of who was truly the ‘first modern thinker’: Hobbes or Machiavelli. Especially when periodizing modern (Western) society as a whole, the question itself appears questionable: Surely, much of what makes Machiavelli and Hobbes specifically ‘modern’ thinkers was not something that they simply invented in isolation from society but what became problematic through social transformation and conflict and thus occupied many of their less famous contemporaries. Suffice to say that in Hobbes we can observe the signs of transformation toward Strauss’s understanding of modernity, regardless of whether Machiavelli came first. For a Foucault inspired genealogy of the transition from the pre-modern state to the modern State with a capital S, which argues that Machiavelli saw the state as essentially a prolongation of the prince without a reason of its own, see Jessen 2015, 31 ff., especially pp. 35-37.

As Shadia B. Drury writes in her commentary on Strauss, “Modernity is not identical to the crisis of Western civilization. It is a set of ill-conceived ideas that ultimately led to that crisis”. The crisis immediately identified by Strauss is the crisis of his own times, which was brought about by modernity arising in the 17th century but which only came to the fore in the 20th century. Modernity, as Drury rightly points out, is to Strauss not so much a “historical or chronological” category but rather a way of thinking about politics and history that has come to dominate Western civilization. In his view, modern political philosophy is at the roots of the crisis of modern politics. This decline is to Strauss no necessary consequence of history – modern thinkers could have chosen to orient themselves toward the classics, reinventing an Ancient form of sociality rather than seeking to radically break with the past in its entirety. However, it is clear from his reading of Hobbes that the way modern political philosophy seeks to free itself of dependence on the past is itself a reaction to a crisis, namely, the crisis of norms at the end of the middle ages and the European Wars of Religion. The three waves of modernity which Strauss describes read as three attempts at overcoming this crisis without relying on the moral assumptions of the past.

In *The Political Philosophy of Hobbes* (1936), Strauss argues that Hobbes’s theory of state unfolds from the tension between the basic passions of vanity and fear: “The antithesis from which Hobbes’s political philosophy starts is thus the antithesis between vanity as the root of natural appetite on the one hand, and on the other, fear of violent death as the passion which brings man to reason”. These two passions, however, are not symmetrical or of the same status for the construction of the state. Like Bacon, Hobbes wished to conceive of a society based on the passions rather than on their suppression through piety. Bacon sought to integrate the passions in political thought by

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37 Drury 1988, 151.
38 Drury 1988, 133.
“play[ing them] one against each other” in order to create virtue through a balancing out of vices. Although reason may reveal what is morally right, Strauss recounts, it cannot be trusted to motivate people to act morally, so we must “exploit the conflict of the passions among themselves”, i.e., appeal to less harmful passions in order to make the more harmful ones less attractive. Yet, Hobbes did not satisfy himself with this economic pragmatism but rather wished to provide a unitary theory of the passions as a new basis of morality. To him, all passions refer back and remain subordinate to the one fundamental passion of human existence, the natural wish for self-preservation, which is negatively expressed in the more acutely felt fear of violent death. The fear of violent death, in combination with reason, drives humans to enter into the social contract, exchanging the absolute freedom of the state of nature for the guaranteed liberties of citizenship. Vanity, which according to Strauss is a derogatory term for the traditional aristocratic virtue of glory, leads people to fight and to hide their shameful fear and make them blind to the advantage of society. It is thus only the polar opposite of the fear of violent death and must be overcome in order to bring people to reason and peace.

Thus, the commonwealth is based in fear, which does not disappear ‘after’ the social contract but remains as an active stabilizer of society. It is not the fear of a despotic sovereign but of the alternative to the state. As the permanent reference for the legitimacy of the state, fear takes on the form of the negative of the state: Fear is what is expressed in the concept of the state of nature. “The state of nature is thus for Hobbes not an historical fact, but a necessary construct,” Strauss writes. The state of nature is the image of universalized fear rather than any historical ‘before’ or ‘outside’ of the civil state. It does,

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however, condition the historical possibility of the state. As opposed to the classical political thought of Plato and Aristotle, Hobbes is not interested in any ideal state as the moral standard toward which the actually extant states should orient themselves. Rather, he is interested in how any state becomes possible at all, that is, the conditions of possibility of the state’s realization. Although the state’s formal structure and its basic laws (the laws of nature) can be deduced rationally, reason in itself only has the power to think the state and cannot bring this thought into reality; for that, it needs the fear of the state of nature. Therefore, the continued historical stability of the state depends entirely on its opposite, namely, the state of nature or the bellum omnium contra omnes. “[T]he nature of War,” Hobbes writes, “consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary.”44 The war of all against all is a constantly lurking threat, even in the absence of open combat, and this latent possibility necessitates the continuity of state power. According to Strauss, “Hobbes ‘prefers’ these horrors of the state of nature because only on awareness of these terrors can a true and permanent society rest. The bourgeois existence which no longer experiences these terrors will endure only as long as it remembers them.”45 Thus, stability depends on instability, order on chaos.

Strauss locates this constitutive instability at the beginning of modernity. Of course, he laments the promethean hubris of Hobbes’s modern solution to the problem; he himself prefers a rekindling of classical ideals of virtue and educated citizenship.46 Yet, he finds that Hobbes, with acute timeliness, identifies and theorizes the crisis faced by the modern state from the time of its birth. It is important to remember that, for Strauss, political philosophy is not simply an intellectual pursuit reserved for the isolation of the ivory tower. On the contrary, political philosophy is political in the sense that it engages with and shapes the ideas giving meaning to society, that is, the substance of the political as such. Accordingly, Hobbes is not just a modern thinker but an

author of that which makes modernity.47 By locating the stability of the modern state in its constitutive instability, Hobbes effectively conceptualizes and gives shape to the state, yet in the eyes of Strauss, he also dooms modernity to repeat its original sin of crisis in a series of waves reaching into the 20th century. The problem resurfaces, albeit in different variations. How Hobbes’s state of nature translates into Schmitt’s state of exception, we shall now examine.

FROM THE STATE OF NATURE TO THE STATE OF EXCEPTION

In his works of the early 1920s, Schmitt does not concern himself with any extended exegesis of Hobbes’s political philosophy, and his remarks on Hobbes are scattered and somewhat superficial.48 However, Hobbes would remain the most important political thinker for Schmitt throughout his career (and beyond it). In his more grandiose moments, Schmitt would talk of “my brother Thomas Hobbes”.49 Most importantly, his concept of the state of exception is clearly inspired by Hobbes’s concept of the state of nature and arguably unthinkable without it. However, in order to understand the specificity of Schmitt’s crisis sovereignty through his Hobbes reception, it is instructive to look at both the continuities and discontinuities between the state of nature and the state of exception.

In the Leviathan, Hobbes does not actually use the term ‘state of nature’. Instead, his central 13th chapter is entitled “Of the Naturall Condition of Man-kind, as concerning their Felicity, and Misery”.50 What interests him is the nature of humans and the conditions of life in which they naturally find

48 Whereas Mehring declares Schmitt to be known as an “outstanding Hobbes scholar” (his only reference for this being an anthology on the subject edited by Koselleck), I agree with McCormick that we should not look to Schmitt for insightful or meticulous Hobbes commentary, Mehring 2008, 520; McCormick 2017, 289. Schmitt’s Hobbes reception is of limited interest to the immense field of Hobbes research, yet – as I shall argue – very revealing of his own conception of the role of the state in modernity.
themselves. In *On the Citizen*, however, he does bring this in connection with the ‘statum naturæ’: “[...] the condition of men outside civil society (the condition one may call the state of nature) is no other than a war of all men against all men; and in that war all men have right to all things.”51 This definition is interesting for several reasons. First, it defines the state of nature as a state of universal war of all against all. As mentioned above, this is not necessarily a state of open aggression but rather one in which there is no guarantee for peace. It is a state of absolute uncertainty. Second, all individuals in this state have a right to all things, which demonstrates that it is not a rightless state, morally speaking, but rather one in which there is no legal framework to draw the distinction between right and wrong.52 Third, the state of nature is defined in contrast to civil society. As war is an absence of peace, the state of nature is an absence of a societal state. Hobbes is very aware that he is deducing the conditions of natural human beings from those of civilized ones, showing his readers not any pure pre-historic state but only the negative of society itself.53

Fourth, however, there seems to be a subtle shift from *On the Citizen* to *Leviathan* on this point insofar as Hobbes in the latter does not speak of the natural conditions of human beings as a form of existence outside of society but as human existence *tout court*. All individuals, Hobbes claims, are by nature equal in that the variations of natural faculties are not substantial enough to secure any one individual against the violent death at the hand of every

52 To Strauss, the fact that Hobbes identifies right as ontologically prior to obligation makes him the first liberal thinker, Strauss [1953] 1971, 182 ff. However, it also clearly shows that Hobbes is no nihilist; although Strauss would argue that while this might be true, his conception of the political inevitably leads to nihilism as the logical result of the crisis of modernity.
53 This forestalls a classic line of criticism against Hobbes, namely that he thinks he is describing a purely natural form of life, while in reality he is only negatively describing the specific historical type of life of his own contemporary society. Hegel and Rousseau both raised this critique; Hegel [1802–1803] 1986, 444–46; Rousseau [1755] 1971, 68. Following C.B. Macpherson, Jessen argues that Hobbes’s state of nature is not pre- but rather non-societal, that is, derived from life in society rather than any transhistorical natural state, Jessen 2015, 90–91.
other. The equality of faculties in combination with the equal right to all things leads to conflict: “So that in the nature of man, we find three principall causes of quarrell. First, Competition; Secondly, Diffidence; Thirdly, Glory.”54

Hobbes does not relegate this ‘nature of man’ to a state outside of society; rather, he views it as a continuous source of potential conflict within society. Whereas in the preface to his earlier work the natural conditions of man were identical to the state of universal war and opposite to society, here the natural conditions are carried into society. Thus, while it is possible to distinguish intellectually between the ‘state of nature’ and the commonwealth, in reality the natural condition of man remains a permanent possibility within the latter. As Hobbes himself reflects:

> It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America, except the government of small Families, the concord whereof dependeth on naturall lust, have no government at all; and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common Power to feare; by the manner of life, which men that have formerly lived under a peacefull government, use to degenerate into, in a civill Warre.55

Hobbes argues back and forth: He concedes that the state of nature has never existed as the universal condition of mankind ‘before’ history, yet he contests that, even in his own time, many people live under such conditions – such as among the indigenous people of the Americas. However, even if the reader does not accept this as an example of a historically extant state of nature, we need not alter the argument, since we can imagine what such a state of nature would look like by drawing on the experience of civil war (the English Civil War of 1642-1651 being a very pressing reality to Hobbes’s contemporary

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readers). Regardless of whether or not there has ever been an actual state of nature, its possibility therefore stands at the center of Hobbes’s theory of sovereignty. It is the latent fear of the state of nature that leads people to accept the social contract and transfer their right of force to the sovereign.

Schmitt’s concept of the state of exception bears obvious resemblance to Hobbes’s state of nature. The state of exception is the source of sovereign power. It stands in opposition to constitutional normality, and it remains an actively stabilizing possibility of instability within that normality. For this reason, Schmitt, as we have seen, calls Hobbes the classical thinker of the decisionist type. Like himself, Schmitt argues, 17th century thinkers of natural law conceived the question of sovereignty as the question of the decisional power over the exception. They all “agree that whenever antagonisms appear within a state, every party wants the general good – therein resides after all the bellum omnium contra omnes – yet that sovereignty (and thus the state itself) resides in deciding this controversy, that is, in determining definitively what constitutes public order”. Every order, including the order of law, he concludes, “rests on a decision and not a norm”.

Although the early Schmitt’s scattered commentary on Hobbes might be somewhat crude (and although Hobbes would hardly agree that every party seeks the ‘general good’), this argument shows that he recognizes the continued presence of the state of nature or the bellum omnium contra omnes within the state as the continuously possible end result of unavoidable conflicts to which the sovereign must perpetually react. The state of exception, in Schmitt’s terminology, is the legal counterpart to this political reality.

Yet, the concept of the state of exception also decidedly distinguishes Schmitt’s theory of sovereignty from that of his chosen predecessor. This shift has to do with the historical situation in which Schmitt found himself and his distinctly 20th century view on the crisis of modernity. Hobbes was not only the originator of the state of nature but also the founder of modern natural

57 For an in-depth discussion on the concept of the exception and its juridical and historical implications, see chapter 5.
right. While the former excludes the possibility of the existence of a meaningful distinction between right and wrong in nature, the other is based on the claim that the origin of right must be found precisely in (human) nature for there to be morality at all. From the right of nature, that is, the right of the individual to preserve one’s life by the means one deems necessary, follows rationally the laws of nature. “The Lawes of Nature are Immutable and Eternall;” Hobbes writes, “For Injustice, Ingratitude, Arrogance, Pride, Iniquity, Acception of persons, and the rest, can never be made lawfull. For it can never be that Warre shall preserve life, and Peace destroy it.” The laws of nature have no effect outside of the state, yet no state can be founded on laws contrary to the laws of nature, as they would offend against either reason or the principle of self-preservation. Hobbes thus preserves a faith in reason and the will to live as characteristic qualities of a rational humanity in an ordered cosmos.

By contrast, Schmitt describes the historical horizon of his study as a centenaries long struggle between not just different churches with different religious doctrines but also competing and mutually exclusive metaphysical systems. His concept of ‘political theology’ is often reconstructed as simply the Christian monotheist dogma of an omnipotent God as the model of the absolute sovereign without taking into account that what he describes is actually several different ‘theologies’ or, rather, belief systems in a broader sense. “The metaphysical image”, he writes, “that a definite epoch forges of the world has the same structure as what the world immediately understands to be the form of its political organization”. Political theology or metaphysics is thus an epochal concept: To the early modern state of the 17th and 18th centuries corresponds a theistic worldview, i.e., a metaphysics in which God does not only provide the laws of nature but may also intervene directly in the secular world through the force of the miracle to restore order according to his will – in structural analogy to the decisionist sovereign. From the 19th century, the constitutional state (Rechtsstaat) gains ground along with deism, which “banishes the miracle from the world” and reduces God to the Rousseauian

lawmaker, who retreats after the completion of his creation, thereby leaving the machine of the secular to its own functioning. Deism then facilitates a transition from transcendence to immanence and finally paves the way for atheism, which is not satisfied with exiling God to the afterlife but demands his abdication – to Schmitt a metaphysics closely associated with French, German and not least Russian socialism/communism.  

However, although the metaphysics of theism, deism and atheism follow a line of historical development, they do not simply replace each other in neat succession but rather coexist, compete, and struggle for domination. Clearly, Schmitt himself prefers the theism of the sovereign nation-state to the two other systems and wishes to restore its dominance in legal theory, while the deism of constitutionalism remains strongly represented by liberals in parliament and positivists in academia, and atheism is only beginning to rise in the East as an ominous sign on the horizon of Europe. The situation in which Schmitt finds himself is fundamentally one of competing metaphysical worldviews mutually rejecting one another. While Schmitt only subscribes to only one of them, he accepts as the necessary condition for political thought the fact that no metaphysical basic assumptions can be counted upon to provide the common grounds for a stable political community. Out of this vacuum, he seeks to create the sovereign state ex nihilo.

Therefore, Schmitt cannot simply adopt the concept of the state of nature. While the transition from the state of nature to civil state for Hobbes relies on reason, Schmitt’s concept of the state of exception is inherently irrational. This is the core claim of his decisionism: “For the decision on the exception is decision in an eminent sense.” The decision on the exception is a decision with no ground in any norm, whether ethical or epistemological. The exception represents the momentary loss of such a normative framework for decision making, and thus a decision par excellence has to be made in order to reinstall or replace that framework. Schmitt can therefore write that, in the state of exception, “the state remains, whereas law/right [das Recht] recedes.”

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statement would be senseless to Hobbes as the social contract legitimizing sovereign power only stands as long as that power protects the natural right of the citizen: to preserve one’s life. The citizen whose life is threatened by the state therefore automatically returns to a state of nature in relation to that state and is no longer obliged to obey its rules, even in the case of a lawful death penalty: “A Covenant not to defend my selfe from force, by force, is always void. For (as I have shewed before) no man can transferre, or lay down his Right to save himselfe from Death, Wounds, and Imprisonment”.63 If the right of nature is universally suspended for the citizenry as a whole, therefore, the state no longer exists.64 Ultimately, the originator of decisionism is not Hobbes but Schmitt himself.65

From the early 1930s onward, however, Schmitt’s legal thinking takes a turn away from decisionism toward what he calls ‘concrete order thought’ and, later, a more historical-epochal approach to politics. Already in The Concept of the Political, we see a shift in focus from sovereignty as the liminal concept of state to the political, as defined by the friend/enemy distinction, which at this point in Schmitt’s theoretical development gains primacy over the state as the founding principle of society.66 Nevertheless, he maintains that Hobbes was a decisionist thinker while also distancing himself from this decisionism. From this point on, Schmitt’s relation to Hobbes becomes ambiguous. On the one hand, he continues to rely heavily on Hobbes as his main philosophical reference for the constitution of the political, while, on the other, he sees in Hobbes’s alleged decisionism the roots of all the modern constitutional state’s problems.

64 As Vatter also points out, following Strauss’s criticism of Schmitt on this point, Vatter 2004, 170.
65 In the literature following Agamben, there is a tendency to confuse Hobbes’s concept of state of nature with Schmitt’s concept of state of exception. Agamben takes Schmitt’s self-identification with Hobbes at face value and therefore misses the central, historically founded differences between them: “(...) the Hobbesian state of nature is the exception (…)”, Agamben 1998, 106. Jessica Whyte notes how Agamben’s reading of the state of nature contrasts with Hobbes’s own, Whyte 2013, 64.
What Schmitt emphasizes as Hobbes’s great merit is no longer his theory of sovereignty but rather his anthropology: “[...] all genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a ‘dangerous’ and dynamic being”.67 Accordingly, political theory is only possible on condition of accepting the premise of an ‘evil’ human nature, and among those thinkers who have seen this inescapable fact clearly, Hobbes features prominently.68 It is worth noticing that Schmitt abandons his preferred Hobbes dictum in favor of another one: Whereas the early Schmitt often cites: “Auctoritas non veritas facit legem”, the later one prefers: “Homo homini lupus” (Man is a wolf unto man), although sometimes in a revised form, emphasizing its cynicism: “Homo homini homo”.69 The aim of any political philosophy, Schmitt believes, is to answer to this problem of human nature, i.e., to create peace and order out of a natural tendency toward conflict. It is this aspect of Hobbes that the later Schmitt identifies with and not his theory of sovereignty, which Schmitt characterizes as based in decisionism.

However, Schmitt’s critique of Hobbes may tell us as much about his own theory of sovereignty as does his newfound (pseudo-)Hobbesian anthropology. Étienne Balibar, in an article entitled “Schmitt’s Hobbes, Hobbes’s Schmitt”, offers the hypothesis that, while Schmitt attempted to retrospectively revise the line of argumentation in his The Leviathan in the State Theory of Hobbes (1938) to represent a form of resistance-between-the-lines against the totalitarian thought control of the Third Reich, we may recognize a quite different form of resistance in the text: the resistance of Hobbes within Schmitt’s theory of sovereignty, or “the systematicity and paradoxical power of his theory, in

68 It may be noted that Hobbes actually denies that humans are by nature evil: “The Desires, and other Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them: which till Lawes be made they cannot know”, Hobbes [1651] 1996, 89; see also [1642] 1998, 11. Human nature is as innocent as animal nature – and as harmful since humans in nature can know no law. They may not wish to harm one another, but since they cannot be sure of the intentions of every other individual, they must distrust each other and therefore be prepared to use violence.
Schmitt in the uneasy relation that Schmitt maintains with elements of his own, personal problematic and with their contextual utilization”.70 The premise of Balibar’s Schmitt interpretation is that while we may condemn his political project, his works as well as his person demonstrate a problematic within the modern constitutional state which it would be foolish to ignore.71 Building on this argument, I would add that the ‘uneasy relation’ to his own work, which Schmitt implicitly processes through his discussion of Hobbes, relates directly to that problematic of modernity which he identifies and responds to but continuously fails to solve. That is, Schmitt’s problem with Hobbes may reveal an unsolved dialectic within his own work resulting from the problem of crisis sovereignty. This is interesting not just as a matter of Schmitt exegesis but for adequately formulating the question as to why sovereignty remains problematic in Hobbes as well as in Schmitt and beyond.

Schmitt’s book on *The Leviathan* constitutes his most extensive engagement with Hobbes. In it, he argues that the formal structure of Hobbes’s decisionism necessarily leads to the moral relativism of legal positivism. He describes a tension within the book between the mythical force of the Leviathan as a symbol and the emptiness of the political form provided by Hobbes’s theory of state. This tension is illustrated by the fact that the sovereign is described on the one hand as a ‘mortal God’ and on the other as a human-made ‘artificial person’, that is, as simultaneously transcendent and immanent, creator and creation.72 According to Schmitt, while Hobbes is the originator of the powerful Leviathan symbol, he thus also backhandedly renders possible a mechanistic-technical view of the state as ‘state apparatus’; in analogy to Descartes’ mechanistic view of the bodily existence of humans.73 More specifically, Schmitt criticizes the fact that Hobbes distinguishes between a public and a private sphere of reason, where citizens in the private sphere retain a freedom of thought and religious belief, even if the public sphere is submitted to the

70 Balibar 2017, 73.
71 Balibar 2017, 38.
72 Schmitt 1938, 50–51.
73 Schmitt 1938, 59–60.
official confession of the sovereign. This ‘agnosticism’ effectively neutralizes the state: “The distinction between private and public, faith and confession, fides and confessio, is introduced in a way from which everything else was logically derived in the century that ensued until the rise of the liberal constitutional state.”74 The public/private distinction places citizens in an arbitrary relation to the community, thus creating a slippery slope to the purely formal unity of the constitutional state.

In this way, Hobbes renders it possible for later thinkers to erode the contents of the state and deprive it of its cohesive force, leaving it an empty form. To Schmitt, the philosopher who has most cunningly succeeded in this devaluation of the state is Spinoza: “The Jewish philosopher pushed this incipient form to the limit of its development until the opposite was reached and the Leviathan’s vitality was sapped from within and life began to drain out of him.”75 Spinoza exploits the principle of freedom of thought allowed by Hobbes in the private sphere and extends it to the public sphere as freedom of speech in order to render the state religiously and culturally neutral. Schmitt assumes as a given that while the Christian Hobbes was trying to preserve the religious unity of the people through the public confession of the state, the Jewish Spinoza naturally inhabits the position of an outsider whose people (the Jews) have no state and are therefore seeking to separate the institutional framework of government from the religious community of the governed.76

While Schmitt’s attack on Spinoza is as relentless as it is anti-semitic, his critique is actually aimed at Hobbes. Spinoza, in Schmitt’s reconstruction,

74 Schmitt 1938, 85; 1996, 56.
75 Schmitt 1938, 87; 1996, 57.
76 The passages on Spinoza are some of the most openly anti-semitic of Schmitt’s published writings. To Schmitt, Spinoza as a Jew is per definition stateless. He therefore assumes that Spinoza’s motivation in all of his writings on politics must be to separate the constitution of the state from its proper foundation: The people, i.e., the organic unity of a religiously, culturally and historically homogenous group of ‘friends’. The error of Hobbes, according to Schmitt, was to not properly commit his theory to the primacy of the pre-existing state people (and its religion), thereby leaving it open to be eroded by the empty formality of Spinoza’s Jewish liberalism. Schmitt 1938, for example, 86-89, 109, 127.
knows perfectly well what he is doing and deliberately seeks to reduce the state to a technocratic bureaucracy. Hobbes, on the other hand, fails to secure the unity of the sovereign state and its people by leaving open a space for normative relativism to unfold progressively. This becomes the ‘sickness onto death’ of the sovereign, leaving the state a non-sovereign machine of administration. The fault lies not with the open liberalism of Spinoza but with the inherent weakness of Hobbes’s decisionism. At this point, Schmitt’s critique unintentionally reveals itself as self-criticism.

Even after Schmitt turned away from decisionism and toward what he called ‘concrete order thought’, and after he declared that the state was ontologically secondary to the political as defined by the friend/enemy distinction, he maintained that Hobbes was the ‘great decisionist’ of political philosophy. Whereas, in Political Theology, Schmitt had positioned himself as a defender of decisionism against legal positivism, in The Concept of the Political, he concluded that decisionism and positivism could not simply be seen as polar opposites; rather, the positivist Grundnorm itself relied on an original decisionism as its foundation, which it sought to repress. In his book on Hobbes, Schmitt sees in the symbol of the Leviathan a political myth with the potential to constitute a state but also, precisely in Hobbes, a decisionism paving the way for later liberal positivism (for which the “first Jewish liberal”, Spinoza, is made accountable) and thereby undermining the very gravitational center of his own theory – the strong sovereign. Decisionism, to this later Schmitt, itself represents an ethical relativism as the concept of the decision itself is nothing but a form with no determinate ethical contents.

Schmitt’s issue with Hobbes is essentially that the latter, in his attempt to overcome the crisis of civil war through its integration in the state as fear, inadvertently reduces that state to an empty framework which can be filled with any content whatsoever and thus become the instrument of subversive forces leading to a new crisis of state. Thus, the crisis repeats itself within the

77 Schmitt 1938, 99.
78 Schmitt 2009, 10, 18.
79 Schmitt 1938, 82.
institution meant to eliminate it. The sovereign, or the mythical symbol of the Leviathan, Schmitt argues, was the soul of the state, but the form that Hobbes gives to the latter ultimately dissipates that soul and leaves it soulless. Yet, although Schmitt repeatedly insists on the importance of the Leviathan as ‘soul’ and ‘symbol’, he does not specify what that soul-likeness consists in nor what it is a symbol of. It would seem to be an empty signifier. And if we return to the earlier, decisionist Schmitt of Political Theology, his own concept of the sovereign is no more soul-like than that of Hobbes. The sovereign decides on the exception – but what does he decide? What is the meaning of the decision itself?

This is the criticism that Strauss raised against Schmitt, which he, in his later work, has apparently taken to heart: His concept of sovereignty is as formal as Hobbes’s, and he therefore leaves the state open to a new form of neutralization. Strauss expressed this critique in relation to the friend/enemy distinction of On the Concept of the Political, but it might as well be directed at Schmitt’s earlier concept of sovereignty, which was arguably replaced by the friend/enemy conceptual pair as the central element of his state theory. The two may be interpreted as two different attempts at a solution to the same problem: How to create the unity of the state out of the disunity of a metaphysical crisis? Strauss argues that the assertion of the friend/enemy distinction as determinant of the political implies the affirmation of any declaration of enmity as a legitimate political position; correspondingly, the assertion of the decision as determinant of sovereignty by implication affirms any decision and any sovereign. The decision on the exception, which defines sovereignty to Schmitt, is itself purely formal and leads to the same legal formalism that he identified as the problem of positivism, and this again, following Strauss, leads to a new normative relativism against Schmitt’s intentions.

Schmitt’s concept of sovereignty attempts to base stability in instability, as did Hobbes, but, ultimately, it only transposes the puzzle of crisis rather than solving it. In his interpretation, the relation between the unity of the state in the sovereign and the unity of the constituency in Hobbes’s theory gradually

80 Schmitt 1938, 54 ff.
reveals itself to be only an arbitrary link, and the state therefore develops into an empty vessel to be filled with any political content, which ultimately undermines its legitimacy as unifying. In the same way, the norm emanating from the “decision in an eminent sense” made by the sovereign in the constitutive moment can only stand in an arbitrary relation to the constituency over which it shall rule. Basing legitimacy of the common norm in the sovereign decision therefore integrates the normative crisis in the state and henceforth confronts the institution with this problematic origin. The specific interaction of crisis and sovereignty in a dialectical process will be treated in chapter 5. What I have investigated here are the roots of the problematic of crisis in the concept of sovereignty as conceived already in the state theory of Hobbes. Furthermore, I have examined how Schmitt, because of this original relation, saw in Hobbes a source for theorizing the sovereign state in a situation of crisis as he experienced it in his own time. And, finally, how neither Hobbes nor Schmitt succeeded in neutralising the crisis by integrating it in the sovereign state but rather inscribed the crisis within it as a point of origin to which it must continuously return.

CONCLUSION

Why think about crisis and sovereignty together? Because the ‘modern sovereign state’ is originally and constitutively conceptualized as a crisis institution. This we can see by returning to one of its first theoretical authors, Hobbes, and this is what Schmitt recognizes when faced with the crisis of his own times. The crisis, however, looks very different to Hobbes and Schmitt respectively. Hobbes is able to write of natural laws as universal dictates of reason only because he fundamentally believes in an intrinsically ordered cosmos, natural and human. Although Hobbes, as Strauss argues, seeks to make the question of God’s authority irrelevant to the human order, his belief in a divine order is a necessary condition of his political philosophy. Schmitt, on the other hand,
while much more explicit in his religious confession than Hobbes, recognizes that such a faith cannot be counted upon as a common ground for the constitution of the state. He is faced with the task of constructing a state theory on the basis of premises that do not rely on any shared set of values but rather on the fact of radically conflicting worldviews. Characteristically, he does not simply speak of one ‘political theology’ but of the competing political theologies of theism, deism and atheism struggling throughout the 18th and 19th centuries.

While Schmitt no doubt sees a kindred spirit in Hobbes, not only because of the role of authority in his state theory but also and importantly because of its historical context, he nevertheless finds himself in a situation where he cannot simply adopt and apply Hobbesian terminology. Writing in the immediate aftermath of the First World War and the Russian and German Revolutions, Schmitt cannot base his theory in a combination of natural right and reason. While he personally favoured the political theology of theism, it is clear from his writings that the situation he finds himself facing is a struggle between the radically diverging metaphysics or ‘theologies’ of competing political worldviews, so he cannot assume a general agreement on the universal laws of reason as the source of stability. Not even the existence of rationality in politics can be taken for granted. Hence, we see a shift from the state of nature toward the state of exception. These concepts are structurally similar insofar as both of them represent attempts to integrate the problem of crisis in the theory of state by recapturing it in politico-juridical terms. In this way, they both seek to base stability in instability. Yet, they differ in the way they facilitate this integration. To Hobbes, it is a truth evident to all that it can “never be that Warre shall preserve life, and Peace destroy it”, wherefore it is natural for all rational humans to wish to exit the state of nature, even if the vehicle of this exit – the state – is itself an artificial construct. Schmitt’s crisis, on the contrary, is among other things a crisis of this common rationality, which he does not trust to found the unity of the state. In this sense, he too participates in the radicalization of the modern crisis initiated by Hobbes as described by Strauss.

81 See McCormick 2017, 286.
Schmitt’s position in this is not unlike the one Strauss ascribes to Nietzsche that rejects both transhistorical and historical universals of human sociality as the basis of morality. Thus, the state of exception is an ethical void, necessitating an existential decision to create a normative order ex nihilo, as argued in chapter 3. The modern crisis to Schmitt represents the loss of any universal norm independent of the authority of the state.

However, what he sees in the 1920s as the solution to this foundational problem, namely, his political decisionism, he revises through a renewed engagement with and critique of Hobbes. This engagement is informed and influenced by his exchange with Strauss. The problem for Strauss and Schmitt is that they both wish to reestablish a transcendent norm as the foundation of the state, yet both recognize that they cannot return to a time before Hobbes and the normative crisis of modernity. Both try to cut this Gordian knot by way of an existential decision. To Strauss, the values of civilization cannot be known philosophically, since reason views all values as equal; nevertheless, as we cannot do without a hierarchy of values, each society must choose its values. It is better to live by a “noble delusion” than “wallow in the sordid truth”. Schmitt, on the other hand, while agreeing with the necessity of choice, had sought to phrase it in juridical terms rather than cultural by assigning the decision on the norm to the authority of the sovereign. Through this juridical solution, he wished to provide social life with a stable political form. Yet, his formalism left the state as empty as he would later accuse Hobbes’s state of being, as Strauss pointed out.

The state of exception therefore does not end the crisis which the state of nature first captured in politico-philosophical terms but only serves to displace and perpetuate the problem in a 20th century context. Schmitt, in this sense, knowingly or not, carried out a self-critique by proxy in his distancing commentary on Hobbes. His post-Weimar writings turned away from decisionism and sovereignty as a main topic; first toward what he called concrete order thought and then during the Cold War toward international law and an explicit

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82 Drury 1988, 164.
83 Quoted in Drury 1988, 166.
philosophy of history. Along with this shift in focus and emphasis, he also changed his view on a number of topics, such as the historical role of the state and Christianity. Yet, this does not mean that we should disregard his Weimar writings or the theory of sovereignty, since Schmitt never solved the problem he was addressing in these texts. Rather than seeking a solution to the crisis in modernity in Schmitt’s theory, whether in the early or late Schmitt, we may take the persistence of the problem as an indication that the aporia of crisis is a constitutive element of the concept of sovereignty as such. Already in Hobbes, the concept of sovereignty is intimately linked with crisis. Schmitt recognizes this and therefore recurrently engages with Hobbes but replaces the state of nature with the state of exception in order to address the crisis experience of his own time. Schmitt’s critique of Hobbes thus reveals not only a blind spot in his own early writings but also an integral dialectic within sovereignty itself. From Hobbes to Schmitt, sovereignty is haunted by the historico-philosophical idea of modernity as crisis time, simultaneously founding and eroding state theory from within. In chapter 5, I shall return to the specific character of this dialectic.
PART III:
CRISIS SOVEREIGNTY
AND BEYOND
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When the global financial crisis broke out in 2008, economic turmoil was soon followed by political. In 2010-2011, sovereign debt crises, as well as the sudden vulnerability of national currencies such as the dollar and the euro, had left Western liberal states in a “general crisis of legitimacy”.¹ One prominent example was the negotiations and very public animosity between the Greek state and the so-called European troika, consisting of the International Money Fund, the European Commission, and the European Central Bank, with Germany as a dominant voice. While it was clear that a Greek default would have a major negative impact on the Eurozone economy as a whole, the price the country would have to pay in order to be ‘saved’ from economic disaster by the troika was the implementation of radical neoliberal measures and even legislation. The notorious German minister of finance, Wolfgang Schäuble, did not hesitate to publicly call for the 2012 Greek general election to be postponed and a technocratic government to be installed instead.² When the conflict peaked in 2015, there were demonstrations throughout Europe, and the new ECB

¹ Tooze 2018, 394.
² Wiesmann and Peel 2012.
headquarters in Frankfurt was blockaded on its opening day in solidarity with the Syriza government against the austerity measures of the troika. The hashtag #thisisacoup circulated online, and a prominent American economist observed that the demands imposed on Greece were a “complete destruction of national sovereignty”.

In the end, the Syriza leadership caved, the government imploded, and the moment of social mobilization had passed. The political events of the financial crisis years were interpreted by many as a shift of power from national governments to international organizations and market agents. In this vein, the German philosopher Joseph Vogl has written about the ‘sovereign effect’ of market events, theorizing that financialization has concentrated decisional power in the hands of ‘modern finance’ acting “outside of popular sovereignties and in avoidance of democratic procedures”.

Faced with the unbridled forces of global capital, national states appeared less than sovereign.

In early 2020, states across the globe found themselves in an emergency situation once again, though of a quite different nature, when the Covid-19 epidemic evolved into a pandemic and countries entered lock-down one after the other. This time, many governments did not hesitate to tackle the crisis in a quite sovereign manner, such as closing borders, imposing curfews, suspending citizen rights and even – which is much more unthinkable – closing stores and industries against the will of the market. Those who did hesitate, such as former sovereign ‘strong men’ US President Donald Trump and UK Prime Minister Boris Johnson, were generally scorned and ridiculed when national infection rates roared, and they themselves had to call in sick.

Inversely, national leaderships such as the Danish social democratic government at least initially gained substantial popular support, not least on account of the perceived resolve to act and statesmanship on the part of Prime Minister Mette Frederiksen. We have yet to see the end of the stream of pandemic literature,

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3 Kassam 2015.
4 Vogl 2015, 8.
5 Landler 2020.
but among the first to publish book-length analyses were Slovenian philosopher Slavoj Žižek and Swedish human ecologist Andreas Malm, who both emphasized the necessity of a strong state to handle global shocks such as the one caused by Covid-19.⁷ The financial and the Covid crises, not to speak of the harrowing and continuously progressing climate crisis, were crises of very different types and origins, but what they have in common is that they are transnational events calling into question the political form of the state and in each case engendering debates about the adequacy and nature of sovereignty.

Hugo Ball, in a text on Schmitt from 1924, quoted C.K. Chesterton, writing: “A practitioner is a person who is familiar with an everyday practice, with the way in which things normally function. However, when things stop working – then one needs a thinker, a man who can deliver a doctrine as to why things ever work at all.”⁸ According to Ball, Schmitt was such a thinker. It is questionable whether he could indeed deliver a doctrine explaining the workings of the political (I have argued that he could not), yet Schmitt was quintessentially the thinker of the extreme; one who always observed normality through the lens of its exception. Sovereignty, it seems, is something which only becomes an urgent matter of consideration in exceptional political situations. In times of stability, where things function according to expectation, questions of sovereignty are uninteresting to most. Yet, this does not mean that it does not play an active role in ordering this apparently automatically functioning normality; on the contrary, the debates on sovereignty reflect both back on what was previously thought to be stable and reliable but turned out not to be as well as forward toward the open question of a new normal. Schmitt identified the constitutive role of exception for order, and for this reason his theory of sovereignty is of central importance for a critical examination of crisis sovereignty, even if he failed to follow the dialectic of his own theory to its logical conclusion, as we shall see below.

In Part I of the present thesis, I examined the problem of sovereignty as one of the mediation between power and legitimacy and discussed the concept

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⁷ Žižek 2020, 10; Malm 2020, 151.
⁸ Ball [1924] 1983, 100, my translation.
of sovereignty as a contradictory concept which must be analyzed dialectically. In Part II, I then turned to crisis temporality as the context for the theory of sovereignty, first reconstructing a conservative eschatology of modernity and then tracing the integration of crisis in the theory of state from Hobbes’s state of nature to Schmitt’s state of exception. In this chapter, I combine and build on these two lines of inquiry – sovereignty and crisis temporality – to unpack the core concept of the thesis, ‘crisis sovereignty’. Through an engagement with Schmitt’s most central texts on the subject, as well as with his commentators, I do this on the one hand by unfolding Schmitt’s concept of sovereignty, and on the other by criticizing this same concept, examining its limitations and showing how it both ultimately undermines the aspirations of Schmitt and simultaneously expresses something true about the nature of sovereignty against its author’s intentions. Central to sovereignty in Schmitt’s definition is his concept of the exception or Ausnahmezustand, which, I argue, has often been one-sidedly interpreted as a purely legalistic term, repressing its historico-philosophical implications – or, alternatively, its legalistic and historico-philosophical aspects have been insufficiently distinguished from each other, leading to a loose terminology and a confused account of their internal relation. As crisis, the exception embeds sovereignty in a context of philosophy of history, which is central to understanding sovereignty’s legitimizing function. The relationship between crisis and sovereignty, I argue, is dialectical in that it simultaneously consolidates and undermines the legitimate power of the sovereign institution to institute the order of law.

In the previous chapters, I have reconstructed the philosophy of history of modern crisis temporality as the context for the present discussion on sovereignty. In the first section of this chapter, I analyze the “double concept of the exception” as a relationship between the exception as a juridical measure and the crisis as a historical event. In the first instance, this is the level of abstraction at which Schmitt’s concept of sovereignty unfolds. The second section on “Article 48 and the dictatorship of the proletariat” exemplifies this relationship through a discussion of Schmitt’s fear of socialist revolution as the historical context for the development of his concept of exception. Having examined the relationship between juridical measure and crisis event, however, in the
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section on “crisis sovereignty between history and philosophy of history”, I then return to the historico-philosophical level in order to analyze how the previous discussion implies a generalized notion of crisis as a structure of modern time. Finally, in the fourth, short section I discuss how the failure to recognize the dialectic between jurisprudence and philosophy of history within crisis sovereignty can lead to diametrically opposed interpretations of crisis sovereignty: as either omnipotent rule through crisis or as the final decline of the sovereign nation state.

THE DOUBLE CONCEPT OF THE EXCEPTION

“Souverän ist, wer über den Ausnahmezustand entscheidet”, Schmitt famously initiates the first chapter of Political Theology: “Sovereign is he who decides on the exception”.9 In Georg Schwab’s English translation, ‘Ausnahmezustand’ is rendered as ‘exception’, yet this is only a partial translation of a very ambiguous and rich concept. Literally, ‘exception’ corresponds only to the first part of the word, ‘Ausnahme’, leaving out the second part, ‘Zustand’, meaning either state or situation. A more straightforward legal translation may be ‘state of emergency’, although Schwab argues that ‘state of exception’ in Schmitt’s terminology implies a pre-existing legal order, whereas ‘state of emergency’ (presumably Notstand/Notfall, although Schwab omits the German original) does not, since ‘necessity has no law’.10 This argument, however, relies entirely on the presumption of a terminological cogency within Schmitt’s work (which I shall argue is not present) since the term Ausnahmezustand is itself obscure and did not have a clear definition in the jurisprudence of his time. According to Hans Boldt’s article on the concept in Basic Concepts in History, it emerged in the 19th century and did not become a terminus technicus until the early 20th century. The first to radicalize and develop the concept out of a tradition of emergency theory arising from the second half of the 19th

century was Schmitt. His theory of the state of exception is thus not just one among many in the history of jurisprudence; rather, it is the introduction of the concept into this history. In order to understand how the concept is used today, it is crucial to examine the ambiguous implication at hand in Schmitt’s first discourse on its meaning and position in state theory.

The above definition of sovereignty, Schmitt argues, renders the concept of the sovereign a ‘liminal concept’ necessarily linked to a liminal situation. The preposition ‘on’ (über) is ambiguous, leaving open whether the sovereign decides in an exceptional situation or over the employment of exceptional means. “It will soon become clear,” Schmitt continues, “that the exception is to be understood to refer to a general concept in the theory of the state, and not merely to a construct applied to any emergency decree or state of siege”. Here, the translation begins to muddle the concepts. The words which I have crossed out in the quote do not appear in the German original but are added by the English translator. In the original, the concept of exception (Ausnahmezustand) is directly linked to both the ‘emergency decree’ (Notverordnung) and the ‘state of siege’ (Belagerungszustand). While it is a negative qualification, demarking the exception against just ‘any’ case of emergency decree or state of siege, it is important to note that Schmitt anticipates two different lines of interpretation of the word exception: On the one hand, a legal decree issued by a state authority and, on the other, a historical situation threatening the existence of the state. This essential ambiguity of the word ‘exception’ is glossed over by the addition of ‘a construct applied to’, unifying the exception as a single construct applicable to multiple types of situation and even to variable levels of reality: jurisprudence and history.

Schmitt affirms the double meaning of the concept of exception: “It is impossible to determine with any subsumable clarity if an emergency prevails, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated”

11 Boldt 1972, 343, 372–73.
12 This paragraph and the following draw on List 2023, 115.
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In this sense, the problem necessitating a theory of sovereignty is twofold: On the one hand, the problem of defining legally what constitutes an emergency and, on the other, the problem of choosing the means of its elimination. Neither of these problems can be solved constitutionally, Schmitt argues, since we cannot predict what the emergency will entail, and since the means to eliminate a constitutional crisis must potentially include suspending parts of the constitution itself.

Matters are further complicated by the fact that Schmitt uses several concepts closely related to the term Ausnahmezustand. Apart from Belagerungszustand and Notstand, these include Notfall and Ausnahmefall. ‘Fall’ means incidence or case, as in the idiom ‘in any case’ (in jedem Fall), but also in the legal sense, i.e., as the matter to be decided in a court of law. Here, the most important conceptual relation is the difference between Ausnahmezustand, state of exception, and Ausnahmefall, exceptional situation. Nicos Tzanakis Papadakis argues that Schmitt maintains a subtle conceptual distinction between the two that is generally overlooked or ignored by commentators, although, while the distinction stands conceptually, in the end it becomes unsustainable theoretically. This distinction would make explicit the difference between the state of exception as a sovereign measure, denoted as Ausnahmezustand, and the exceptional situation as a factual occurrence to which the sovereign reacts, that is, Ausnahmefall. Tendentially, Schmitt does appear to adhere to this careful terminology in certain parts of Political Theology. The difference between the two terms is certainly important enough to make it problematic that it is lost in the English translation,

13 Schmitt [1922] 2009, 14; [1922] 2005, 6. I have modified the translation as the English version distorts the meaning of the first sentence (changing the question of whether an emergency prevails to a question of the specific details of the emergency in question), though not in a sense central to the present argument.

14 Papadakis 2021, 233–35, 247 ff. According to Papadakis, Agamben’s failure to notice this difference leads him to merge the conflictual life form of the exceptional situation with the state of exception as a reaction to the former, thus interpreting the latter as a biopolitical technique of governance; see Papadakis 2021, 324, n. 311.
where both are rendered simply ‘exception’. The question is whether this possibility of differentiating between the two terms excludes the exceptional situation (Ausnahmefall) from Schmitt’s definition of sovereignty, making it entirely contingent on the Ausnahmezustand in the sense of a legal construct.

Although linguistically and from a perspective of juridical terminology it would make sense for Schmitt to make this distinction, it does not hold up throughout the book. First, Schmitt seems to confuse the concepts or use them interchangeably on several occasions, as when he writes that “also the seventeenth-century authors of natural law understood the question of sovereignty to mean the question of the decision on the exception [Ausnahmefall]”. Here, he repeats his initial definition, yet he replaces state of exception with exceptional situation – while associating his own theory with that of the earliest thinkers of sovereignty through the conjunction ‘also’. Second, he often uses simply ‘exception’, Ausnahme, in both senses, as when he writes that “the decision on the exception [Ausnahme] is decision in a quintessential sense” (meaning state of exception) or “the exception [Ausnahme] is that which cannot be subsumed [by law, LL]” (meaning exceptional situation). This further contributes to dissolving the difference apparently introduced with the distinction between Zustand and Fall.

This ambiguity in Schmitt’s text, and thus in his theory of the relation between sovereignty and state of exception/exceptional situation, has left its mark in the afterlife of the concept. Ernst Forsthoff, one of Schmitt’s many protégés and fellow party member, in his article on the concept of state of exception in the standard work of philosophical concepts Historisches Wörterbuch der Philosophie, defines it as follows:

State of exception [Ausnahmezustand] denotes that situation [Lage] in which a state can no longer master a threat – either from the outside in

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15 Strong, in her introduction to Political Theology, praises Schwab’s translation in general, but remarks that it “condenses ‘case’ into ‘exception’”, Strong 2005, xii.
the form of a hostile attack or from the inside in the form of anti-constitutional forces or natural catastrophes – by normal constitutional means. In this, it differs from a constitutional disturbance (a temporary non-functioning of a constitutional body), which can only be corrected by reestablishing loyalty to the constitution. The state of exception is a legal institution [Rechtsinstitut] typical of the constitutional state. For in those cases where a government body, such as the absolute monarch, commands over the entire state power [Staatsgewalt] in all its wealth, there is no need for extraordinary mandates in order to overcome difficult situations.  

The primary sources for this definition are Schmitt’s On Dictatorship and Political Theology. Here, we have the double definition of the concept spelled out, although not explicitly theorized. The article defines the state of exception first as a ‘situation’ in which the state may find itself, and second, with no mediation between the two, as a ‘legal institution’. Forsthoft, who attained his PhD degree under Schmitt’s supervision in 1925 and thereafter kept an extensive letter exchange with the latter, clearly understands the state of exception both as a historical event, that is, as crisis, and as the sovereign legal means to overcome this crisis. Even if Schmitt had intended to distinguish the two in order to give an unambiguous definition of sovereignty, this is just one example of how the double meaning of the concept of state of exception has caused confusion in the literature building on his work. Often, the word is used in the two senses interchangeably and without clarifying their internal relation.

18 Forsthoft 1971, 669.
19 It is worth noting that, while not officially associated with the project, Schmitt held a presentation on invitation from Joachim Ritter, the main editor of Historisches Wörterbuch der Philosophie, in his working group and subsequently received an offer to contribute to the work, which he declined, J. B. Hansen 2005, 28–29. Of course, Schmitt’s influence on another standard work of German intellectual history, Geschichtliche Grundbegriffe, is even more pervasive, not only through his mentorship of Reinhart Koselleck but also by providing another of its editors, Otto Brunner, with the central methodological concept of ‘concrete order thought’, Olsen 2013, 46. These are just two examples of how Schmitt has had a lasting effect on German intellectual life.
The above discussion on the ambiguity of the concept of Ausnahme-
zustand and the ensuing difficulty of translating it into English or other languages may seem like a rather obscure semantic concern. Its importance lies in the demonstration that Schmitt’s famous, and in all its rhetorical vigor seemingly straight-forward definition of sovereignty is anything but. Instead, it deliberately and constitutively employs two meanings of the defining term, and the theory of sovereignty continuously oscillates between the two. Christoph Menke defines sovereignty in similar terms, echoing but also explicating the implicit ambiguity in Schmitt’s defining term: “We can speak of ‘exception’ in a twofold manner: an exception can exist (in a situation) and an exception can be made (from a law). (...) Sovereignty is defined by the ascertainment of the (possible) existence of a situation of exception, and hence by the ascertainment of the (possible) necessity of the making of an exception”. This definition is of course different from Schmitt’s insofar as Menke replaces decision with ascertainment, thus implying that the situation of exception actually exists, if only in a latent or ‘possible’ state, and hence the relationship between exception as situation and exception as action becomes unproblematic at least in an epistemological sense. Yet, Menke, in contrast to Forsthoff and others, unfolds the double meaning of the concept of the exception rather than oscillating between the two meanings. While Forsthoff remains caught up in Schmitt’s ambiguous theory of sovereignty, however, Menke essentially misrepresents it precisely insofar as he dissipates its ambiguity, which is an essential part of its logic. Sovereignty in this double sense consists not only in the legal capability to declare the state of exception and suspend the law but simultaneously depends on the precarious ability of the sovereign to overcome a threat to the state and restore legal order. In the first sense, the sovereign power is the source of the legitimacy of law, as Schmitt argues against Kelsen, but in the second, the legitimacy of the sovereign power itself depends entirely on historical circumstances. The first sense constitutes the strength of sovereignty, the second its weakness.

This ambiguous relation between omnipotence and impotence is a central problem in Schmitt’s theory; a problem which he does not solve but merely glosses over by continuously emphasizing the exception as legal tool,
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disregarding the exception as situation.\textsuperscript{20} Undoubtedly, this is at least in part a performative move motivated by Schmitt’s wish to strengthen the sovereign institution by providing it with theoretical juridical support. His attempt at a solution to the internal contradiction then becomes the decisional power of the sovereign: “He decides whether there is an extreme emergency as well as what must be done to eliminate it. He stands outside the normally valid juridical order and, nevertheless, belongs to it (...)”.\textsuperscript{21} These lines have been central to Agamben’s critical reinterpretation of the ‘logic of sovereignty’ as he frames it in the first volume of \textit{Homo Sacer}.\textsuperscript{22} Agamben has developed this logic as a paradoxical relation between inside and outside of the juridical order, whereby the “law is outside of itself”.\textsuperscript{23} At first glance, the conceptual pair of inside/outside might appear identical or at least parallel to the dual nature of the exception as both emergency situation and emergency means. Indeed, it is not, but this apparent affinity may be the reason why the inside/outside distinction has become so dominant in the reception, while the double meaning of \textit{Ausnahmezustand} has been widely ignored.

Schmitt himself has contributed to this line of interpretation by excluding one of the two aspects of the problem immediately after introducing it: “(...) Whether the extreme exception can be banished from the world is not a juristic question. Whether one has confidence and hope that it can be eliminated depends on philosophical, especially on philosophical-historical [\textit{geschichtsphilosophischen}] or metaphysical, convictions.”\textsuperscript{24} The question of how to exclude the exceptional situation as an historical occurrence is, he argues, a matter of historico-philosophical belief and thus outside the scope of political thought. By inference, the question of \textit{what constitutes} an exception in the historical sense is brushed aside as speculation. The sovereign decides whether an exception exists in juridical terms, dissipating discussion as to the factual

\textsuperscript{20} This paragraph and the following draw on List 2023, 115–16.
\textsuperscript{22} Agamben 1998, 13 ff.
\textsuperscript{23} Agamben 1998, 15.
grounds for the state of exception. While Schmitt clearly has legal positivists such as Hans Kelsen in mind when speaking of metaphysical convictions, by implication he nevertheless confesses to the opposing historico-philosophical belief himself: That emergency situations will always and invariable arise to threaten the existence of the state. This premise, although introduced in passing, is a necessary condition for the legitimacy of the sovereign, which depends on the perceived danger of constitutional breakdown.

The meaning of the concept of sovereignty thus depends on its relation to the concept of Ausnahmezustand, but the meaning of this concept is double, and while both aspects are crucial to sovereign power, only one is allowed into Schmitt’s theory of sovereignty. Ausnahmezustand may mean either an historical emergency situation or the employment of exceptional means. While the relation between historical situation and legal exception is (deliberately) ambiguous in the original, the translation renders them indistinguishable by simply omitting ‘Zustand’ and conveying the concept as exception rather than, say, emergency. In this case, it would be necessary to read Schmitt against the grain in order to unfold the full implications of the problem he uncovers. The reception of his work, however, has been only too willing to accept his displacement of the discussion toward legal formalism.25

This line of reception has been carried most prominently by Agamben. In his work on the state of exception, he does develop a certain dialectic within the concept, but as noted above this is a dialectic of inside/outside, which remains, paradoxically, within a legal conceptual framework. The “state of exception”, Agamben writes, “appears as the legal form which cannot have legal form”.26 To Agamben’s praise it must be acknowledged that he is acutely aware of the constitutive instability within the definition of sovereignty, but, on the other hand, he sees the exception as the legal machine at the center of state power which utilizes this instability to transform the “juridico-political system” into “a killing machine”.27 That is, by recapturing the exception in

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25 See also my critique in List 2020.
26 Agamben 2005a, 1.
27 Agamben 2005a, 86.
juridical terms, what initially appears a weakness becomes a strength and sovereignty, consequentially, becomes an almighty logic disseminating itself to all areas of life through universalized exceptional rule. The ‘outside’ of jurisprudence, then, is an outside already conceptualized in jurisprudential terms as the extra-juridical, the outside viewed from the inside. History disappears as the exception becomes an ontological condition of life.

This one-dimensional interpretation of ‘exception’ as (extra)juridical form has led to a mystification of the concept in the post-structuralist inspired philosophical reception of Schmitt. Sergei Prozorov, in an article on Schmitt’s concept drawing on Foucault, Deleuze, Derrida, Rancière and Agamben, among others, sets out to develop a ‘general theory of the exception’. He conceptualizes the relationship between order and exception as an ‘X/Xs’ dualism, where X denotes the order (or governmentality, in Foucauldian terms) and Xs – a pun on excess – denotes the exception as the (Deleuzian) ‘other’ of order; its non-ordered surplus. The author distinguishes his own approach from Agamben’s, arguing that his is a theory of the excess of order whereas the latter theorizes excessive order, yet his concept of exception is clearly inspired by Agamben, as Prozorov himself emphasizes. It is thus a purely formal concept of the exception as indefinable otherness, excluding any historical-material crisis: “The situation of the ‘other within’, formalized as X(Xs), is (...) unrelated to any ‘empirical other’”. If we apply this notion retrospectively onto Schmitt’s theory of sovereignty, it would imply that sovereign power is entirely self-reliant and constituted through an inner undecidability of inside/outside rather than a relation between juridical normativity and historical reality. This theory “posit[s] transcendence as absence” rather than questioning the sovereign dogma of transcendence.

Several consequences follow from this mystification of the exception. First, the dialectic of conflict is replaced by conceptual paradoxicality: “The sovereign is an inherently paradoxical figure that synthesizes in a nondialectical

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30 Prozorov 2005, 85.
manner exteriority and interiority, the rule and its transgression”. The paradoxical nature of the sovereign effectively exempts it from analysis beyond the inherent relation of rule and transgression. With this concept, we are thus unable to understand sovereignty in a conflictual context of both power and precariousness. The sovereign appears omnipotent but purely in terms of a ‘sovereign logic’ contained within its own concept and not in any ‘real’, that is, politico-historical sense. Second, sovereignty is depoliticized through ontologization: “as with Agamben,” Prozorov writes, “my reconstruction of sovereignty divorces it from the modern state as a historically specific resolution of the problem of authority” and instead proceeds from an “understanding of sovereignty as the ontological condition of order”. In this way, sovereignty is naturalized as a human condition rather than a specific form of political organization. Correspondingly, the critique of sovereignty is eternalized as a never-ending deconstruction of a paradoxical ontological structure which always conditions social life but can never be fully comprehended by it. In effect, the concept as well as the institution is depoliticized as the ontologically necessary can neither be reformed nor revolutionized.

This line of interpretation, which is exemplified in but by no means exclusive to Prozorov’s article, is philosophically seductive as it allows for an open-ended, non-conclusive, and aestheticizing reading of any concept whatsoever through the lens of ‘exception’. Prozorov’s general theory of the exception thus leads to an analysis not just of sovereignty but of politics, religion, and love all at once. The “logic of the exception structures the constitutive relation between the order and its transgression in an identical manner in a variety of domains, which nonetheless retain their specificity”, the author concludes without explaining further how the alleged specificity is retained. Furthermore, the general theory of exception includes a concept of history which “may then reverse the commonsensical image of a stable order, traversing history in its empty sameness” and replace this image with a view on order as “a momentary

33 Prozorov 2005, 93.
stabilization of generalized exceptionality of existence: every form of order is the veil that conceals precisely that there is nothing behind it to conceal, that it enfolds the void”.\textsuperscript{34} It is difficult to see how such a theory of the continuity of discontinuity is any less homogenous or empty than the philosophy of history which it replaces.

Paradoxically, then, to avoid the temptation of mysticism we must uncover the metaphysics inherent to Schmitt’s theory of sovereignty as contained in the double concept of exception. It appears that in forgetting the historico-philosophical dimension of the concept, its juridical dimension itself turns metaphysical and begins to colonize other spheres through a process of ontologization. In order to retain the politico-juridical specificity of sovereignty, we must insist on its necessary preconditions in philosophy of history. To deny or ignore the metaphysics of politics is not to eliminate it but rather to allow it to flourish and proliferate. To understand what is at stake in Schmitt’s conceptual displacement, it is necessary to turn to the state of exception as historical occurrence, that is, as crisis. In the following section, I give a concrete example of how the exception plays a double role in Schmitt’s theoretical development.

**Exception: Article 48 and the Dictatorship of the Proletariat**

An often used example of Schmitt’s concept of the state of exception is Article 48 of the Weimar constitution, which specifies the mandate of the Reichspräsident to suspend parts of the constitution in case of a national emergency. In 1924, Schmitt published an article on the subject entitled “The Dictatorship of the President of the Reich according to Article 48 of the Weimar Constitution”, which was then added as an appendix to the 1928 edition of On Dictatorship. This has become an important primary source in the literature on the state of exception in the context of not just the discussion on dictatorship but also that on sovereignty. It is important to distinguish between the two since the sovereign is not identical with the dictator (neither the commissarial nor the

\textsuperscript{34} Prozorov 2005, 98.
sovereign dictator); yet, as Strong notes, Schmitt’s theory of sovereignty specifies the condition of possibility for dictatorship and thus the latter presupposes the former.\footnote{Strong 2005, xiii–xiv.} The common ground for the two is arguably the concept of state of exception, determining both.

The dominant focus on Article 48 as the prime example of this, however, tends to ignore the subject matter of the discourse on dictatorship, which Schmitt himself defines in the subtitle of his book: *From the origin of the modern concept of sovereignty to proletarian class struggle*. A central concern for Schmitt is not only the constitutional discussion on emergency means, centered on Article 48, but the threat of an actual emergency as represented by ‘proletarian class struggle’. His examination of the concept of dictatorship itself appears, in part, motivated by the appropriation of the concept in the slogan ‘dictatorship of the proletariat’ propagated by contemporary socialism; not least in the context of the Russian Revolution. It therefore becomes important to recognize that while Article 48 may be a vehicle for the unfolding of the concept of exception, the driving force initially motivating its theoretical necessity may be less legalistic. This does not mean that we should write off Schmitt’s work on Article 48 as core to the theory of the state of exception. Instead, we should consider both the article and proletarian class struggle at the beginning of the 1920s, as well as their interrelation, in order to give concrete expression to the abstract concept of exception.

In his introduction to the first edition of *On Dictatorship*, Schmitt points to the general political (not juridical) discussion on dictatorship as the motivation for his book. The bourgeois concept of dictatorship he deems inadequate, first because it ignores the socialist dictatorship of the proletariat, and second because it remains too vague, including any form of political rule by ‘dictate’. As the contemporary context for his book, he therefore identifies the “current discussions – in the summer of 1920 – among Marxists”, prompted by Karl Kautsky’s pamphlet *Terrorism and Communism* (1919).\footnote{Schmitt 1994, XIII–XVI; [1921] 2014, xxxvii–xl.} Kautsky’s text was a critical reaction to a publication by Lenin and attracted a countercriticism by
Trotsky, published in German in August 1920, to which Schmitt is referring. Schmitt takes an interest in this discussion because Lenin’s and Trotsky’s defenses of dictatorship, in his reconstruction, centers on it being an intermediary state, i.e., an exception to the norm or, rather, the exception as transition between two states of normality – between the bourgeois state and communism. The force employed in the dictatorship of the proletariat is an exceptional force, and this to Schmitt is at the core of the concept and demonstrates that “a contradiction may exist between the rule of the norm-to-be-realized and the method of its realization”. Yet, on the other hand, the dictatorship of the proletariat clearly also represents an exceptional state to Schmitt in a different sense, namely, as the very real possibility of a violent attack on the state: To Trotsky, he recounts, “the bourgeoisie is a ‘class doomed by history to perish’, so the proletariat, by virtue of being the ‘historically ascending class’, has a right to use force by any means”. Thus, Schmitt finds confirmation of his concept of dictatorship as based in the exception confirmed in socialist theory, while the socialist political movement to him also incorporates the exception in the form of a threat to the constitutional state.

Both Hoelzl & Ward and Quaritsch note that Schmitt’s book does not live up to the promise of its subtitle: The reader looking for an extensive discussion of proletarian class struggle will be disappointed. His considerations on class struggle and the dictatorship of the proletariat are mostly contained in the preface, although one finds comments linking the historical account with contemporary socialism scattered around the book. However, we should note that the final paragraph of the final section VI, discussing Article 48, returns to the concern of the introduction in order to criticize the proletarian concept of popular dictatorship as a bridge to a stateless society. Schmitt goes on to speculate how the First World War may have transformed the concept but concludes that, in any case, it presupposed a conception of dictatorship

belonging to the National Convention of the French Revolution.\textsuperscript{40} The fact that he thus employs a discussion of the revolutionary tradition from French republicanism to Russian and German socialism as the framework for his book is telling. He clearly sees his examination of dictatorship and state of exception not as a purely legalistic concern but as an acutely relevant critique of a contemporary phenomenon.\textsuperscript{41}

Strong warns against confusing the exception with “severe economic or political disturbance” by reading Schmitt’s theory “back through the years of hyperinflation or the economic depression of 1929” since inflation did not set in until 1923, that is, the year after the publication of Political Theology, and the latter therefore “cannot be understood as simply the response to these or any other developments”. She concludes that we should not consider the question of the exception as a matter of identifying a crisis but rather in the context of a legal discussion on what constitutes a “genuine decision” since the decision determines what is legally considered an exception, and therefore any situation can in principle be declared a state of exception, regardless of whether any actual threat to the order of law exists.\textsuperscript{42} However, it is striking that she would consider only the economic crisis of the Weimar period a relevant historical development to Schmitt’s theory and not other obvious examples, such as the First World War or the 1917 October and 1919 November Revolutions, which were undoubtedly the backdrop for Schmitt’s writings during the early 1920s and are repeatedly referenced in these. We should not consider his theory ‘merely’ a reaction to historical events, this much is true, but removing history from the theory would be a mistake just as grave as reducing the latter to the former.

With this in mind, we may revisit the discussion on Article 48 of the Weimar constitution. The article stated the mandate of the president of the Reich to suspend certain parts of the constitution in case of a national emergency,

\textsuperscript{40} Schmitt 1994, 201–2.
\textsuperscript{41} As Quaritsch also concedes: “ultimately, the issue is a (since 1917) current phenomenon”, Quaritsch 1996, 7.
\textsuperscript{42} Strong 2005, xii–xv.
specifically a number of civil rights, such as the freedom from arbitrary detention, freedom of speech, freedom of assembly, and private property rights, among others. The fact that the wording lists the articles to be suspended, Schmitt claims, has led to the unchallenged assumption that the emergency authorities of the president are limited to these specific articles since the list is taken to be implicitly exhaustive. However, he argues, the ‘practical implementation of the state of exception’ demonstrates that it is not so; on the contrary, at the time of writing (1924), Article 48 had already been used to suspend, among others, Article 105, which secured the right to stand before an ordinary court and was not on the list. Indeed, according to Schmitt, it is in fact impossible to limit the emergency authority to any number of specific rights since this would render an ‘effective state of exception’ impossible.  

It belongs to the nature of the state of exception, in the legal sense, to intervene not just in specific laws but in the structure of the constitution as such – otherwise, it would be no exception from the latter. In this sense, Article 48 is not a normal regulation of the constitution but represents a ‘hole’ in the latter, and, as such, it incorporates the legal concept of the state of exception.

Again, Agamben’s interpretation of Article 48 is instructive for the way Schmitt’s theory of the state of exception has been received. According to Agamben, “it is impossible to understand Hitler’s rise to power without first analyzing the uses and abuses of this article [48] in the years between 1919 and 1933”. Article 48 to Agamben represents the constitutional institutionalization of the state of exception as a ‘paradigm of government’, where state of exception must be understood as that ‘zone of indeterminacy’ between law and politics. He rediscovers this indeterminacy in Article 48 as it leaves the question of the conditions under which the article may be employed to be determined by another prospective law, which, however, never passed. The openness of the article renders the powers it grants virtually limitless and allows the state of exception to expand from a temporary measure to a permanent paradigm. The article, he recounts, was continually activated throughout the

44 Agamben 2005a, 14.
Weimar years until President Hindenburg in 1930 finally used it to save the Brüning government by dissolving the Reichstag, breaking parliamentary continuity and instituting the paradigm of the exception, thereby paving the way for the Nazi takeover of 1933. The intention may have been to protect democracy, but, Agamben argues, “a ‘protected democracy’ is not a democracy at all, and (...) the paradigm of constitutional dictatorship functions instead as a transitional phase that leads inevitably to the establishment of a totalitarian regime”.45 While the term ‘state of exception’ became taboo in federal German law after the war, it was, in effect, reintroduced in the form of an ‘internal state of emergency’ legitimized by reference to the protection of liberal democracy; “By this point, protected democracy had become the rule”.46 The state of exception as a legal institution in the form of Article 48 thus, in Agamben’s reconstruction, necessarily leads us not just on the path of transition from a democratic Weimar to the totalitarian Third Reich but also, by necessity, to the integration of totalitarianism into the constitutional state of BRD.

Schmitt, however, warns against interpretations that do not consider the crisis context in which the Weimar constitution was written: “(...) it would be fundamentally flawed to attempt to investigate a constitutional provision for the state of exception that deliberately held back a detailed regulation, without any concern for the abnormal state of affairs [Lage] in 1919 or for the conclusions that the founding fathers of the constitution have drawn from such a state. The current situation is not unambiguously normal enough for one to do so in good right.”47 The abnormal state of affairs in question was the German revolution at the end of the First World War, which marked the transition from the empire to the republic yet also included the suppression of the communist general strike in Berlin, the Spartacist Uprising, and the murders of Rosa Luxembourg and Karl Liebknecht. The ‘dictatorship of the proletariat’ alluded to in Schmitt’s subtitle was thus no mere theoretical or historical reference for him but a competing contemporary vision for social formation. Article 48,

45 Agamben 2005a, 15.
46 Agamben 2005a, 16.
Schmitt seems to believe, was a necessary reaction to the precarious conditions surrounding the birth of the Weimar constitution.

Article 48, then, is not only the legal loophole for fascism to infiltrate the liberal constitutional state but, first and foremost, the attempt of the liberal state itself to preemptively suppress revolutionary socialism by constitutional means. In the early 1920s, Schmitt was not so much a proto-fascist but a conservative jurist striving to conserve the bourgeois state against socialist revolution. Schmitt’s Weimar works are often popularly read as a blueprint for the Nazi regime, predicting, if not actively constructing the juridical groundwork for totalitarianism. Yet, in *On Dictatorship*, we find a pressing concern for the continuity of the existing state, even if the Weimar constitution was in Schmitt’s view fundamentally flawed. Considered in this way, the exception is not originally a legal construct which is then taken up and used for political purposes in order to erode the rule of law; rather, it is the attempt of jurisprudence to counter preceding political movements in order to uphold the rule of law against fundamental change. The crisis precedes the exception. Schmitt’s primary enemy here is not liberalism but socialism, and his charge against liberal political and juridical theorists is that they are not willing to go far enough in their attempts to strengthen the safeguards of the state against socialism.

What Agamben overlooks is that Article 48 represents not only the exceptional possibility of the Nazi state but also the crisis at the origin of the Weimar state, to the constitution of which it belongs. The ‘state of exception’ was not only the end but also the beginning of the Weimar republic – both as emergency means and as crisis. It represents, therefore, not only the strength of the state but also its weakness. As an ambiguous concept comprising both sides of the divide between historical crisis and juridical exception, the state of exception introduces a dialectic between power and impotence in the institution of sovereignty.
So far, we have examined the relationship between the ‘exception’ as exceptional measure and as exceptional situation, that is, between the state of exception in the juridical sense and the state of exception as crisis. While Schmitt seeks to emphasize the former and suppress the latter in his definition, and while the literature on exception and exceptionalism following Schmitt often adheres to this tendency, I have argued that the crisis is an essential part of the defining link between sovereignty and exception, exemplified by the historical importance of revolutionary socialism for the integration and interpretation of Article 48 in the Weimar constitution. Crisis sovereignty, however, is characterized both by its interaction with the concrete (possible) historical crises in which it unfolds and, more fundamentally, by its embeddedness in a philosophy of history of modernity as crisis temporality. In this section, I explore how ‘crisis’ is generalized as a temporal structure in the concept of crisis sovereignty.

First, let us consider how Schmitt’s definition of sovereignty makes the sovereign the decider of crisis yet also, reversely, crisis the decisive moment of sovereignty. Helmut Quaritsch has suggested that the definition can be read both ways: Indeed, sovereign is he who decides on the exception, yet this also implies that the decision on the exception is made by the sovereign.48 The meaning of the definition is not just to identify the carrier of sovereign power by means of the state of exception but also to answer to the problem of exception by reference to sovereign power. As examples of states of exception, Quaritsch mentions war, civil war, revolution and ‘grave internal emergencies’; like Ernsthoff, he does not distinguish between the state of exception as emergency means and exceptional situations in the form of crises. Such situations, he argues, call for action: “In the cases of exception outlined above, the imperative to act [Zwang zum Handeln] is evident, yet action is only possibly by violating the normative order of the state. The imperative to act as such does not convey the knowledge of who holds the right to act. Schmitt’s dictum gives

an answer to this, if one only turns around the first sentence of Political Theology”.49 Not only is the sovereign characterized by the ability to decide on the state of exception, but the state of exception itself forces the state or an institution within it to make a decision. This interpretation of the exception closely resembles Koselleck’s characterization of the essence of crisis as a situation in which “a decision is due but has not yet materialized”.50

By reversing the dependency between definiendum and definiens in Schmitt’s definition, Quaritsch and Koselleck point to something essential in sovereignty which belongs not just to its theory but to its inherent logic and claim to legitimacy. When Schmitt says that “whether the extreme exception can be banished from the world is not a juristic question”,51 we cannot accept this as a dismissal of the question; rather, we must acknowledge it as a challenge to leave the field of jurisprudence in order to gain a more fundamental understanding of the question of sovereignty. As mentioned above, Schmitt himself characterizes the sovereign decision on the exception as double: The sovereign decides what constitutes an exception and what must be done to overcome it. Yet, the sovereign does not decide whether or not an exception exists in a historical vacuum; if the decision is made completely arbitrarily in a historical situation of total stability and harmony, this would reveal the emptiness of the category of exception and thus undermine the sovereign’s legitimacy. The decision on the exception must correspond to some collective historical experience. Conversely, if, as Quaritsch and Koselleck claim, the exception as crisis calls for a decision, then it must precede sovereignty – logically if not chronologically. Sovereignty itself presupposes a crisis necessitating and thereby legitimating the sovereign decision on the exception.

Walter Benjamin, in his 1925 habilitation thesis on the Origin of the German Mourning Play, parodied Schmitt’s definition of sovereignty. In the context of a discussion on the relationship between history and sovereign rule in the German drama of the Baroque, he writes:

50 See chapter 6.
If the modern concept of sovereignty amounts to a supreme executive power on the part of the ruler, the Baroque concept develops on the basis of a discussion of the state of exception [Ausnahmezustand], and makes it the most important function of the prince to preclude [ausschließen] this state. Whoever rules is from the beginning destined to be possessor of dictatorial powers in the state of exception, should it be brought about by war, revolt, or other catastrophes. This postulate [Setzung] is counter-reformatory. From the rich feeling of life of the Renaissance its worldly-despotic element emancipates itself to develop in all its consequences the ideal of a complete stabilization, a restoration as much ecclesiastical as political.\textsuperscript{52}

The passage references Schmitt as a source for this description of sovereignty. Yet, as Sam Weber has noted,\textsuperscript{53} Benjamin here subtly but decidedly alters Schmitt’s definition: Sovereign is he who precludes the state of exception. The function of the prince, as bearer of sovereignty, is to prevent a state of exception from happening, while his latent ‘dictatorial powers’ stem from the theoretical possibility of it happening nonetheless. The power of sovereignty is thus dependent on a future event whose actualization would nullify its claim to power. Benjamin clearly conceives of the state of exception not as a legal prerogative of the sovereign but rather as a historical experience, that is, as crisis. The sovereign in this conception is caught in a dialectic of crisis: On the one hand, the legitimacy of sovereign rule depends on the possibility of crisis, the prevention of which is the sole claim to power on part of the sovereign, and, on the other hand, this possible crisis continuously threatens to prove the sovereign incapable of rule.

It is important to keep in mind that Benjamin is not here developing a theory of sovereignty but rather observing an image of sovereign rule within a specific worldview represented in the form of the Baroque mourning play. First, we should note that the definition of sovereignty which he ascribes to Schmitt is characterized as anti-modern and counter-reformatory. It is, in other


\textsuperscript{53} Weber 1992, 130.
words, a reactionary vision of political rule. Second, its ideal is total stability, a perpetuating and unchanging political order not only preventing but excluding the very possibility of crisis. This ideal is ‘as much ecclesiastical as political’, that is, it belongs to the order of the church as the institutionalization of a metaphysical system (Benjamin also speaks of the ‘historico-philosophical’ ideal of the Baroque). The metaphysics underlying this ideal, however, is not identical to the ideal itself; instead, the wish for the exclusion of the possibility of crisis emerges from an acute sense of catastrophe. The theory of the state of exception, Benjamin writes, aims at the antithesis of the ideal of the restoration and the idea of catastrophe. In the end, the prince of the mourning play always reveals himself to be incapable of decision and can only stand by in paralysis and watch the catastrophe unfold. This is, however, not a “true and proper theory of ‘sovereign indecision’”, as Agamben has suggested, but rather a literary commentary on the way the Baroque ideology of Counter-Reformation processes its own historico-philosophical anxiety through the dialectic of sovereignty. Benjamin does not commit himself to this worldview, but he does seek to demonstrate how the notion of sovereignty depends upon it.

In Benjamin, we find a description of the dialectic of sovereignty as based in a philosophy of the history of crisis. This notion of crisis sovereignty, he ascribes to Schmitt. Indeed, we may follow Benjamin in recognizing that while his definition displaces Schmitt’s, this displacement is already present in Schmitt’s own work. As I have argued above, his concept of the exception must be read in a double sense as both crisis and emergency law. The sovereign authority to declare a state of exception depends precisely on the legitimacy bestowed on the institution of sovereignty, as Benjamin notes, by the mandate to preclude the crisis. The legitimizing foundation for sovereign authority in Schmitt is his insistence on the permanent possibility of crisis, as based in his view on modernity as crisis time (see chapter 4). Sovereign power

56 Agamben 2005a, 55. See the excellent critique of this reading in Papadakis 2019.
therefore can be neither self-sustaining nor self-constituent if not for the philosophy of history of crisis. This institution of state is directly dependent on our understanding of historical time.\footnote{For an extensive and clear reconstruction of Benjamin’s critique of Schmitt’s theory of sovereignty, see Papadakis 2021. See also my own attempt in List 2020.}

Yet, Schmitt’s theory is no mere disinterested description of the juridical form of sovereignty but also, and importantly, an attempt to theoretically empower the sovereign institution in order to counter the luring danger to state order, which he sees in the modern crisis. The dependency on the exception as outside factor, as Benjamin indicates, represents a weakness inherent to sovereignty: What if the sovereign institution shows itself to be incapable of answering sovereignly to the crisis? On the one hand, sovereignty is only perceived as necessary by function of the possibility of crisis, and, on the other, this same condition of possibility continuously threatens to unmask the sovereign institution as less than absolute. To Schmitt, the jurisprudence of public law is charged with the task of providing sovereignty with the strongest possible theoretic foundation for the purpose of securing state order. Thus, in order to shift the weight toward exception as legal form, he introduces the decision as mediating element between sociology (or history) and jurisprudence:

\begin{quote}
It would be a crude application of the schematic disjunction between sociology and jurisprudence if one were to say that the exception [Ausnahme] has no juristic significance and is therefore “sociology”. The exception is that which cannot be subsumed; it defies general formulation, but it simultaneously reveals a specific-juristic element of form, the decision in absolute purity.\footnote{Schmitt [1922] 2009, 19; [1922] 2005, 13, translation modified.}
\end{quote}

There is a sociological component to the exception, then, which Schmitt here describes in its historical form as crisis or ‘that which cannot be subsumed’, i.e., that which eludes juridical terminology and thus jurisprudence. Nevertheless, the exception ‘reveals’ an element of form, namely, the decision, bringing us immediately back into the sphere of jurisprudence and reintegrating the
exception in juridical language. Schmitt writes here as if the decision were to arise out of the exceptional situation by necessity, making juridical form a product of the exception. In Schmitt’s decisionist worldview, a decision must be made. Of course, this is not necessarily so; as Benjamin notes, it is entirely possible that a decision is not made. It is thus not the exception that reveals the decision but the decision that gives juridical form to the exception. What Schmitt is seeking to establish is that the crisis is always already, in its moment of materialization, transformed into a state of exception and in this way re-subsumed under jurisprudence.

We might notice here a difference in emphasis between On Dictatorship and Political Theology. While both revolve around the problem of exception, the first examines the origin of exception in crisis, yet the latter seeks to actively repress this origin in favor of a juridical formalization of the exception. Although the crisis component of the exception is necessary to legitimize sovereignty, the sovereign decision counters this dependency by transforming the nonlegal chaos of crisis into the extralegal order of the state of exception. The decision, however, is constitutively undetermined. Normatively speaking, it “emanates from nothingness”.59 In this sense, as I have argued in chapter 3, Schmitt’s decisionism is a form of political existentialism. Yet, although he refers to Kierkegaard on the subject of the exception, his existentialism is post-theological. The sovereign in Schmitt is precisely not a delegate of God, as opposed to the Christian Emperors, but a decidedly modern institution whose historical role is to fill the normative void left behind after the golden age of Christian rule. Indeed, the figure of the sovereign is created in the image of 17th century theism, yet what Schmitt is advocating is not a return to the kings of lore but rather the reinvention of the concept of sovereignty for his own, modern present. He is acutely aware of living in an ‘age of immanence’. The sovereign decision is his antidote against normative nihilism spiraling into what he sees as the extreme antithesis between anarchy and dictatorship, against which he warns at the end of Political Theology. Thus, Schmitt’s decision is a

creation ex nihilo, without any reference in Christian ethics, where the will of
the deciding subject can only be identified after the decision has been made.

The subsumption of the exception under the legal form of the decision is
no mere juridical technicality. What needs form is time itself, as Schmitt writes
on the counterrevolutionary consciousness of his conservative predecessors,
de Maistre, Bonald, and Donoso Cortés: “time demands a decision”. The
content of the decision may be given arbitrarily by the sovereign decider, but
the urgent need for a decision arises qualitatively out of the temporal character
of the historical age in which Schmitt finds himself. In Political Romanticism,
we find the following passage on the romantic image of time:

The instant, the dreaded second, is (...) transformed into a point. The
present is nothing other than the punctual boundary between past and
future. It connects both “by means of limitation.” It is “ossification, crys-
tallization” (Novalis). A circle can be wrapped around it as center. It can
also be the point at which the tangent of infinity is contiguous with the
circle of the finite. It is also, however, the point of departure for a line into
the infinite that can extend in any direction. Thus every event is trans-
formed into a fantastic and dreamlike ambiguity, and every object can
become everything.  

Time here is punctual, circular, linear, infinite, finite, uni- and multidirectional
all at the same time. Historical events become indecipherable as such as time
becomes an unstable framework for experience. This kaleidoscopic play with
temporality as a myriad of constantly changing geometric forms is to Schmitt
the nightmare of romanticism. It is the metaphysical side to the problem of
form, which he ascribes to romanticism in the introduction to the book. The
age that does not succeed in producing a proper political form, Schmitt writes,
is forced to ‘grasp for thousands of surrogates’ from the authentic forms of
other ages. The exception as crisis presents an analogue problem for his own

5. THE DIALECTIC OF CRISIS SOVEREIGNTY

contemporary time. Against the formless plurality of times – or, conversely, the plurality of ‘forms without substance’ – Schmitt’s sovereign decision is charged with taming not only the specific crisis confronting us but also the possibility of crisis as such, i.e., taming and stabilizing time.

Yet, the decision does not solve the problem of crisis but merely shifts the weight toward the jurisprudential interpretation of the exception in the definition of sovereignty. As Schmitt himself writes: “In political reality there is no irresistible highest, that is greatest power, functioning with the certainty of natural law. (...) The link between actually and juridically highest power is the fundamental problem of the concept of sovereignty.” The connection of juridically invested sovereign authority with historical reality remains a problem in Schmitt’s theory. The concept of the sovereign decision refers the theory of sovereignty back onto the exception in the juridical sense, while its historical other, the crisis, is relegated to the sphere of history of philosophy, insofar as crisis temporality is posited as a metaphysical constant. Schmitt sought to solve the dialectic of jurisprudential omnipotence and historical impotence within sovereignty by making crisis temporality the ultimate, indisputable source of sovereign legitimacy: Because modernity is essentially crisis temporality, we need the sovereign institution to decide simultaneously on the actuality of crisis and the means to overcome it.

In summary, ‘crisis sovereignty’ is a complex conceptual nexus, oscillating between the epistemological levels of jurisprudence, history, and philosophy of history. ‘Exception’ in the definition of sovereignty from which it departs means both a juridical measure and a historical crisis; and the term ‘crisis’ implies both a (possible) historical event and a historico-philosophical claim about the temporal structure of modernity. Furthermore, this oscillation between epistemological levels is core to the legitimizing function of crisis sovereignty. While Schmitt emphasized the formal juridical capacity of the sovereign to declare a state of exception, thus elevating the sovereign institution to supreme and omnipotent authority, Walter Benjamin diagnosed within Schmitt’s own definition the historical promise of the sovereign to exclude crisis temporality.

crisis, thus revealing the potential weakness of the institution. Schmitt sought to preempt this dialectic of omnipotence and impotence by making the sovereign the decider; not just on the declaration of a state of exception but on the existence of a crisis situation necessitating such a declaration. In so doing, however, he banished the question of crisis to philosophy of history, making crisis temporality a given of the modern condition. Modern crisis temporality is thus the ultimate metaphysical source of legitimacy for sovereignty. The critique of crisis sovereignty therefore includes the critique of its metaphysical foundation.

SOVEREIGN CRISIS OR SOVEREIGNTY CRISIS?

A central point of the above analysis of crisis sovereignty is to demonstrate that the link between crisis and sovereignty is ambiguous and has ambiguous political consequences. Failure to recognize this ambiguity may lead to one sided, yet at the same time diametrically opposed analysis of how sovereign institutions act in situations of crisis. The literature on sovereignty following the financial crisis is a case in point. Some saw the crisis as a new tool for sovereign rule, suspending laws and normal legal processes in order to retain the neoliberal dominance of the state. Others saw it as the symptoms of a dying state; the last safeguard against total marketization and depoliticization crumbling away. Crisis sovereignty, between these poles, may be interpreted either as a sovereign crisis, a way of ruling through exceptional means by reference to an exceptional situation, or a sovereignty crisis, whereby any state intervention, however authoritarian, is merely the death throes of the obsolete nation state system. Here, I will give an example of both lines of analysis to demonstrate how crisis sovereignty should ultimately be interpreted not as either/or but as both in a dialectical dynamic.

The theory of crisis as a mode of rule is common among thinkers belonging to the philosophical current of ‘Italian Critical Thought’, often inspired by Maurizio Lazzarato’s theory of debt and financialization as a form of

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64 Gentili, Stimilli, and Garelli 2018.
dominance, as well as by Agamben’s theory of sovereignty as the rule by ordered disorder.\textsuperscript{65} One recent publication within this tradition is Dario Gentili’s book *The Age of Precarity: Endless Crisis as an Art of Government*. Drawing on biopolitical theory, Gentili argues that the term crisis should not properly be understood as a concept but rather functions as a dispositive, and that its effectiveness as a dispositive is directly proportional to its vagueness as a concept. In order to understand the term, Gentili writes, we should ask not what it signifies but how it functions.\textsuperscript{66} Following Agamben’s reading of Foucault, he takes ‘dispositive’ to mean something which captures and orders the heterogeneous gestures and expressions of living beings through a process of subjectification, leading him to claim: “It is in this sense that the recent crisis operates as a *dispositif*. Since it essentially establishes a certain power relation, it today carries out that function which marks it as the art of government par excellence.”\textsuperscript{67} This hypothesis builds on the assumption that we are currently living in a new time of crisis that differs from the modern crisis in that it no longer presents any possibility of resolution. The character of crises as permanent condition engenders a new form of crisis rule.

Gentili largely follows Koselleck in his conceptual history of crisis, tracing it back to the Greek *krisis* and emphasizing its meaning of “decision, resolution, judgement, election, choice”.\textsuperscript{68} In the Greek polis, he argues, the crisis is something which divides and distinguishes, revealing an alternative and urging a decision. The crisis itself remains unchallenged; it is not the problem in question but rather the “mode of judging”.\textsuperscript{69} Therefore, the dispositive of crisis is conservative in that the decision it calls for must restore the harmony of an already existing political order. Because it functions as a stabilizer of political rule, its locus is the administration of the polis, where it is used by the rulers as an art of government. Gentili stresses that, to the Greeks, the crisis cannot found a new political order but always serves to preserve what is already given.

\textsuperscript{65} Lazzarato 2015\textsuperscript{a}; 2012; Agamben 2005\textsuperscript{a}; 1998; 2015.

\textsuperscript{66} Gentili 2021, 5.

\textsuperscript{67} Gentili 2021, 9.

\textsuperscript{68} Gentili 2021, 11.

\textsuperscript{69} Gentili 2021, 12.
This changes, Gentili argues again following Koselleck, with modernity, wherein crisis begins to be associated with revolution and the possibility of the new.\(^{70}\) Whereas, in antiquity, crisis functioned as a mode of judgement based in the normative foundation of an already existing order, in modernity it becomes a mode of decision between diametrically opposed alternatives. While this provides the crisis dispositive with a critical potential, it also pushes the called-for decision toward crude dichotomies and ultimately results in a distance between political reality and critique.

Today, however, the crisis dispositive has moved beyond this basic ideological conflict modernity, Gentili continues. The model for the ‘current crisis’ (it is not entirely clear what Gentili means by this often repeated phrase), he finds prefigured in Antonio Gramsci’s classic concept of the ‘interregnum’.\(^{71}\) The interregnum is not punctual or transitory but is rather characterized by its endurance. It is the temporal dead zone between one, obsolete form of rule and another, yet to be invented. It is a crisis of social organization wherein no paradigm of order succeeds in achieving hegemonic status. Under neoliberalism, Gentili argues, the Gramscian notion of interregnum is radicalized as political rule through the indefinite extension of crisis. By treating crisis as a force majeure that must be handled by the political system, rather than an occasion to reform the latter, neoliberalist capitalism has “converted its economic crisis into an art of government”, he writes.\(^{72}\) It should be noted that Gentili does not see this rule by crisis as a form of sovereign power but rather as an administrative governmentality in Foucault’s sense. The crisis to him does not necessitate decision but, on the contrary, excludes it. Nevertheless, the crisis dispositive falls decidedly on the side of state rule, reproducing and enforcing power over the population. Remarkably, the antidote to crisis governmentality to Gentili consists in the reinvention of political decision. The governmental power of the crisis dispositive consists in excluding political

\(^{70}\) Gentili 2021, 24 ff.
\(^{71}\) Gentili 2021, 59.
\(^{72}\) Gentili 2021, 64–65.
alternatives and thus any meaningful choice on the part of the collective. In this sense, the political-economic elite is governing by crisis.

Wendy Brown, in her 2010 seminal work on *Walled States, Waning Sovereignty*, approaches the subject of crisis and sovereign power from the opposite perspective. This book does not focus on the totalizing logic of sovereign or governmental power, as is often the case in Italian critical thought and related traditions, but rather on the sovereign anxieties underlying excessive displays of power. Specifically, she explores how the renewed eagerness to erect walls and reinforce borders in order to consolidate territorial sovereignty reflects insecurity, not absolutism, of the state.\(^{73}\) Brown takes her theoretical starting point in the notion that sovereignty is essentially a fiction, but that this fiction has real effects in the political world.\(^{74}\) The fiction of sovereignty is thus no mere *illusion* which could be done away with simply by pointing out the emperor’s lack of clothes. Following Machiavelli, Brown argues that politics is intrinsically theatrical and accordingly analyses sovereign expressions of power as dramatic enactments serving to stage the state in a certain way. Such a theatrical expression is the building of walls.

Brown’s central thesis is that we have entered an age where new waves of nationalism react to the waning of nation-state sovereignty. The nation state today, she argues, is increasingly losing terrain to transnational forces and the cross-border flow of people and capital. The physical manifestation of national borders as walls, she notes, is no longer primarily directed at neighbor states, they are not meant to keep out enemy armies, but rather “these walls target nonstate trans-national actors – individuals, groups, movements, organizations and industries”.\(^{75}\) Thus, the emphasis on borders is the attempt to reinscribe the geopolitical forces of a coming post-national age in the symbolism of a political form approaching obsolescence. Examples of transnational forces uncontainable within the limits of the traditional nation state are financialized capital, religious terrorism, poverty (and we might add: climate) migration, and

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\(^{73}\) Brown 2017.

\(^{74}\) Brown 2017, 34.

\(^{75}\) Brown 2017, 33.
economic and political institutions, such as the IMF and WTO. The attempt to erect walls in order to symbolically contain these flows merely demonstrates the states’ impotence to bend them by the traditional strategy of binding them to a delimited territory. In fact, Brown argues, the wall is not only a symptom of the state’s decline but unintentionally accelerates the process: “(...) the new border fortifications tend to deepen the crisis of sovereignty to which they also respond.”  

In this way, she has it, the classical display of sovereign power exemplified in the reinforcement of borders in reality testifies to a general crisis of sovereignty.

This juxtaposition of Gentli’s and Brown’s exemplary analyses illustrates how there can be diametrically opposed depictions of the relationship between crisis and sovereign state power. On the one hand, what appears initially a weakness or void of power, the crisis, is in fact a motor for power. On the other hand, what appears initially as an expression of absolutism, sovereign states building walls, is in fact the symptom of dying power. Both strains of thought do identify real tendencies. However, only by uncovering the dialectic of crisis sovereignty may we begin to combine their findings. The concept of crisis sovereignty means simultaneously sovereignty of crisis and sovereignty in crisis; it denotes both the omnipotence and the impotence of sovereignty in relation to crisis. It is not an epochal concept, as it implies neither an age of generalized crisis nor exceptional rule, but neither is it the death of the state in a post-Westphalian globalized world. Yet, it points to the fact that the concept of sovereignty as such presupposes a specific epochal metaphysics rooted in crisis.

**Conclusion**

In summary, the dialectic of crisis sovereignty arises from the contradiction within its defining term, the exception, meaning both crisis and the juridical means to overcome crisis. Because sovereignty consists not only in declaring
the state of exception and determining its conditions but also in the promise to overcome the crisis at hand, its relationship with crisis is double in nature. On the one hand, it is dependent on the continuous return or permanent threat of crisis as a fundamental structure of modernity, and on the other hand it remains constantly vulnerable to the possibility that the next crisis will not be overcome. Since the legitimacy of sovereignty depends on crisis, it simply cannot do without it, but it may, on the contrary, be weakened during prolonged periods of relative stability. Yet, at the same time, every crisis represents an existential threat to the legitimacy of the order of law. Therefore, the crisis reveals something essential about the nature of sovereignty that remains valid not only for crisis time but, indeed, for what is called ‘normality’, insofar as the order of law presupposes sovereignty.

Schmitt’s theory of sovereignty was not a neutral description but included a performative effort to empower the institution through a juridical formalization of its concept. When he attempts to suppress the crisis component of his own definition, this exclusion therefore cannot be taken at face value but must be understood as belonging to the self-imposing logic of sovereignty itself. If we wish to counter this logic, we must uncover the necessity of (a latent) crisis for the legitimacy of sovereign power. In this sense, we should reconstruct Walter Benjamin’s implicit critique of Schmitt, not as an alternative theory of sovereignty or the exception but, rather, as the reintegration of sovereignty in its proper context: The historico-philosophical notion of a generalized exception or, as I have called it, the crisis temporality of modernity. To be sure, this is neither Benjamin’s own philosophy of history nor my own. It is the implicit metaphysical assumption inherent to crisis sovereignty, which Benjamin diagnoses in the drama of the German baroque and transposes onto Schmitt and, by implication, the conservative tradition of philosophy of history and state theory to which the latter belongs.

The concept of crisis sovereignty uncovers the metaphysics inherent to sovereignty and may help us to demystify the notion of sovereign power as a totalizing juridical logic, propagated by Agamben and his followers. It may thus serve to reinsert the juridical discussions surrounding the state of exception and its sovereign consequences in their proper historical context and show
how sovereignty is not so much anti-liberal or absolutist as it is inherently re-
actionary and adverse to any societal and institutional change. To Schmitt, it
was the last safeguard of the bourgeois constitutional state against revolution-
ary socialism. Furthermore, in the context of contemporary debate, the
concept of crisis sovereignty retains the ambiguity of the relationship between
crisis and sovereignty as a dialectical dynamic rather than as any theoretical
fallacy. It therefore mediates between the radically opposed positions analyz-
ing this relationship as one of alliance or enmity, respectively. The crisis is
neither an extension of sovereign rule nor its demise but, simultaneously, its
source of legitimization and a constant threat to that same legitimacy. As crisis
temporality mediates between power and legitimacy of the sovereign institu-
tion, it constitutes also its weakest point, insofar as its metaphysical foundation
may be challenged.

This I will do in the following chapter. In the thesis so far, I have examined
how crisis temporality has informed the notion of sovereignty. In the next
chapter, I shall turn this relationship around, once again directing the attention
at philosophy of history in order to examine how Schmitt’s theory of sover-
eignty has in turn informed notions of modern crisis temporality as exemplified
by the historical thought of Reinhart Koselleck and Agamben. Not only does
sovereignty draw legitimacy from crisis but sovereignty and crisis together
form a nexus of modern political thought; a knot which must be undone as
part of the critique of crisis sovereignty.
6. PERMANENT CRISIS

Overcoming the concept of “progress” and overcoming the concept of “time of decline” are but two sides of one and the same thing.
– Walter Benjamin.¹

This thesis has explored the dialectical dependency of the juridico-political concept of sovereignty on a notion of modernity as crisis, that is, philosophy of history. The present chapter turns this relation around to follow it in the opposite direction: the influence of this modern notion of sovereignty on theories of modernity as crisis temporality. Not only is sovereignty as theorized in the tradition from Hobbes to Schmitt legitimized by its reference to crisis, but the concept of crisis itself, as a temporal structure, depends on a universalized notion of sovereignty as the center of social organization. Crisis sovereignty appears to function as part of a crisis/sovereignty nexus central to at least one influential conceptualization of the ontology of modernity.

Since the financial crisis, we have witnessed a new flourishing of diagnostics of our present as a ‘time of crisis’. Literary scholars George Edmondson and

¹ Benjamin 1991a, 575; 1999, 460, translation modified.
Klaus Mladek capture this sense of living in crisis times when they write: “We are fortunate to find ourselves living in interesting times: times not simply of change or transition but of universal crisis. History is full of crises, of course. Yet, compared to its predecessors, today’s crisis feels more permanent and enveloping because it lacks the one certainty they shared: that it will, for better or worse, have an end.” What these authors identify as the paradigm of the present is a ‘universal’ or ‘permanent’ crisis and something qualitatively completely different from all previous crises of the world. What defined the crisis as crisis, its temporariness as a transitional interim between two states of normality, has fallen away and created a new form of crisis temporality: the exception as norm. The crisis, the two authors continue, has become “the new nomos of the earth” in a Schmittian sense, yet in a manner which Schmitt himself could not have predicted. Such diagnoses of the present as a special, radicalized form of crisis often come from writers on the left, glimpsing in the universal crisis the signs of an untenable capitalist society at the brink of collapse. Heiko Feldner, Fabio Vighi, and Slavoj Žižek, for instance, speculate that “we have good reasons to assume that within the life span of only one generation capitalism as a system of social reproduction might no longer be with us”. Peter Osborne, too, concurs that “the globalization of capital relations through financial markets appears to have exacerbated the structural tendencies toward economic crises into something like a permanent condition,” and that this has led to a global “temporality of crisis”. Others share the diagnosis, while harboring a bleaker outlook on its implications for social life: Dario Gentili sees “endless crisis as an art of government”, while David Runciman and Wolfgang Streeck warn against the possible ‘end of democracy’ or ‘end of capitalism’, respectively.

Yet, the diagnosis of the present as a time of universal crisis is no prerogative of the Left. In this chapter, I examine the crisis theories of Reinhart

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2 Edmondson and Mladek 2017, 1.
3 Feldner, Vighi, and Žižek 2014, 1.
4 Osborne 2022, 12.
5 Gentili 2021; Runciman 2018; Streeck 2016.
Koselleck and Giorgio Agamben and their roots in Schmitt’s theory of sovereignty and the tradition of state theory to which it belongs. Koselleck and Agamben serve as prominent examples of a wider tendency in theories of modernity. A central feature of these theories is the notion that the modern epoch as such is defined by crisis temporality, yet the crisis of our own time is special in the sense that crisis time has dialectically recoiled from a recurring disturbance into a universal paradigm, which is about to culminate in catastrophe. As this appears to be a constant of conservative crisis thought, we should be careful to analyze its reactionary implications. Koselleck was a conservative critic of modernity in the tradition after Schmitt yet a common reference among contemporary critical scholars on the left. And if Agamben, since the Covid outbreak in Italy in the spring of 2020, has revealed himself to be a reactionary conspiracy theorist,\(^6\) he was long considered to be a ‘radical’ thinker belonging to the leftist tradition of ‘Italian critical thought’.\(^7\) While Koselleck argues that the belief in progress of modern philosophies of history have led us into a state of ‘permanent crisis’, Agamben argues, through the exceptional logic of sovereignty, that the “state of exception in which we live” has “become the rule”.\(^8\)

In the following, I first reconstruct Koselleck’s philosophy of crisis, distinguishing it from his conceptual history of the crisis concept and tracing its development throughout his writings. I argue that his definition of crisis is not simply a neutral history of its conceptual transformation from Greek antiquity to modernity but a positive and philosophical concept, which he bases in Schmitt’s political concept of the sovereign decision. The crisis to Koselleck consists in the combined necessity and impossibility of decision. I then turn to Agamben to show how he combines Schmitt’s theory of sovereignty with a philosophy of history which he reads into Walter Benjamin, although, as I shall argue, this is a reconstruction more Schmittian than Benjaminian in flavor. While Agamben focuses on the state of exception as the core concept of his

\(^6\) Agamben 2021.
\(^7\) Gentili, Stimilli, and Garelli 2018.
\(^8\) Koselleck [1959] 1973, 1; Agamben 2005a, 57.
philosophy of history of modernity, he too relates this to decision, although in his case the crisis consists not in a deficit but in a surplus of sovereign decision. Incidentally, in their late writings they both take up Schmitt’s biblical notion of the ‘katechon’ or restrainer as the principle of historical time. Finally, I take recourse to Benjamin’s double critique of the notions of sovereignty and modernity in order to counter the universalization of the crisis narrative exemplified in Koselleck and Agamben. Benjamin, I argue, has been integrated into the discourse of permanent crisis by Agamben and kindred spirits, yet if we liberate his thought from this tradition, he may, on the contrary, serve as its antidote.

**Koselleck: crisis and decision**

Koselleck’s theory of crisis, and by implication his theory of modernity, is linked with Schmitt’s state theory through the concept of decision. Studying in Heidelberg in the immediate post-war years, Koselleck may have had several sources for integrating this concept as a key term in his 1954 PhD thesis, published in 1959 as *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*. During this time, he came into contact with Schmitt, establishing an extensive letter correspondence and meeting privately with the former professor, who had now been excluded from all official university contexts, to receive unofficial supervision on his thesis. But Koselleck studied a broad range of subjects and also attended the lectures of Martin Heidegger, whom he regarded with skepticism yet was also inspired by in his conceptualization of historicity and the interplay of temporal ecstases. Heidegger too was a thinker of the decision. As recounted in chapter 3, both Schmitt and Heidegger were part of a current of Weimar intellectuals seeking a philosophical resource in the category of the decision for personal and political authenticity. After the war, these thinkers reconstituted themselves as the

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teachers of the new generation, and Koselleck therefore had ample oppor-
tunity to engage with theories of the decision.

Although Koselleck’s fascination with and inspiration from Schmitt is well-
documented, and he himself has willingly admitted to it, the structural anal-
ogy between the former’s crisis theory and the latter’s theory of sovereignty
remains obscure. This might in part be due to the fact that Koselleck does not
immediately present his theory of modernity as a crisis theory but rather as a
meta-commentary on the relationship between the concepts of critique and
crisis in what he characterizes as Enlightenment philosophy’s utopian ideology
of progress. With the later development of his methodology of conceptual his-
tory (a methodology greatly inspired by Schmitt), his writings on crisis
increasingly take the shape of a historical account of modern political struggles
over the concept rather than any positive theory of crisis temporality. Adding
to this impression, in the newer literature on the subject, Koselleck’s concept
of crisis is often cited as a neutral conceptual-historical reference rather than a
specific and politically invested crisis theory. Yet, a systematic close-reading
of Koselleck’s works on crisis reveals that, from the beginning, his historiog-
raphy revolves around a notion of modernity as crisis temporality, and that
this notion in central aspects mirrors Schmitt’s theory of sovereignty as based
in the exception. What is more, it is clear that this remains a constant of
Koselleck’s thinking throughout his career, albeit that his assessment of the
crisis of his own time undergoes a transformation.

Already on the first page of *Critique and Crisis*, Koselleck links crisis with
decision:

> These two phenomena are one unitary historical occurrence: the political
crisis which – if it really is a crisis – presses for a decision and the philos-
ophies of history which correspond to the crisis and in whose name some

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10 Olsen 2013.
11 See, for example, Roitman 2014; Gentili 2021; Osborne 2022.
seek to anticipate the decision, to influence it, control it, or—as catastrophe—to prevent it.\footnote{Koselleck [1959] 1973, 1; [1959] 1988, 5, translation modified.}

The crisis here relates to decision in a double, contradictory way: On the one hand, the political crisis establishes the need for a decision to be made, yet on the other hand the philosophical movement at the root of the crisis strives to pre-empt this decision by anticipating, steering or preventing it. And these two contradictory forces are one and the same: The modern political-revolutionary crisis consists in the totalitarian aspirations of modern philosophy. It should be noted that Koselleck uses ‘philosophies of history’ in the same sense as Löwith: 18th and 19th century ideologies of progress and universalist humanism, or secularized eschatologies. Such philosophies of history would regard the political decision on the crisis as an unnecessary disturbance since history progresses along a single, unidirectional line toward human perfection. This is precisely Schmitt’s critique of liberalism’s metaphysics of immanence: that it tries to do away with political contingency through rational deliberation on the objectively wisest course for all. In this way, personal and normative decision making is made superfluous.

Crisis to Koselleck exists in a tension with decision. They are not merely each other’s polar opposites; rather, a productive tension or tense relation subsists between them. The political crisis as historical occurrence calls for a decision which has not yet come and therefore does not yet have any content. Crisis calls for the form of decision, but it says nothing about the content. The concept of crisis here, therefore, has the same emphatic yet also existentialist empty sense as in the writings of the Weimar intellectuals. There is a sense of an urgent existential need for decision, any decision, no matter which. On the other hand, however, crisis consists in the impossibility of decision – the crisis persists because there are historical forces which deliberately seek to influence or prevent decision. The crisis, then, is both the need for and the impossibility of decision. This characterization of crisis is obviously Koselleck’s own since it
contrasts with the anti-decisionist ideology of Enlightenment in his historical reconstruction.

The third chapter of Koselleck’s book centers on the crisis concept and opens with a definition:

It is in the nature of the crisis that a decision [Entscheidung] is overdue [fällig], yet remains to be made. And it is also in the nature of the crisis to leave open which decision will be made. Thus the general uncertainty of a critical situation contains one certainty: that an end to the critical situation – at an indeterminate time, yet determined, under uncertain circumstances, yet certain – is imminent. The potential solution [Lösung] remains unknown, but the end itself, a turnover [Umschlag] of the present conditions – threatening and feared or hopefully wished for – is known by all. The crisis evokes the question of the historical future.13

This is my translation since the English MIT edition radically distorts the relationship between crisis and decision.14 It translates the first two lines as follows: “It is in the nature of crises that problems crying out for solution [Entscheidung] go unresolved. And it is also in the nature of crises that the solution, that which the future holds in store, is not predictable.” Not only does the translation add ‘problems’ to the equation, rather than relating crisis to decision directly, it also replaces decision with solution. ‘Solution’ is not necessarily an invalid translation of Entscheidung, yet Koselleck uses the term specifically in constellation with ‘fallen’, which means that a decision is made, i.e., someone must consciously decide on a solution rather than wait for the solution to emerge out of the unfolding of events. The translation ironically neutralizes the definition in the same sense as Schmitt’s critique of deliberative

14 Curiously, the English edition does not name its translator. Koselleck wrote a preface to the edition on the occasion that “this translation into English has become available”, thus not claiming responsibility himself, yet implicitly acknowledging its credibility. Hoffmann notes this unusual lack of accountability for a translation, which he criticizes for its negligence in conveying the book’s early steps toward developing conceptual history as a method, Hoffmann 2017, 170.
parliamentarism by relegating the solution to some unpredictable future *objective* event rather than the call for an urgent *subjective* decision. Finally, the slight reformulation of ‘the crisis’ as ‘crises’ suggests a general historical observation of crisis events rather than a historico-philosophical definition of crisis temporality. Yet, in the German original, it is clear that this is Koselleck’s own definition of crisis as a temporal structure: The crisis is here defined as a paradoxical certainty-uncertainty in relation to the future, calling for a decision to end the radical openness of the present. Crisis time is an interim; a waiting room for the decision allowing us to pass into the future.

We may note that Koselleck’s decision is curiously deprived of a subject. In the first quote, it is the crisis that presses for a decision and, in the second, it is the decision itself that is ‘overdue’ (*fällig*). But a decision by whom? Koselleck emphasizes that the crisis leaves open *which* decision will be made, but it seems obvious that it also omits *who* will make the decision. This is a central feature of Schmitt’s definition of sovereignty: The question ‘who decides on the exception?’ is what allows us to locate sovereignty within the state, and the question of the subject of sovereignty is “the question of sovereignty as such”.15 To decide is a *personal* capacity presupposing the presence of a deciding person, although this person may be of all shapes and sizes and not necessarily a natural person.16 Koselleck’s definition of the crisis thus implicitly raises again the Schmittian question of who decides. Indeed, the central drama of his book unfolds around the struggle over the right to decide between the absolutist sovereign state and the revolutionary historico-philosophical elite. The relationship between these two combatants, however, is not symmetrical: “The philosophy of history is the other side of the coin to the prognosis of revolution. The crisis manifests itself in their interplay.”17 The crisis leaves open who will make the decision, yet one of the candidates, consisting in the

16 The question of the person of the sovereign has been central to state theory from its earliest years, see Hobbes’ chapter ‘Of Persons, Authors, and Things Personated’ as well as the debate between Quintin Skinner and David Runciman, Hobbes [1651] 1996, chap. XVI; Skinner 2002a; Runciman 2000.
6. PERMANENT CRISIS

political revolution-philosophy of history complex, is itself the driver of crisis. Its claim on the power of decision will therefore not end crisis but merely universalize it. The last remaining agent of authentic political decision then, is the sovereign state. Koselleck’s crisis definition in this way refers us back to Schmitt’s image of a centralized decisionist state power. Considered in unity, Schmitt’s state theory and Koselleck’s crisis theory form a closed circle: The crisis defines the sovereign, and the sovereign in return defines the crisis. Whereas Schmitt drew legitimacy from a metaphysical notion of the temporality of modernity for his political philosophy, Koselleck bases his theory of modern history in a political notion. Crisis and sovereignty become interlocked in a co-determination of modernity as the time of crisis sovereignty.

The medievalist Kathleen Davies has noted the centrality of the notion of sovereignty for Koselleck’s historiography of modernity. Discussing the secularization theses of Schmitt and Koselleck, she argues that although the latter does adopt his concept of secularization from the former, Schmitt operates with only a single break in continuity, while Koselleck redoubles this break. Schmitt recounts a historical transition from an openly theological mode of state rule to a theologically molded secular state metaphysics, to which Koselleck adds “a qualitative break within the conceptualization of temporality itself”. Only with secularization, Koselleck’s overarching thesis has it, is historical time temporalized, in the sense that the modern epoch understands itself to be historical, while pre-modernity did not. As Davis points out, this sweeping generalization of modern vs. mediaeval mindsets creates a highly questionable dichotomy of pre-historical and historical peoples, not only in temporal but also in geographical terms, the pre-modern primitives of feudalism mirroring those of the modern colonies.

By redoubling the break between pre-modernity and modernity as a transition, first toward the modern sovereign state and second toward modern historical consciousness as a new form of temporality, Koselleck effectively hypostasizes ‘modernity’ itself as the cause of this dual transformation, Davis argues. Like the decision in Schmitt’s theory of sovereignty, modernity

18 Davis 2008, 95.
becomes the unquestionable, unfounded foundation for the normative order. “In just this way,” she continues, “modernity becomes a sovereign period, and its periodization the basis of sovereignty”.\(^{19}\) To Davis, the periodization medi-aeval/modern is itself a sovereign act carried out from a position of power and instituting a normative world view of the primitive vs. the civilized; the static vs. the dynamic. We might add that the specific form of temporalization ascribed to modernity by Koselleck functions by way of the crisis: The crisis is the temporal structure turning modernity into a constant process of transformation. Without going into an in-depth reconstruction of Davis’s complex historical argument, we may draw the insight that not only does sovereignty serve as a mark of modernity but the concept of sovereignty itself informs the way a dominant strain of (European/Western) historiography has come to view our historical situation as an epoch of crisis time.\(^{20}\)

In the same vein, Koselleck has been criticized both for his narrow focus on Europe and for his equally narrow focus on intellectual history as a cause of political history. Koselleck’s history of modernity as crisis temporality locates the origin of the modern crisis in a reorientation toward the future associated with Enlightenment utopianism and the ideology of revolution. What happens to modern consciousness in the Sattelzeit, Koselleck argues, is a decoupling between experience and expectation,\(^{21}\) a loss of trust in the relevance of past knowledge for the guidance of future actions, so that modern social life becomes increasingly preoccupied with imagining and planning possible futures rather than building on long established traditions and practices. As Vanessa Ogle concurs, this is a fairly accurate depiction of a central transformation in the intellectual history of modern Europe. What Koselleck, as intellectual

\(^{19}\) Davis 2008, 95.

\(^{20}\) Of course, Davis is not the first to question ‘Modernity’ as a universal concept of historiography. Especially postcolonial theory has problematized the relationship between European dominance and the notion of modernity, see Chakrabarty 2007; Bhambra 2007. Davis’s contribution consists in the specific link between this Eurocentric notion of modernity and the theory of sovereignty, which she quite rightly identifies in Koselleck’s influential historiography.

historian and conservative cultural pessimist, ignores is the socio-economic context for this transformation, that is, the transition toward capitalist production and commerce. In the early history of capitalism, the uncertainty of the future presented a problem for long-term investments, for instance in maritime international trade in the 17th century, and had to be quantified as risk in order for the gradual establishment of insurance systems to support enterprise. The same goes for capitalist production generally: Future trends of production and consumption have to be extrapolated and quantified in order to calculate rates of return and balance them against risks. Koselleck’s narrative of crisis temporality glosses over these material preconditions for the modern crisis consciousness and tends to ontologize it as a condition of life of modern humanity.

This narrative of modernity as the unfolding of crisis time through the interplay of philosophy of history and political revolution forms the historical background for Koselleck’s diagnosis of his own time in the early years of the Cold War. *Critique and Crisis* opens with the observation that the modern crisis has reached its peak: “European history has expanded into world history and culminates as such, having led the whole world into a state of permanent crisis.” There is a qualitative shift from the modern crisis to contemporary crisis in that the former is still in the process of unfolding and as such remains open to a new turn of events, whereas the latter has become chronic in a way that seems to paralyze historical agents. This is a common trait in crisis theories, and one to which we shall return in the following sections: The account of modernity as crisis is not merely a historical observation but always directed at the historian’s own time as a continuation and culmination, but also radical transformation of the modern crisis. The ‘permanent crisis’ is the emphatic emblem of ‘our time’ as the time of the end; the final disintegration of modern society. As indicated in chapter 3, it ironically echoes precisely the apocalyptic tendencies which secularization theorists such as Schmitt and Koselleck criticize.

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Critique and Crisis is a youthful book rich in pathos and was criticized upon its publication for its suggestive writing style and obvious Schmittian inspiration. Yet, Koselleck’s crisis theory is not confined to his PhD thesis but subsists and evolves in his more mature works. His 1982 entry on ‘crisis’ in the encyclopedia of German conceptual history, Basic Concepts in History, provides an introductory etymology of the word:

Κρίσις has its roots in the Greek verb κρίνω: to “separate” (part, divorce), to “choose,” to “judge”, to “decide”; middle voice: to “measure up to”, to “quarrel”, or to “struggle”. This created a relatively broad spectrum of meanings. In classical Greek, the term was a central concept of politics. It meant not only “divorce” and “quarrel,” but also “decision” in the sense of reaching a final outcome. (…) Above all, it was in the sense of “judgment”, “trial”, “legal decision”, and ultimately “court” that crisis achieved a high constitutional status, through which the individual citizen and the community were bound together. Thus the “for and against” was originally an inherent part of the word and this in a manner which already anticipated the due decision [fällige Entscheidung].

Here, Koselleck documents historically what he in Critique and Crisis speculated philosophically: that crisis is defined by its relation to decision. He does so, furthermore, in explicitly juridico-political terms. This etymology is often cited as an authoritative historical account of the origin of the crisis concept. And this origin again is implicitly taken as evidence of a core meaning of the term, namely that it, in some way, is defined by its relation to decision. David Runciman, for instance, draws on Koselleck in his definition of crisis for political analysis as “a situation characterized both by fundamental threat and fundamental choice. Each needs to be present for it to count as crisis. So, threat

24 Hoffmann 2017, 169 ff.
26 See, for example, Roitman 2014; Gilbert 2019; Osborne 2010; 2022; Agamben and Schümer 2013; Gentili 2021; Reitter and Wellmon 2021.
without choice – for instance, in the case of an asteroid on a fatal collision course with Earth – does not qualify as a crisis, since the scale of the threat precludes meaningful choice”; in the rest of the section, Runciman uses ‘choice’ interchangeably with ‘decision’.27 The general framework of Koselleck’s crisis theory in this way is accepted as the historically original and enduring implication of the concept, meaning that as soon as we speak of crisis, we necessarily evoke decision.

Yet, while Koselleck’s etymological reading is historically well-founded, it is neither theoretically neutral nor self-evident that the Greek ‘original’ meaning subsists as the defining aspect of the political use of the term throughout the ages. After all, one central methodological principle of conceptual history is precisely to demonstrate the transformation of the meaning of concepts through their politically conflictual constellation with other concepts in a specific context of social history: It contradicts directly the quasi-metaphysical belief in the deterministic power of ‘original meaning’ of the Heideggerian sort. The quoted section cites extensively from a footnote in Critique and Crisis (without referencing the source), which already drew on this etymological account. There, Koselleck emphasized the quality of establishing order (ordnungsschaffend) belonging to the Greek word krisis, further demonstrating his affinity with Schmitt’s political thought.28 The etymological roots of crisis in the Greek thus provides historical confirmation of Koselleck’s own philosophy of history of crisis. To Koselleck, the decisive transformation in modernity is that crisis is temporalized, that is, the Ancient political concept of crisis becomes a marker of modern time. While the encyclopedia entry traces a long and complex history of the concept throughout the eighteenth and nineteenth centuries (as always culminating with Marx), it ultimately returns to this original meaning. At the end of the article, Koselleck laments the inflationary use of the word crisis in modern mass media: “The concept of crisis, which once had the power to pose unavoidable, harsh and non-interchangeable alternatives, has been transformed to fit the uncertainties of any alternatives

27 Runciman 2016, 4–5.
The concept of crisis is itself, Koselleck speculates, in crisis, urging researchers to consider its proper meaning before employing it analytically. The etymologically original sense of the concept, which corresponds closely with Koselleck’s own philosophical crisis theory, is thus not only the first but the final and true meaning of the term. The apparently neutral historical account of a concept thus lends scientific legitimacy to a politically invested philosophy of history.

In several of Koselleck’s essays from the late 1970s and the 1980s, the qualitative shift of the modern crisis into a globalized permanent crisis becomes conceptualized in terms of speed – of acceleration and retardation. In this context, he picks up Schmitt’s Paulinian notion of the katechon from the second letter to the Thessalonians (see chapter 3). Schmitt had criticized what he saw as revolutionary and internationalizing forces of history in terms of a politically uprooting and destructive acceleration in Nomos of the Earth under the headline of “Accelerators Against Their Will” (“Beschleuniger wider Willen”), positing against them the delaying or retaining force of the katechon, the ‘one who withholds’. In a 1976 essay, whose title resonates with Schmitt’s inquiry, Koselleck asks: “Does History Accelerate?” In this essay, he takes the position of a disinterested observer of historical narratives of acceleration. The notion of an acceleration of history, Koselleck argues, originates from Christian eschatology, which depicts the apocalypse as a ‘foreshortening of time’ but transforms qualitatively from the 16th century onward and especially with the Industrial Revolution. The question of acceleration is a question about the nature of historical time, he argues, and since the concept of progress is the “first genuinely historical category of time”, acceleration becomes a specific variety of progress. While time, according to Koselleck, does not become historicized until modernity, this historicization also projects retrospectively onto the past in the sense that ‘history’ comes to mean change, so the principle

of progress applies to all of history. “What is modern, however, is the kind of change that calls forth a new experience of time: the sense that everything is changing more quickly than one had expected or experienced up to that point.” Koselleck initially rejects the notion of acceleration by arguing that since the concept of ‘history’ in the grand sense contains the standards of historical comparison, it cannot itself be characterized as faster or slower since there would be nothing outside of it to measure it against. Yet, while there is no acceleration of history, there can be an acceleration in history, he concedes, in the sense that events can happen rapidly and in great number, leading to a notion of a foreshortening of time as described in the apocalyptic texts. The essay ends with a short, inconsequential discussion in Koselleck’s signature terminology of how this shortening of time can be either a concept of expectation or experience; or, as is the case in his own time, a combination of both, whereby ‘less developed’ countries of the world seek to project the past progress of ‘developed’ countries into their own future while striving to accelerate the process in order to catch up with the latter. The author here remains agnostic as to whether there actually is a general tendency of acceleration.

This changes with his 1985 essay “Some Questions Regarding the Conceptual History of Crisis”. He opens this with a repetition of his lamentation of the inflationary use of the term ‘crisis’ and restates, in shorter and clearer terms than ever, his insistence on the proper definition as a ‘definitive, irrevocable decision’. The historical account of the historicization of modern time through revolution and crisis is largely the same as in his earlier accounts, although Koselleck here tentatively speculates that even the concept of progress is a subcategory of the historical category of crisis as the overarching structuring notion of historicity. In the final section of the essay, however, he proceeds to theorize the relationship between the modern crisis and his own time in quite explicit terms. It belongs to the finite nature of humankind, he

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claims, to conceive of one’s own time as the most important, most serious and most grave of all, which makes it easy for the historical observer to brush them aside as illusions of perspective. Yet, the fact that every epoch sees its own crisis as the final and conclusive one, he adds, does not mean that we can exclude the possibility that it might at some point be true – “especially in light of the doctrine of the Last Judgment”.35 Although he takes care to present it as a ‘thought experiment’ and a ‘temporal hypothesis’, Koselleck at this point launches a positive theory of acceleration along three exponential curves of time: the first is the astronomical time of the Earth, spanning over five billion years with biological life only occurring in the last billion years and human life only in the last ten million years. The second is the time of human societies since the invention of tools two million years ago, accelerating toward the agriculture of the past 10,000 years. And the third is the past 6,000 years of high civilization, accelerating with industrialization and, finally, the revolution of information technology, transportation and population numbers toward the end of the 20th century. Finally, he writes, having abandoned his initial reservations about the objective reality of this development:

The three exponential time curves might be dismissed as mere number play. However, a limit obviously begins to emerge that can no longer be overstepped by technological and scientific progress. Moreover, there is the fact that in the same exponential time curve, the power for the self-destruction of autonomous humanity has multiplied. So, the question can be raised as to whether our semantic model of crisis as final decision has gained more chances of realization than it has ever had before. If this is the case, everything would depend upon directing all our powers toward deterring destruction. The katechon is also a theological answer to crisis.36

In other words, the acceleration of history (and at this point, Koselleck no longer distinguishes between acceleration of and in history) has led the

modern crisis to a culminating moment; a definitive limit which cannot be transgressed by way of scientific innovation. To Koselleck, writing in the mid-1980s, this culmination consisted in the combination of population growth and the technical potential for destruction. Although he once more stresses the need for decision in this moment of universalized crisis, this decision is no longer left as open as it was in his definition from *Critique and Crisis*. The only decision of any consequence at this point is one that staves off the final destruction. Like Schmitt before him, Koselleck, in his mature writings, thus turns away from the ethical existentialism of the decision *ex nihilo* toward the historico-theological concept of *katechon*, the unifying term for historical forces of conservation. The difference being that Schmitt searches for a new representative of the katechontic in his own time, while Koselleck, as an intellectual historian, urges contemporaries to look for “stabilizers” in the “long duration of the history of humanity up until now”. The present state of permanent crisis is thus a bleak outlook for a humanity which can do nothing but commemorate the past and hope for the longest possible postponement of the catastrophe.

**Agamben: an eschatological drama**

Agamben is arguably the thinker to have popularized the concept of the exception in contemporary political thought – and to a much greater degree than Schmitt himself. Yet, he remains faithful to Schmitt’s version of the term, and thus Agamben’s own political philosophy becomes tinted by its implications. And by combining it with a Benjamin-inspired historical Messianism, the exception is unfolded in more explicitly historico-philosophical terms. The exception here is not confined to an either/or but becomes a principle of progression.

Although Agamben’s thought is permeated with historico-philosophical considerations, it is quite difficult to pin down his historiographic principles.

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His writings are loaded with emphatic hints at marks of periodization, yet his operative historical periods escape schematization. Agamben often uses phrases that suggest a historical transformation and mentions concrete historical events as turning points, but his historical perspective is constantly shifting. There appears to be a tension in his analysis between the uniqueness of ‘our time’ (a period which is also vaguely and flexibly defined) and its logical evolvement out of the entire trajectory of what he sometimes calls ‘the history of Western politics’ and sometimes ‘the Judeo-Christian tradition’.

This is especially true of the way he uses the concept of the state of exception. To Agamben, this concept both defines (Western) politics as such and marks modern or contemporary politics as something distinctly new. In *Homo Sacer* (1995/1998), Agamben writes that “The original political relation is the ban (the state of exception as zone of indistinction between outside and inside, exclusion and inclusion)”.

In this sense, the state of exception belongs to the nature of politics, making it a constant of political history, the beginning of which Agamben tentatively localizes in Ancient Rome and the tradition of Roman law, although in the broadest possible reading the statement might be taken to apply to all of global political history. However, in *State of Exception* (2003/2005), he dates the birth of the state of exception to the French Revolution and tracks it through 19th century emergency legislation, the First World War, the Weimar Republic, the Third Reich and beyond in Western democracies. This alternative history of the exception would make it, then, a specifically modern and Western phenomenon. These two characterizations of the relationship between the state of exception and political history may not contradict each other within the architecture of Agamben’s theory: According to his logic of continuous escalation, the state of exception may be at the core of Western politics from the very beginning, unfolding throughout its history and becoming paradigmatic or pathological only with the advent of modernity. Yet, it reduces the uniqueness of our own time, which he repeatedly stresses, to an extreme version of what was always already there, thereby impeding any meaningful historiographical differentiation of political and economic epochs.

When examining Agamben’s historical thought, we should therefore be aware that it might not be possible to map it according to a systematic historiography. Nevertheless, the concept of state of exception here takes on a distinctly historical, or rather historico-philosophical meaning. In *State of Exception*, he ascribes the concept to Schmitt, using his definition of sovereignty as the starting point for his own analysis. This influence from Schmitt’s state theory is a consistent element of Agamben’s philosophy. He identifies Schmitt’s early Weimar writings as the source of the theory of the state of exception, from which a later proliferation of theorization in the 1930s and 1940s implicitly drew inspiration. In a comment on these epigones of Schmitt, Agamben writes:

They are in some ways the heralds who announced what we today have clearly before our eyes – namely, that since “the state of exception ... has become the rule” (Benjamin 1942, 697/257), it not only appears increasingly as a technique of government rather than an exceptional measure, but it also lets its own nature as the constitutive paradigm of the juridical order come to light.39

Agamben here adds Walter Benjamin’s use of the concept of state of exception to the equation, quoting a section of his posthumously published manuscript “On the Concept of History” (1940), which clearly bears a reference to Schmitt. However, Agamben retains the Schmittian definition, adding to it a historical dimension for which he finds inspiration in Benjamin.40 Whether this reading is justified or not is a question to which I return in the next section of this chapter. Yet, it should be noted that Agamben actually misquotes Benjamin here: First of all, he omits the quotation marks which frame ‘state of exception’ in Benjamin’s text, thereby removing their gesture of distance to any direct use of the concept. Benjamin is not in fact saying that there *is* a state of exception but merely making a commentary on those who would believe so, implicitly

40 Brian Britt argues convincingly that Agamben reads Benjamin through the lens of Schmitt, and so his terminology remains consistently Schmittian, Britt 2010.
meaning Schmitt. Second, he does not write that the ‘state of exception’ has become the rule but that it is the rule. It is a subtle difference, yet this small displacement adds a notion of a progressive development to the quote, which represents Agamben’s own take on the exception rather than Benjamin’s. The exception to him is not merely a state but an unfolding and expanding condition.

Although Agamben misquotes Benjamin, the quote thus plays an important role in adding an aspect of explicit historicity to the notion of state of exception. Agamben himself, in his discussion of the intellectual exchange between Schmitt and Benjamin, argues that the former “attempts every time to reinscribe violence within a juridical context” with this concept, whereas the latter in turn seeks to “assure it (...) an existence outside the law”.41 According to him, Schmitt is a rigorously juridical thinker whose concept of the exception serves to recapture in legal terms that which cannot be captured as such, that is, violence. As I have argued in chapter 5, this is indeed the performative ambition of Schmitt’s theory of sovereignty, yet it necessarily depends on an extra-legal history of philosophy, which the concept of exception includes rather than excludes from the theory. Agamben, in contrast, takes Schmitt’s juridical formalism at face value.42 Approaching the state of exception as a purely juridical concept (exemplified in Article 48 of the Weimar constitution), Agamben surprisingly turns the relation on its head and makes it the central concept of his philosophy of history. Following the argument in chapter 5, this means that while Schmitt takes the notion of crisis as belonging to philosophy of history and formalizes it into the juridical concept of the state of exception, Agamben picks up what he takes to be a juridical notion of state of exception and transforms it into a historico-philosophical paradigm of crisis. Only, this time around, the ‘sovereign logic’ of the exception is taken to be as perfectly universally applicable as a legal concept rather than as imperfect and irregular as any historical tendency.

41 Agamben 2005a.
42 I have argued elsewhere that Agamben has a juridical-formalist reading of Schmitt, and that this reading in turn informs his reading of Benjamin, see List 2020.
The state of exception, in this historico-philosophical version, becomes a principle of the progressive decline of humanity. The ‘zone of indistinction’, as Agamben calls it, is continuously expanding in both an extensive and an intensive sense. Like Koselleck, he sees modernity as the unfolding and generalization of civil war: “Faced with the unstoppable progression of what has been called a ‘global civil war’, the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics.”43 While to Koselleck the war originated in humanist claims to universality and culminated in the mutually exclusive universalities of East and West in the Cold War, to Agamben it is waged between the state; or, ‘sovereign logic’ in general on one side and isolated and deprived individuals on the other. Furthermore, like Koselleck, Agamben sees the uniqueness of his own time as an intensification or acceleration of this development: A “final, paroxysmal acceleration”.44 ‘Today’, a vague temporal denominator which Agamben uses in abundance, the crisis has been universalized as permanent crisis. However, unlike Koselleck, he does not see this as a result of the impossibility of decision. Rather, the state of exception is a zone of indistinction where the sovereign wields absolute unchecked power to decide. It is the space where decision has no foundation, Agamben argues, but where decisions nevertheless are constantly made. And this zone is relentlessly evolving and spreading, colonizing political life.

In Agamben’s later, more theologically oriented writings, this crisis tendency is reformulated in explicitly eschatological terms. He too picks up Schmitt’s localization of the core term of Christian eschatological time in the concept of katechon. In an essay with the title “Mysterium iniquitatis: History as Mystery” (2013/2017), he analyses Paul’s second letter to the Thessalonians, one of the central texts of Christian eschatology. “History as we know it is a Christian concept”, he writes. This claim might be taken as the starting point for a conceptual history of the term ‘history’ or a critique of the theological implication of the modern concept, yet this is not what Agamben has in mind.

43 Agamben 2005a, 2.
44 Agamben 1998, 178.
Instead, he sets out to understand historical time as it actually is through a reading of “the Paulinian conception of messianic time (which is to say, of historical time, if it is true that eschatology is only an abbreviation or a model in miniature of humanity’s history”). In contrast to Koselleck, Agamben thus establishes no distance between the eschatological model of historical time and his own understanding of ‘history as we know it’.

Agamben then analyses the eschatological structure of historical time as a historical drama between the three mystical figures mentioned in Paul’s letter: the katechon, the anomos and the messiah. The first is the ‘one who restrains’ or withholds, the second is the lawless one, often identified with the Anti-Christ, and the third is Christ. The eschatological end consists in the revelation of the Anti-Christ bringing an end to profane order, which will immediately be met with the coming of Christ bringing redemption; yet, this end is delayed and thus historical time dilated between now and the end by the katechon, which Agamben, like Schmitt, identifies with temporal powers such as the Church or the empire. In this way, “time is held in suspense, in such a way that the decisive crisis can never come”. Yet, the end remains an urgent historical matter, and messianic time is therefore defined as a paradoxical ‘already and not yet’; an ‘already’ of the imminent end and a ‘not yet’ of its delay. While it is the nature of the katechon to defer the end indefinitely, Agamben does not take this to mean that the decisive crisis will indeed never happen. On the contrary, he reads the signs of his time as indications of this final crisis closing in:

The unveiling of this mystery coincides with the manifestation of the inoperativity of the law and with the essential illegitimacy of every power in messianic time. (And by all appearances, this is what is happening today under our noses, when the powers of state act openly as outside the law. In this sense, the anomos does not represent anything but the unveiling

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of the lawlessness that today defines every constituted power, within which State and terrorism form a single system.)

In the parentheses, Agamben places himself and his contemporaries of ‘today’ in the *eschaton* – at the end of time. Like the late Koselleck, then, he does not shy away from a diagnosis of the present as apocalyptic. Yet, in contrast to Koselleck, Agamben does not see the *katechon* as a safeguard against total destruction but rather as the motor of the violence of the law. Between the *katechon*, the *anomos* and the messiah, the first stands on the side of the force of law, while the latter two both represent moments of its dissolution. The ‘anti’ in Antichrist, Agamben argues, does not refer to polar opposition but rather to a mirrored similarity in function. The suspension of temporal law by the lawless one heralds the final destitution of all legality by Christ. This is why Agamben in the quote equates the extralegal activities of state and terrorism with the unveiling of the illegitimacy of legally constituted powers ‘in messianic time’. The collapse of law and order to him brings to light the truth of the illegitimate core of this same order. The *katechon* defers this revelation and thus only preserves the violence of law.

In *The Time That Remains* (2000/2005), Agamben warned against confusing messianic time with eschatological time. While the *eschaton* marks the end of time, the announcement of the messianic apostle, as Agamben characterizes Paul, makes an incision in time, causing it to contract and become finite. Messianic time is therefore not the same as the last day but the time toward the last day; the experience of time mediated through the consciousness of time running out. It is “not the end of time but the *time of the end*”, a phrase which he repeats in his interpretation of history as mystery. However, while in this later text messianic time is still presented as the time of the end which structures historical time in general, Agamben here harbours no reservations against diagnosing the present as the *eschaton* or the end of time. He uses

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48 Agamben 2005b, 62.
‘today’ twice in the parentheses as a suggestive temporal marker to distinguish between the unfolding of the eschatological drama since the time of Paul and the historical stage of its culmination, which we have now entered. This time of the end is conceived not only as the chaos of lawlessness but also as the truth of the illegitimacy of law; not only as the time of the Antichrist but also as the reign of Christ.

This resonates with what Jessica Whyte has identified as “the real weakness of [Agamben’s] political thought: that is, his tendency to see the intensification of the catastrophe of the present as the path to redemption”.49 She argues that while the critical reception of Agamben has tended to focus solely on his alleged pessimism, this pessimism goes hand in hand with an optimistic belief that the disintegration of order into disorder will bring with it an end to the violence of law and the possibility of a new, utopian form of life. This, she notes, is a form of accelerationism: the conviction that we can only reach the next societal level by letting the problems of the present society spiral out of control until it reaches its breaking point. From a political perspective, however, this messianic optimism is no more encouraging that his apocalyptic pessimism, since it excludes any form of political action. And from a historico-philosophical perspective, it remains a trans-historical vanishing point of a historical narrative of decline, which is never realized in history since Agamben offers us no indicator of how and when the catastrophe finally recoils into redemption.

Koselleck and Agamben are each influential philosophers of history and politics in their own right. Yet, for the present context, they are interesting not primarily because of their importance as thinkers but because their thinking quintessentially exemplifies the tendency of modern political thought to conceptualize its own time in terms of universalized crisis. Nevertheless, a comparison between these two prime examples may serve to illustrate the span in various shapes such a narrative may take. While Koselleck openly confirmed his inspiration from Schmitt and drew extensively from the latter in his own account of European history, Agamben explicitly denounces Schmitt’s

49 Whyte 2013, 3.
sovereign state. While the former interprets the crisis of modernity as an eschatological path to destruction, the latter locates, precisely in this destructive progress, the possibility of emancipation. And while the former sees Schmitt’s Paulinean concept of *katechon* as a final safeguard against the self-destruction of modernity, the latter, in contrast, views the katechontic forces of history as the violence of law which is to be overcome by messianic redemption. Yet, ultimately, both of their accounts of modernity (or, in Agamben’s case ‘the Western tradition’, which culminates in modernity) as crisis temporality are moulded on Schmitt’s theory of the sovereign decision on the exception. In Koselleck, this legacy is articulated in the definition of the crisis as a simultaneous need for and lack of decision, whereas in Agamben there is no such lack; on the contrary, the exception as zone of indistinction is replete with sovereign decision. The problem with this Janus-faced account of crisis as either deficit or surplus of decision is that it refers crisis back to the *person* of the sovereign or of any sovereign-like institution. The crisis is a vortex circling the either empty or always-already inhabited seat of the sovereign. This limits us not only in how we are able to conceptualize the crisis but also in how we are able to respond to it. The response can only be a personalist, voluntarist, or centralized decision or, on the contrary, it can be the abstinence from decision. This excludes collective action and political organization and in effect leads to passivity.

**Benjamin: Permanent Crisis as Modern Phantasmagoria**

Since the first volume of Agamben’s *Homo Sacer* project, it has become commonplace to read Walter Benjamin’s political thought through the lens of his connection with Schmitt, with commentators intentionally or unintentionally depicting him as a political theologian of the left; a symmetrically opposed counter-image to Schmitt’s absolutist theory of sovereignty. This is, I believe, if not the ‘wrong’ way of reading Benjamin (since his works are fragmented, rich, and open to interpretation), then a barren and reactionary way. Contrary to the popular view of Benjamin as a melancholic-messianic thinker of the
catastrophe, we find in his writings a consistent rejection of any deterministic narrative of historical decline as exemplified above by the jargon of ‘permanent crisis’. This goes hand in hand with his venture to rethink history and time in a way which prioritizes above all the possibility of collective political action. It is unfortunate that Agamben and his followers have successfully integrated Benjamin in the tradition of modern sovereignty theory since his thought would otherwise offer a reservoir for denaturalizing this narrative of modernity. The aim of this section is thus to untangle Benjamin’s writings on philosophy of history from the tradition outlined above in order to indicate how it may help us undo the sovereignty/crisis nexus.

As noted in chapter 5, Benjamin does not actually develop a theory of sovereignty, although his commentary on the subject is often perceived as such. In *State of Exception*, Agamben reconstructs an ‘esoteric dossier’ on the ‘debate’ between Benjamin and Schmitt. Yet, he bases this reconstruction on the dubious claim that since Schmitt was a “regular reader” of the journal *Archiv für Sozialwissenschaften und Sozialpolitik*, he “could not easily have missed” Benjamin’s essay “Toward the Critique of Violence”, which was published in the journal in 1921. “The theory of sovereignty that Schmitt develops in his *Political Theology,*” Agamben deduces, “can be read as a precise response to Benjamin’s essay.” In this way, Agamben projects the problematics Schmitt developed into Benjamin’s early text on the relationship between law and violence, making its hidden centre the theory of sovereignty. The cogency of this reading may have been reinforced among Benjamin’s English speaking readership by the fact that the 1996 translation of the *Selected Writings* renders ‘waltend’ as ‘sovereign’ in the final line of the essay: “Divine violence, which is the sign and seal but never the means of sacred dispatch, may be called ‘sovereign’ [waltende] violence.” This would indeed be

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50 For a critique of the reconstruction of Benjamin as a theorist of sovereignty, see also Papadakis 2021, 260 ff.
51 Agamben 2005a, 53–54.
52 For an extensive critique of Agamben’s reading, see List 2020.
reminiscent of political theology in Schmitt’s sense, yet the concept of sovereignty is absent from the German original. Agamben’s reading of this politico-philosophical treatise as belonging to the literature on sovereignty then leads him to read Benjamin’s more extensive commentary on the concept in *The Origin of the German Trauerspiel* (1928) as direct observations of the phenomenon of sovereignty. It is clear from the context of the book, however, that what Benjamin is observing is not sovereignty as a political reality but the idea of sovereignty as part of a metaphysical worldview illustrated in the drama of the German baroque. It is an intellectual historical argument on a specific relation between philosophy of history and political thought (though this argument is itself part of a larger philosophical project).

Although the importance of the critical aspects of “Toward the Critique of Violence” cannot be overestimated, its attempt at a positive theory of divine violence or power (*Gewalt*) is theoretically ambiguous and politically problematic, for which reason it may be argued that the text lends itself to such a misreading. Yet, more important than any inaccuracy is the fact that this reading obscures Benjamin’s consistent and productive critique of the concept of history underlying the theory of sovereignty. To Benjamin, the pessimist view on modernity as a process of disintegration, of which Koselleck and Agamben are each in their own way proponents, is not in opposition to the ideology of progress but rather its compliment. As quoted in the beginning of this chapter, “Overcoming the concept of ‘progress’ and overcoming the concept of ‘time of decline’ [Verfallszeit] are but two sides of one and the same thing.”54 Benjamin was as critical of the idea of progress as Koselleck, although for very different reasons. While he would concur with the latter that the concept had a revolutionary function in the context of Enlightenment philosophy and the French Revolution, it had gradually lost its potential for inspiring change throughout the 19th century and had become the intellectually lazy assumption that society would automatically improve indefinitely if left to follow its own evolutionary mechanism.55 According to him, the ideological deficiency of the

54 Benjamin 1991a, 575; 1999, 460, translation modified.
55 Benjamin 1991a, 597.
Social Democratic Party consisted in the belief that the proletariat was simply the heir to the revolutionary tradition from the French Revolution and was, for this reason, “moving with the current” of history. Progress had by then become a mechanical movement through “homogenous and empty time.”

Duy Lap Nguyen, in a recent study on Benjamin’s ‘new historical materialism’, reconstructs his dialectical analysis of the “indissoluble antinomies” of progressivist optimism and the pessimistic spleen of authors such as Charles Baudelaire, Friedrich Nietzsche and Auguste Blanqui. While apparently rooted in opposing expectations for historical development, these positions are in fact complementary and emerge from the same view on historical time. The three authors of ennui each in their different ways conceive of modernity as repetition as opposed to the continuous change of progress: To Baudelaire, the new consists only of allegorical reappearances of the old, while Nietzsche develops the doctrine of eternal return, and the aging revolutionary Blanqui, from his prison cell, ponders astronomic eternity as the infinite repetition of every event in every moment. This version of pessimism as the loathing of the feigned newness of the ever-selfsame is specific to the fin de siècle thought to which these authors belong. Yet, in a broader sense, to Benjamin they represent a reactionary expression of the same universalization of a specific concept of time which belongs to the progress ideology. In a letter from 1938 to Max Horkheimer, Benjamin recounts his luck in having found a document which would provide a whole new historico-philosophical framework for his Arcades Project. Blanqui’s thesis The Eternity Among the Stars (1872). After having participated as a major figure in a series of revolutions, Blanqui composed this treatise on cosmological universal history in 1871, the year of the Paris Commune, while under imprisonment for his rebellious activities. While some have read the text as a Utopian piece of writing, Benjamin sees it as the outline of an ‘infernal worldview’. “The shocking thing”, he writes, “is that this outline

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57 Nguyen 2022.
58 Rancière 2012.
lacks all irony. It represents unconditional submission, but at the same time the most terrible accusation against a society that has reflected this image of the cosmos as a projection of itself onto the heavens.” What Blanqui simultaneously submits himself to and raises accusation against is the universalization of mathematical-mechanical time under capitalism. In other words, he reproduces the metaphysics of a society which he had spent his life revolting against as dystopia rather than utopia. This reversal of the imagery of modern historical time constitutes the accusation against bourgeois society: Infinite progress amounts to never-ending repetition of the same old strive for newness. On the other hand, Blanqui, in Benjamin’s account, confirms the inescapable universality of this repetitive structure of historical time: “Blanqui’s vision has the entire universe entering modernity”. In this way, Blanqui derives the “data” for his cosmology from “mechanistic natural science”.

The critique of mechanical time is a common thread throughout Benjamin’s works. The mechanistic concept of time views it as an empty container for historical events which have no bearing on the experience of historical time. It originates in early modern natural science, specifically Newtonian physics, and is transferred into philosophy, from where it is disseminated as a dominant metaphysics of modern history. Later studies in the history of capitalism have confirmed Benjamin’s early, programmatic description of this transformation of the view on time as parallel to the transition toward capitalism. Jonathan Martineau’s *Time, Capitalism and Alienation* provides an entry-point into this discussion as well as an insightful interpretation of the historical emergence of what he calls ‘abstract time’. Abstract time, Martineau argues, is the mechanical-mathematical time of the clock, based on conventionally determined units such as the hour, minute or second, which have no ‘natural’ point of reference in, for instance, the rotation of the Earth or the span of a human life. In a commentary on Isaac Newton’s concept of ‘absolute time’, Martineau argues that this corresponded to the methodological need for a time

59 Benjamin 1978, 742; 1994, 549.
60 Benjamin 1991a, 77; 1999, 26, translation modified.
61 Benjamin 1978, 742; 1994, 549.
independent of motion and thus non-relative to movement in space in order to theorize the laws of motion without recurring to relative position. This methodological need was again a response to concrete political and economic needs in Newton’s time for a mechanical theory to solve problems of commerce, industry, and warfare, such as, for instance, the calculation of the trajectory of a projectile. This of course does not mean that Newtonian physics is simply the superstructure to the economic basis of emerging industrialization, as if his mechanics are a mere ideological lie, but rather that the historical background to his work sets the framework for his research interests. And Newton did not limit his use of ‘absolute time’ to theoretical physics, Martineau recounts, but posited it as the ‘real’ time behind or below the time of human experience: “Indeed, Newton’s method here substitutes symbolic mathematical abstractions for intuitional concrete physical temporal realities. The means through which the world is represented is mistaken for the world itself.” A specific historical situation calls for a new concept of time, which Newton brilliantly theorizes, thus providing his contemporaries with the framework for a new metaphysical self-conception. It is important to note that this concept of time does not capture the full story of modern capitalist temporality but is in fact rather conceived during the rise of mercantile capital as a transitory phase toward capitalist production. What it illustrates, however, is the historical importance of a concept of historical time as ordered or deterministically predictable for the establishment of this form of production. This resonates with Vanessa Ogle’s emphasis on the need for predictability as the source of a new orientation toward the future, as mentioned above.

Already in 1916, in a draft for an unpublished essay entitled “Trauerspiel and Tragedy”, Benjamin distinguished between mechanical time and historical time. Mechanical time he calls an ‘empty form’; a measure for spatial change manifested in the hands of the clock. In this early text, he contrasts this time with the proper historical image of time, which he calls the messianic. Yet, in later texts, his conception of the relation between these temporal systems

62 Martineau 2015, 100.
becomes sophisticated in the sense that he no longer simply conceives of the application of mechanical time on history as ‘wrong’ but as belonging to a specific worldview dominant in modern society. In *The Origin of the German Mourning Play*, he writes:

The image of the moving clock hand is, as Bergson has shown, indispensable for the representation of the nonqualitative, repeatable time of mathematical natural science. In such time is enacted not only the organic life of the human being but also the doings of the courtier and the acts of the sovereign, he who, according to the occasionalist image of the prevailing [waltenden] God, directly intervenes in the affairs of state at every moment in order to arrange the data of the historical process in a, so to speak, spatially measurable, regular and harmonious succession.64

Mechanical time is thus the empty container not only for physical motion and biological life but for the political form of the sovereign legal order. Benjamin here characterizes this order as entirely dependent on the promise of the sovereign decision to be able to intervene at any time to restore order in a historical vacuum reminiscent of Schmitt’s ex nihilo, ‘out of nothing’. With a pointed reference to Schmitt, he compares this sovereign with an ‘occasionalist’ image of God constantly fiddling with his creation to maintain a precarious cosmic balance. From the causal space of classical mechanics, an occasional notion of historical time paradoxically emerges. For this reason, Benjamin can write elsewhere that “The sovereign represents history. He holds historical happenings in his hand like a scepter”.65 Without the sovereign, there is no history within this temporal system. The political notion of sovereignty is thus entirely intertwined with mechanical time. This means that everything Benjamin has to say in the *Trauerspiel* book about sovereignty and the state of exception is

64 Benjamin [1928] 1991, 275; 2019, 87, translation modified. Note that Benjamin here uses ‘waltenden’ as a characteristic of God in a negative sense in contrast to its positive use in “Toward the Critique of Violence”, indicating that he may wish to distance himself from any possible theo-political tendency of his earlier text.

framed by this temporal system. If time is not conceived in this way, then neither are these historically specific political concepts. When Agamben takes Benjamin’s remarks to be a positive theory of sovereignty, he is thus unwittingly adopting the standpoint of time which they imply. Instead, we should see the notions of sovereignty and the state of exception as part of a political and historico-philosophical nexus to be submitted to critique in its totality.

It would be a mistake to conflate Benjamin’s examination of the baroque worldview with his characterization of modernity in the Arcades Project. Importantly, by the time of his Trauerspiel book, he had not yet studied Marx and Marxism, which would play a decisive role in the development of his methodology for his later historical work and, therefore, could not yet make an explicit connection between mechanical time and the capitalist organization of society. Regardless of his own theoretical evolvement, however, the baroque and the modern also differ from each other as objects of study, although Benjamin would situate both within the same overall dominant temporal metaphysics. The baroque philosophy of history is marked by a “hypertension of transcendence that lies at the bottom” of all its “provocative this-worldly accents”. The mourning of the baroque is not least a mourning of a lost metaphysics of transcendence in which it has not yet entirely lost belief. While the baroque belongs to the ‘Neuzeit’, which Benjamin uses to denote the historical period since the end of the middle ages, he reserves the label ‘modern’ for late modernity from around the middle of the 19th century onward. To the exemplary authors of this period, Baudelaire, Nietzsche, and Blanqui, the rejection of any form of transcendence has become the mark of the modern condition. The same dominant metaphysics reigns, yet its expression has shifted.

In the 1939 exposé to his Arcades Project, Benjamin writes: “The world dominated by its phantasmagorias – this, to make use of Baudelaire’s term, is ‘modernity’.” Modernity in this sense consists in a self-narrative which has come to be experienced as universal truth. As Nguyen argues, Benjamin

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conceives of modernity as the phantasmagoria of an “historically specific condition that appears as fate”. This specific condition is the capitalist mode of production.\textsuperscript{68} Nguyen therefore compares Benjamin’s concept of modernity as phantasmagoria to Marx’s concept of commodity fetishism: The fetish of the commodity naturalizes what is in reality a historically produced relation between humans, making the commodity seem like it carries value \textit{in itself} regardless of the wider social context, that is, the capitalist economic system. An important aim of Marx’s critique of political economy was to denaturalize this condition by demonstrating the social and historical origins of capitalist production and thus of the commodity. The same can be said of Benjamin’s characterization of modernity in the \textit{Arcades Project}. By showing how the self-narrative of modernity as a special form of historical time relates to the economic and socio-historical transformations of the period, he denaturalizes this narrative and submits its \textit{political} investment and consequences to critique.

Koselleck and Agamben, of course, write in a different time again from that of the fin de siècle authors, and they are not thinkers of the eternal return – in between the former and the latter, after all, lie two world wars and a cold war. Yet, in their view on modernity as permanent crisis resonates that air of \textit{spleen}, which Benjamin identifies as the mode of modern historico-philosophical thought: “Spleen is the feeling that corresponds to catastrophe in permanence”.\textsuperscript{69} This feeling is specific to modernity not as a historical period but as a phantasmagoric form of self-narrative:

\begin{quote}
There has never been an epoch which did not feel itself to be eccentrically “modern”, and did not believe itself to be standing directly before an abyss. The despairingly clear consciousness of being in the middle of a decisive crisis is something chronic in humanity.\textsuperscript{70}
\end{quote}

We need not go so far as to say, as Benjamin does here, that the sense of observing history from the edge of an abyss is something common to all eras

\textsuperscript{68} Nguyen 2022, 11.
\textsuperscript{69} In his unfinished Baudelaire manuscript, Benjamin 1991b, vol. I: 660; 2003, 164.
\textsuperscript{70} Benjamin 1991a, 677; 1999, 545, translation modified.
and all areas of the populated globe; indeed, it is questionable if this is what he intends with this grand statement. Suffice to note that it is not unique to either Koselleck or Agamben, even though they both present it as such: The thought that the specific point in time from which they are themselves writing is privileged and cursed with the predicament of a final, decisive crisis of history. It is especially peculiar in Koselleck’s case since he makes the diagnosis of crisis one of his primary objects of study; and peculiar that he would, in this way, naturalize the image of time which the narrative ‘modernity as crisis’ implies. Both authors, however, take the nexus of political sovereignty and historical crisis at face value as the nature of modernity rather than problematizing this narrative as itself a politicized philosophy of history.

Benjamin shows a different way by turning the relationship between politics and history upside down. History to him is not identical to the past but consists in a specific meeting between the past and a politically conflictual present. This is not the simple acknowledgement that we can never experience the past as ‘pure’ without it being contaminated by the prejudices of our own time. It means that what is considered historical is constituted through its encounter with a specific and perspectival present. The perspectival nature of this encounter does not make it less true. He calls this the ‘Copernican turn’ of historical perception: “Politics attains primacy over history.”71 His tentative programme for a philosophy of history, as documented in the theses “On the Concept of History” and the convolute N of the Arcades Project, should be read through this lens: as a framework for historical thought which allows us to act on history rather than being caught up in some inevitable progress or, reversely, decline toward the abyss. It is not the aim of the present chapter to unfold this programme but only to show how Benjamin’s double critique of the notion of sovereignty and the phantasmagoria of modernity can be used to denaturalize the narrative of permanent crisis, which both Koselleck and Agamben universalize.

Peter Osborne writes of historical time – or ‘History’ with a capital H – that it consists in the totalization of multiple social temporalities into a single unified

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narrative. Although such a totalizing concept is by definition universal, it is itself historical and exists in competition with other totalizing concepts of history. The struggle over the definition of History is what Osborne characterizes as a ‘politics of time’. Benjamin was aware of this struggle and recounts conflicting politics of time under totalizing concepts such as ‘modernity’, ‘tradition’, ‘progress’ and ‘decline’.72 To Benjamin, then, it is not the metaphysics of the epoch which defines its politics but rather that every metaphysical concept of History is itself defined by a political investment. While each totalizing concept is universal and as such exclusive, in reality it never reigns absolutely but is always contested, although it may be hegemonic. This implies that we should not search for the true, transhistorical concept of history but rather realize the political implications of our own conceptualization of history. This would give another sense to Marx’s famous dictum from The Eighteenth Brumaire that “Men make their own history, but they do not make it as they please in circumstances they choose for themselves; rather they make it in present circumstances, given and inherited”73 – namely, that humans create not only what happens in history but also what is to be understood by the concept of history itself. Yet, they do not do it ‘as they please’, that is, in a historical vacuum, but through political struggle over the right to History.

**Conclusion**

In summary, the self-narrative of modernity as crisis temporality mirrors the concept of sovereignty in modern state theory, insofar as it assumes a centralized decisionist personal power as the crux of the crisis, whether in the form of the empty seat of the sovereign or a totalitarian sovereign logic. Because crisis temporality is co-originary with sovereignty, but sovereignty is also perceived in opposition to crisis, the crisis in this narrative becomes both the mark of the modern period and simultaneously something unique to our allegedly

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72 Osborne 1994, 7.
post-sovereign present. Crisis is the paradigm of modernity, culminating in the permanent crisis of an ever-present ‘today’. In this regard, the examples of Koselleck’s and Agamben’s diagnoses are surely not identical, but they both represent typical strains of the discourse on contemporary modernity as permanent crisis. And both of them, in different ways, draw this analysis from their reception of Schmitt’s state theory. This means that whereas the concept of sovereignty, in the tradition from Hobbes to Schmitt, bases political theory in a historico-philosophical notion of crisis, these theories of modernity, in an inverted move, base crisis temporality in political theory. In their different ways, Koselleck and Agamben both locate the epicentre of the crisis in the sovereign decision. To Koselleck, this epicentre is the lack of decision in the organizational vacuum left behind by the decline of the sovereign state; while to Agamben, it is the zone of indecision between legality and illegality, in which the sovereign subject of the state decides arbitrarily and absolutely. In Agamben’s version, then, our time is not post-sovereign in the sense that sovereignty has faded away but rather in the sense that it has infiltrated all areas of life, thus becoming total and thereby invisible.

The implicit assumption preconditioning these crisis theories is the idea that the principle of social organization in modernity is located in some institution of sovereignty, and that any form of unifying political action must emanate from this locus. Some form of sovereign subject of decision is assumed, even if this is a missing subject, as is the case in Koselleck’s diagnoses. Of course, Agamben’s critique of Schmitt’s affirmative theory of sovereignty complicates matters since sovereignty here is the origin not only of order but also of disorder, exclusion and arbitrary violence. To him, sovereignty constitutes order through the suspension of order, and since the exception is a historical paradigm, disorder was already there from the beginning of the modern political order as its core. It is the paradoxical order-disorder of sovereignty which drives the modern crisis toward its culmination in the present. Koselleck too, however, over time increasingly came to reject the sovereign state as a possible cure of the modern crisis. This is not unlike Schmitt’s own development, in the course of which he abandons the theory of sovereignty in favour of the concept of the *katechon*, which collects a range of diverse institutional
forms as the carriers of the withholding principle of history. Koselleck adopts this concept in order to argue that the only stabilizing force in the crisis ridden history of modernity is history itself, that is, the continuous postponement of the final disintegration of modern society.

Koselleck and Agamben are perhaps extreme but nevertheless illustrative examples of the common trope of diagnosing ‘our time’ as a ‘state of permanent crisis’. To critically examine this trope, I have suggested that we untangle Benjamin from the web of Schmittian state theory and philosophy of history through which he is often received as an inverted political theologian of the left. The importance of Benjamin’s critique is not to have developed an alternative theory of sovereignty, set within the same modernity as the one narrated by the conservative thinkers treated above, but rather to have exposed the philosophy of history integral to this universalist narrative of modernity and thereby restored it to its historical specificity. Koselleck and Agamben do not replicate the vision of modernity as eternal repetition, which we find in fin de siècle thinkers such as Blanqui, to be sure, but their notion of permanent crisis only serves to invert the narrative of progress to which they react, thereby reintegrating the crisis in the idea of a principle of historical normality. By naturalizing the sovereignty-crisis nexus as a necessary condition of modernity, they limit both our possibility of historical analysis and the scope of political action. To both, the only action available is the postponement of catastrophe. Benjamin’s theoretical framework for the analysis of such philosophies of history of modernity is both too fragmented and too historically specific to the material it is moulded on to provide a detailed interpretation of the trope of permanent crisis in post-war modernity. Yet, its core insight from which we may benefit is that the narrative of modernity as permanent crisis is not a historical fact but itself a politically invested philosophy of history with roots in modern state theory. We may then begin to trace one such lineage, as I have tentatively attempted to do in the above, back to Schmitt’s state theory and the idea of crisis sovereignty.
CONCLUSION AND PERSPECTIVES

Sovereignty is in crisis: It is crisis sovereignty. It is in crisis insofar as its proper locus is the crisis temporality of modernity. Sovereignty only ever becomes a topic of interest when there is some perceived crisis to it or, conversely, when a crisis seems to necessitate a sovereign response. Normality belongs to the sphere of governance, where sovereignty fades and can come to appear obsolete. However, whenever the illusion of a normal course of history is broken, sovereignty resurfaces as the constituent power of the state and the promise of order in chaos. Together, sovereignty and crisis form a politico-metaphysical nexus of modern state theory as the pivotal center of social organization.

To ask about the relationship between sovereignty and crisis is also to inquire into sovereignty as a form of power. I have argued that sovereignty is neither purely a matter of normative legitimacy, as in the theories of constituent power, nor purely a matter of force, as in the theories of law-positing violence, but rather places itself in the schism between them as a mediator of the ideological and political aspects of law. Sovereign power is not the same as state violence, yet it cannot exist in separation from it. The notion of a sovereign
power to constitute the state as the order of law responds to the problem of
the realization of law: How can the normativity of law manifest itself in social
reality by legitimate means? Since law can only be upheld by recourse to vio-
lence, and since prelegal violence is contrary to the normativity of law, the
constituent moment of sovereign power (which is not momentary in a temporal
sense but always latently present) must legitimize the use of state violence to
institute law by reference to a constant outside of and beyond politics: the crisis
as a metaphysical fact of modern history.

Against the secularization theorists’ critique of Enlightenment philosophy
of history as utopian eschatology, we can trace an intellectual historical trajec-
tory of conservative crisis theory. These conservative, statist,
counterrevolutionary thinkers created a narrative of modernity as crisis tem-
porality, establishing this structure of historical time as the necessary context
for the formation of the state. The crisis narrative depicted revolutionary forces
as the driver of the modern crisis and positioned against them a centralized,
personalized state. In this narrative, the state is thus not only a political force
but a force of history, countering modernity’s innate tendency toward self-de-
struction. Surely, this vision of crisis modernity was not one uniform theory
but took different shapes and varied among the thinkers considered here.
Whereas Donoso Cortés and Burckhardt saw the modern crisis as inevitably
progressing toward an imminent end of civilization, Schmitt in the Weimar
years conceived of the sovereign decision in the state of exception as a coun-
terforce capable of turning the crisis against itself, continuously transforming
chaos into order. In this, he drew on Hobbes’s notion of the state of nature as
the foundation of the commonwealth, yet he transfigured it into the normative
vacuum of the state of exception, which was fitting for the crisis of his own
time. The novelty of Schmitt’s contribution lies in this reconstitution of crisis
sovereignty as the legal order’s ex nihilo point of creation.

Schmitt defined sovereignty as the power to decide on the state of excep-
tion. Yet, the defining term, ‘state of exception’, is ambiguous, meaning both
a situation of crisis and the legal means of the state to overcome it. These two
meanings of the term are in direct opposition to each other, making Schmitt’s
definition of sovereignty a dialectical concept. I have argued that Schmitt’s
theory, deliberately or not, takes its starting point in the recognition of the
notion of crisis as the metaphysical foundation for sovereignty yet, in a per-
formative move to consolidate the power of the sovereign institution, that it
represses this original source of legitimacy and shifts the weight toward the
legal formalism of the state of exception in the sense of emergency measure.
By relegating the question of the crisis structure of time to the sphere of meta-
physics, Schmitt seeks to isolate the problem and banish it from state theory,
yet he inadvertently makes crisis metaphysics the necessary precondition of
his theory of sovereignty. Insofar as its core aim is to repress crisis, and insofar
as it instead places crisis at the center of the state, sovereignty is a failed con-
cept. This failure, however, is not a logical flaw of its theory, nor does it
dissolve its importance as an institution; rather, the recognition of its non-self-
identity should lead to a dialectical analysis of its functionality as the power to
constitute law.

Thus, we may find in Schmitt the key to unfolding sovereignty as crisis
sovereignty. Yet, his attempt at repressing the notion of crisis within his own
definition has also exercised great influence in distorting crisis sovereignty in
later theory on the state of exception. This is most notably the case in Agam-
ben and the literature following his lead, where sovereignty is conceived as a
‘sovereign logic’ based in the absolute power over the state of exception as
the suspension of law. Sovereignty in this conception is independent of any-
thing outside its own logic, creating its own exception from within and, in an
inverted move of jurisprudence transforming into philosophy of history, itself
becoming the driving force of modern crisis time. Sovereignty thus becomes
omnipotent, insofar as any subversion to it is immediately reintegrated into it
as merely another expression of the sovereign logic itself. The fact that the
condition of possibility of this line of interpretation is to be found in Schmitt’s
sovereigntist distortion of sovereignty is perhaps best illustrated by Ernst For-
sthoff’s definition of the state of exception: As recounted, he defines it
simultaneously as both a ‘situation’ and as a ‘legal institution’ without noting
the contradiction between these two interpretations, let alone explaining their
relation. This is a model example of how the state of exception is often in-
voked without clarification of its use as either a historical or juridical notion;
and this ambiguity not only impedes our understanding of sovereignty as a form of power, its potencies and impotencies – it also, most importantly, constitutes a core element of the functionality of sovereignty itself and thus contributes to its consolidation. This is the dialectics of crisis sovereignty: Our miscomprehension of its concept is an integral and constitutive element of its institution.

Sovereignty may be a fiction in the sense that it is a juridical construct aimed at the realization of law’s normativity in social reality rather than any phenomenon already existing in social reality independently of its conceptualization. But it is not an illusion which we could dissolve by revealing it as if pointing to the emperor’s lack of clothes. Disregarding the role of sovereignty in the formation of the state amounts only to ignoring the problem of mediation between normativity and enforcement, which is law’s proper form. However, if we understand how sovereignty functions, not as violence but as the legitimization of legal violence, then we may gain a critical distance to the source of its legitimacy, we may question the metaphysical foundation for this source, and we may challenge sovereignty as a basis of social organization. Sovereignty, I have argued, legitimizes the violence of the state by positing itself as the historico-philosophical counterforce to the crisis temporality of modernity. It promises to continually transform the extra-juridical force of crisis into the juridical force of the state of exception internal to the state itself. Crisis is thus the source of sovereign power but also a constant latent threat to this power since the sovereign state is always in danger of finding itself less than sovereign in the face of crisis.

In the above, I have left aside any in-depth historico-philosophical discussion of the role of crisis in modernity and any historical or philosophical critique of modern crisis theory, its sources and development, in order to focus on the way the notion of crisis informs the concept of sovereignty. I have, in other words, focused on sovereignty rather than crisis. The discussion in the final chapter on Benjamin’s double critique of sovereignty and modernity, however, opens up the perspective of a critical engagement with crisis theories of modernity, their sociohistorical context, and their political investment. Drawing on historical-materialist accounts of the transformation of time
perception during the transitional and consolidating phases of capitalism, I have hinted that ‘modernity’ may be misleading as a periodizing mark of the global historical era which begins with the early steps toward capitalist production and a world market. The critique of the concept of modernity as a Eurocentric, exclusive-universalist framework of discrimination between the modern and the pre-modern, the primitive and the civilized in both diachronic and synchronic terms, is not new.¹ Yet, an investigation of how the transformation of time under capital is ontologized and reinscribed in the narrative of modernity as crisis temporality in a dialectical interaction with the centralization of political action in the notion of the sovereign state may serve to further our understanding of the consequences of the sovereignty/crisis nexus to social organization and the possibilities for reorganization. Such a study could benefit from the findings of the present thesis, but it would also have to venture beyond them to analyze the socio-economic historical context for the emergence of the modern crisis narrative.

This thesis contents itself with having developed the concept of crisis sovereignty through a critical engagement with Schmitt’s theory of sovereignty as well as the tradition from which it emerges. In so doing, it has taken a first preliminary step toward a critical theory of sovereign power as based in the historico-philosophical notion of crisis sovereignty, yet it does not presume to have developed such a theory in full. The limited scope of its intellectual-historical material sets the limits for the scope of its analysis. By approaching the topic conceptually through an immanent critique of Schmitt, I have unfolded my core concept from within a specific philosophical tradition. My aim, however, has not been to provide a complete analysis of contemporary sovereignty and its history but merely to outline a conceptual framework for such an analysis. With the concept of crisis sovereignty, I hope to have contributed to the demystification of sovereign power and thus paved the way for its critique.

¹ Bhambra 2007; Chakrabarty 2007; Davis 2008.
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