

Benjamin's State of Exception: An Analysis of the 'Critique of Violence'
with Reference to Carl Schmitt

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Abstract

The aim of this dissertation is to explore the connection between Carl Schmitt, popularly recognized as ‘Crown Jurist of the Third Reich’, and Walter Benjamin’s ‘Critique of Violence’. The dissertation responds, in part, to a series of secondary commentaries that read one thinker as an influence on the other. In arguing for the necessarily implicit dialogue between these two thinkers, the dissertation brings into question the emphasis, in these secondary commentaries, on Benjamin’s reference to Schmitt in *The Origin of German Tragic Drama*. The introduction establishes the obscure beginnings of Benjamin’s ‘Critique of Violence’, staging the problem, and the method, for reading the essay in the context of Benjamin’s understanding of the specifications of pure violence and the significance of Schmitt to these constructs. Part one (chapters one and two) examines Benjamin’s interest in the moment of Schmitt’s conversion from Catholic conservative principles to Nazism. Chapter one sets the framework for reading Benjamin’s refusal to engage with the terms of Schmitt’s discourse, and offers detailed expositions of Schmitt’s principle of sovereignty. Chapter two seeks to establish the difficulty in asserting and substantiating a conceptual difference between Schmitt’s concept of sovereignty, and Benjamin’s critique of that concept. Part two (chapters three and four) extends the incommensurability of Benjamin’s position with respect to Schmitt. Its starting point is a conceptualisation of pure violence as that which exists from within the legal order, and refuses conscious willing. This analysis works, firstly, against the interpretative direction set by Derrida in his essay on the ‘Force of Law’, which reads pure violence as open to a ‘reversal’ and appropriation by the anti-revolutionary cause. Against Derrida’s claim that Benjamin separates pure violence from the legal order, I argue that Benjamin’s account of pure means brings to light a series of contradictions within critique as a method of legal analysis. Secondly, this analysis seeks to articulate the general underestimation in the secondary commentaries informed by Derrida of the strategic irony Benjamin deploys in his determination of the conditions of reading pure violence. Chapter three clarifies how, for Benjamin, the problem of the destruction and liberation of any given form of representation, dramatic or otherwise, is a political problem. The radical potential of Benjamin’s work is argued in terms of his situation of his account of the deficiencies of the legal order within the same sphere of legal ends against which he seeks to deploy the

revolutionary violence of a pure means; and in his location of pure means within the sphere of legal violence, so that it is at once the force that binds the authority of the law and the singular entity that unbinds that authority. This potential is exemplified through Benjamin's analysis of divine and sovereign violence, in which I argue that guilt is neither determined exclusively by, nor belongs exclusively to, Schmitt's concept of the juridical. Chapter four considers the emergence of 'pure language' and the proletarian general strike as states of exception. Here, an analysis of Sorel's attempt to map the 'creative consciousness' of the general strike serves two purposes: it lends context to a shared refusal on the part of both Benjamin and Schmitt to posit catharsis as the driving force of general strike, and it marks the point at which Benjamin takes his departure from Schmitt. Through the detailed analyses of the points of common reference between Benjamin and Schmitt, I develop and substantiate a stronger and richer account of the 'Critique of Violence' as a space of future potential within which an explicit dialogue between disparate schools of thought might be able to unfold.

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Declaration

I declare that I have composed this dissertation, that it is my own, and that it has not been submitted for any other degree or professional qualification.

Rachel M. Van de Weg

References and Abbreviations

- SW Walter Benjamin, *Selected Writings*, vols 1-3, ed. by Marcus Bullock and Michael W. Jennings, trans. by Edmund Jephcott (Cambridge, MA and London: Harvard University Press, 1996).
- GS Walter Benjamin, *Gesammelte Schriften*, vols 1-8, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp Verlag, 1972-).

Introduction

1. Origins of the Critique

In the Second Essay of the *Genealogy of Morals*, Nietzsche surmises the effects of a juridical system that belongs not to some discrete part of philosophy, but to the monstrous energy that constitutes the universe – a swarming mass of forces that are either active or reactive. These active and reactive metaphysical forces do not stand in simple opposition to each other. The relationship they share is dynamic and reciprocal – such that each force comes to define itself through the other.¹ The reactive forces find their correlate in the ascetic ideal that is the focus of Nietzsche's critique insofar as it lends itself to a process of 'adaptation', a 'second-order activity' that responds to external circumstances as part of a survival strategy.² The ascetic ideal cancels out the 'burgeoning' and 'flourishing' state of active asceticism that actually 'precedes' adaptation.³ It is the inverse of the active force, and requires, quite literally, the hollowing out of an interior space, or to *re-act*. Nietzsche, however, seeks to prioritize the active ascetic and its 'spontaneous, attacking, overcoming, restructuring and reshaping forces'.⁴ The juridical system is the focus of Nietzsche's attention insofar as it provides a channel for the life-affirming, active forces, but also, and paradoxically, accommodates the equally powerful forces of reactive asceticism:

One is forced to admit something even more disturbing: that, from the highest biological point of view, legal conditions may be nothing more than *exceptional states of emergency*, partial restrictions which the will to life in its quest for power provisionally imposes on itself in order to serve its overall goal: the creation of *larger* units of power. A state of law conceived as sovereign and general, not as a means in the struggle between power-complexes, but as a means against struggle itself, in the manner of Dühring's communist cliché according to which each will must recognize every other will as equal, would be a principle *hostile to life*, would represent the destruction and dissolution of man, an attack on the future of man, a sign of exhaustion, a secret path towards nothingness.⁵

That Nietzsche deploys the forces of active and reactive asceticism in order to shatter the conventions of objective representation is clear. Given that Nietzsche's categories are never static, however, it follows that the same morality capable of inspiring the life-giving, burgeoning, flourishing, active forces of the will is also responsible for the rise in power and influence of the juridical system. The juridical

system belongs to a paradigm so powerful, in turn, that it retains the right to bestow arbitrary benevolence, grace, or a state of exception beyond the law upon its subjects. Endemic to the juridical system, moreover, are the subtle workings of the concept of equal rights. As the obscurantist tool of the propertied and powerful, the concept of equal rights provides sovereignty with a means by which to anaesthetize its subjects. To refuse to collaborate with the concept of equal opportunity, as does Nietzsche, however, is to neglect the question of how to critique the ascetic ideal without acceding to nihilism.

The reactive forces of the ascetic ideal are manifested in the state of exception, and the state of exception is predicated upon the rule of law. Each of these phenomena is pivotal for the operation of the juridical system. This system is at once normative and repressive, and as such symptomatic of the reactive forces against which Nietzsche launches his polemic. The juridical system also establishes in order to *act* against destructive forces, however. Destruction, then, does not issue nakedly from these reactive forces: the juridical system brings these hostile forces into being from the moment it posits the legal code. In doing so, the juridical system circumvents the idea that forces hostile to life come into being from the moment they incur damage. Perhaps this is how Nietzsche comes to state, in the above cited passage, that the legal order is the articulation of ‘partial restrictions’ that ‘the will to life in its quest for power provisionally imposes on itself in order to serve its overall goal: the creation of *larger* units of power’. Nothing in Nietzsche escapes the paradox of the equivocal, and even the creation of power in this example is the product of both an active and a reactive asceticism. Herein lies the problematic of Nietzsche’s *Genealogy*: in its critique of the ascetic ideal, and of the representation of objective truth by the juridical, it encapsulates the struggle for social transformation. In doing so, however, the *Genealogy* depends on a state of becoming, of flux, and of impermanence that cannot be sustained. The juridical constitutes a heightened paradox, in Nietzsche, whereby it both resists and participates in the movement to narrow down, to intensify, and to exacerbate forces hostile to the will to life. Rather than subordinate the will to the rule of law, Nietzsche appeals to the conditions of possibility for an opening to a future that defies conceptual determination, and in which social struggle will not be suppressed.

The conundrum with which Nietzsche is faced, and with respect to which Nietzsche demonstrates great awareness, is the fact that the will, irrespective of external constraints, nevertheless and still actively affirms its own oppression. This is the seductive enigma through which the ascetic ideal operates, and that I argue, Walter Benjamin's notion of pure violence holds the potential to destabilise. Whence my concern, in this dissertation, with Benjamin's 1921 'Critique of Violence', an essay that received some critical attention on its initial publication, but that, initially intended as part of a book on *Politics*,⁶ was never completed. Deemed too long, too difficult, and too obscure to merit attention at its inception, the 'Critique of Violence' nevertheless stands as the main surviving fragment of the *Politics* project.⁷ A spectrum of secondary literature has documented the essay's emergence: it was originally commissioned for the journal *Die Weißen Blätter*, whose editor Emil Lederer deemed it too long and difficult to merit further consideration.⁸ And although Benjamin expressed to Scholem that he hoped to have captured within it the essential of violence, its first appearance in the journal *Archiv Für Sozialwissenschaft* looked, according to Scholem's recollection, 'quite out of place'.⁹ Ultimately, Benjamin abandoned the larger project to which the essay belonged. Yet the imperative to read the 'Critique of Violence' is still significant in light of the historical context from which it emerged. Benjamin wrote the essay in the wake of the Bolshevik Revolution, the short-lived 1919 Munich Soviet Republic, and against the background of a crumbling German empire, and the Ruhr Uprising. Increasing debate over the 'Rule of Law' and matters of sovereignty today has regenerated the imperative to read the 'Critique of Violence'.

Having experienced a period of long neglect, the essay underwent a renaissance of sorts in the 1960s, when 'the normative foundations and legitimacy of German liberal democracy were radically shaken by an upsurge of left-wing violence'.¹⁰ The reception of the essay within the spectrum of studies at that time varied from the total exclusion of Benjamin by Hannah Arendt in her 1969 treatise *On Violence* to an interpretation of Benjamin as 'theologian of the revolution' by Herbert Marcuse and Oskar Negt.¹¹ Negt understood Benjamin's Critique to advocate the use of counter-violence – itself the means by which Benjamin, on Negt's terms, unmasked 'the dissimulation of liberal democratic systems, which, while holding that violence ought not to be used as a means in politics, in reality

sustained structural or institutional violence'.¹² Jürgen Habermas's 1972 position in 'Walter Benjamin: Consciousness-Raising or Rescuing Critique', sought to expose the 'covert connection between Benjamin's theory of violence and the politics of surrealism', and similarly placed Benjamin 'squarely in the camp of conservative revolutionaries'.¹³ Habermas's later 1987 review of Schmitt in translation went so far as to warn of Benjamin's indebtedness, in the Critique, to Schmitt's theory of sovereignty and the aesthetics of violence.¹⁴ Of particular importance is the slide that takes place in Habermas's thought from his 1970s interpretation of Benjamin's politics of pure means as having put an end to all purposive rationality and having effectively countered the potential for political praxis, to his later and more extreme charge that Benjamin was complicit in 'the violent destruction of the normative as such',¹⁵ and had in fact crossed over to the side of Schmitt's conservative anti-liberalism.

2. Derrida's response to Benjamin's 'Critique of Violence'

Derrida's 1991 essay on the 'Force of Law' opened the forum for debate on Benjamin's essay once more, but, as I argue in the forthcoming pages, has perpetuated, to some extent, this misinterpretation of Benjamin's relationship to Schmitt.¹⁶ From another perspective, however, Derrida has been successful in bringing the 'Critique of Violence' into the lively arena of debates on sovereignty. It is in an effort to redefine the specifications of pure violence as they appear in the 'Critique of Violence' – pure language and the proletarian general strike – in the context of sovereignty, that Derrida can be credited for drawing attention to Benjamin's relationship to Carl Schmitt. A legal scholar popularly recognized as 'Crown Jurist of the Third Reich', Schmitt was tried at Nuremberg, and received critical exposure in leftist publications for having given Hitler an understanding of the Weimar Constitution that enabled the National Socialist rise to power.¹⁷ I will argue over the course of this dissertation, however, that questions arising in response to Benjamin's Critique are poorly posed to the extent that they engage in an uncritical appropriation of Derrida's framework for reading the essay. There are two particularly significant moments in Derrida's reading of Benjamin to which I draw attention. The first moment sees Derrida refer to the law as being susceptible to critique on account of its being governed by procedures of critical analysis. To isolate pure violence from the law, Derrida states, would also align its force with the

force of critique. It would follow, according to the precepts of Derrida's reading, that given their separation from the sphere of legal violence, both pure violence and critique would contain the revolutionary potential to transform the realm from which law or right actually evolves. The problem with Derrida's reading is in its emphasis on critique as a critical separation and demarcation. Derrida notes that the decisive and cutting force of *Kritik* derives etymologically from *krinein* (to cut, to separate), and is echoed in the essay's preoccupation with the language of decision (*Entscheidung*).¹⁸ This distinction between the language of decision, critical separation and demarcation, and the discourse of a pure violence, is the point, I argue, that has seeped into the framework of secondary interpretations of Benjamin.

The interpretative direction set by Derrida is reductive, I argue, insofar as it sets the parameters of its inquiry around an investigation into whether Benjamin has succeeded or failed in his supposed attempt to separate pure violence from the legal sphere. This brings me to the second point of my analysis, in which I draw attention to Derrida's reading of pure violence as that which is open to 'reversal', and to appropriation by the anti-revolutionary cause. The interpretative direction set by Derrida is not incorrect insofar as it aligns the spectral presence of pure violence with the mythical structure of the law. Its effects, however, are more problematic insofar as they emerge from a false separation between pure violence and the mythical-legal sphere. There is, in this separation, an underestimation of the *strategic irony* Benjamin deploys in his determination of the conditions of reading pure violence: the 'Critique of Violence' may appear, on an initial reading, to show Benjamin engaged in the act of separating pure violence from the legal sphere; it is the futility of that separation, I argue, that Benjamin is attempting to demonstrate. My own argument, however, does not only seek to intervene in existing debates surrounding Benjamin's relationship to Schmitt with respect to the 'Critique of Violence'. Among the subsidiary aims of my argument stands the re-conceptualisation of pure violence. Generally understood as a 'violence without violence', as a 'bloodless violence' or as a violence that refuses mediacy – hence an *immediate* violence – pure violence has been written into an increasingly abstract spectrum of debate. These debates have come to decontextualise pure violence, such that it has begun to diminish in significance. Ripped from its context, and refined out of existence, the term can find very little purchase.

Against the background of a pure violence no longer able to communicate its agenda, my own analysis responds to Derrida's efforts to separate pure violence from the legal sphere. I have a series of reasons for doubting Derrida's reading of Benjamin in conjunction with Schmitt, the first of which pertains to the fact that Derrida explicitly writes his own essay in response to questions about the Final Solution, and from within the context of the question of the 'Judaean-German "psyche"'.¹⁹ Derrida begins his discussion of Benjamin's essay by discussing its 'exemplary' status in relation to the questioning of law. The notion of a 'Judaean-German "psyche"' locates this general question about the political status of deconstructive reading within a very specific set of politico-historical matrices that culminate in the philosophical question of the conditions of possibility of the Final Solution. Derrida writes that he understands his hypothesis of a 'Judaean-German "psyche"' to mean: 'the logic of certain phenomena of a troubling specularly ("psyche" also meaning a sort of mirror in French), a specularly that was itself reflected in some of the great German Jewish thinkers and writers of this century...'.²⁰ Derrida further states: 'A serious reflection on Nazism, and on the "final solution", cannot avoid a courageous, interminable and polyhedral analysis of the history and structure of this Judaean-German "psyche"'.²¹ Derrida's reading of Benjamin then consists of two distinct but related tasks regarding how deconstruction can concern itself with justice, and how this possibility can be illustrated through the general hypothesis of the 'Judaean-German psyche'.²² My point here is that Derrida's reading of pure violence falls prey to the broader polemic of his essay on the 'Force of Law', which is concerned with questions that exceed the limits of my analysis of Benjamin.²³

There is, nevertheless, substantial reason for reference to Derrida in consideration of Benjamin's 'Critique of Violence'. Central to Derrida's concern with justice and the political is the notion of *responsibility*, and the negotiation of responsibility through political action.²⁴ Responsibility provides the fulcrum for Derrida's investigation into the relationship between Benjamin and Schmitt. The reading of Benjamin's 'Critique of Violence' emerged after all, Derrida notes, along with unprecedented changes in modes of communication – which at that time some thought would put into question the very possibility of the parliamentary model of discussion.²⁵ Responsibility is also, however, implicit in Derrida's qualifications of

the translation of Benjamin's essay title, conventionally rendered as 'Critique of Violence' but also, as the German *Zur Kritik der Gewalt* denotes, considerate of the movement 'Toward a Critique', which signals the hope of a convergence upon something like a simplex of violence, even in the midst of what, discursively and logically, can lead only to complications of violence.²⁶ But the critique of *Gewalt* does not only mean the critique of 'violence': it should also be understood more loosely as a critique of 'force', or even of 'sovereignty'.²⁷ The controversy surrounding the translation of Benjamin's title is apt considering the extent to which law is rather summarily, by Benjamin and by Derrida's accounts, connected with the concept of violence. It follows that the use of *Recht* in Benjamin's essay is assumed by many to be equivalent to law, while since Hegel the meaning of *Recht* 'has involved reference to institutions and practices which create the environment for law, and not simply to law itself'.²⁸

3. Lending context to pure violence

There is one facet of Derrida's reading of Benjamin that I have not yet articulated. This relates to Derrida's appropriation of the logic of Schmitt's discourse on sovereignty in his interpretation of Benjamin. The extent to which Derrida's 'Force of Law' has eclipsed secondary commentaries on the 'Critique of Violence' suggests, by extension, the inevitable difficulty that will materialise in any effort to ascertain the difference between Benjamin and Schmitt. This difficulty is brought into focus by way of a series of secondary commentaries that attribute Schmitt's influence to Benjamin's *Origin*. The latter tendency is flawed on two counts, the first of which seeks to locate one thinker as derivative of the other. In order to set the framework for reading the relationship between Benjamin and Schmitt, I argue against the notion that a dialogue could be shared between Benjamin and Schmitt. This is largely because the very notion of a dialogue implies commensurability between Benjamin and Schmitt; it is something that the participants in the dialogue share with respect to the meanings of the terms used in the dialogue. The fact that there is a lack of common space shared between Benjamin and Schmitt, I argue, actually prevents the occurrence of a more concrete dialogue. Evidence of a more concrete dialogue would presume some consensus between the two on the constitution of Schmitt's principles, so that the question would no longer be one of dialogue, but rather one of each party defining the function and operative terms of his dialogue to the other.

There is, of course, no question that Schmitt's language of decisionism (*Entscheidung*) and the state of exception (*Ausnahmezustand*) traverses Benjamin's writings from the 'Critique of Violence' through the *Origin*. That language does not, however, necessarily signify any affinity between Benjamin and Schmitt. That Benjamin picks up and discusses a selection of Schmitt's principles does not suggest consensus between the two on the constitution of those principles. It rather suggests that there is a division within Benjamin himself of which he is not entirely conscious; that he is both drawn to and resistant to Schmitt's principle of sovereignty. The submission of Benjamin to Schmitt or of Schmitt to Benjamin would not only diminish the profound intensity of their discussion, but would also force the collapse of their respective identities. Benjamin's essay, I argue, flirts with the same concepts that are evident in Schmitt's text, but in refusing to refer directly to that text, marks a position of incommensurability and difference with respect to Schmitt.

This brings me to my second point in response to the tendency, in the secondary commentaries in question, to attribute the influence of Schmitt exclusively to Benjamin's *Origin*. These commentaries have enriched the field of studying Benjamin in relation to Schmitt enormously to the extent that they have successfully pointed to the friction between Benjamin and Schmitt, as well as the difficulty in substantiating the terms of that friction. Foremost among the readings is an identification of the extent to which the terms and conditions of Schmitt's discourse on sovereignty inform the very structure of Benjamin's critique of sovereignty. Insofar as Schmitt's language can be shown to filter into the language of, for example, Benjamin's Prologue to the *Origin*, it forecloses the space of future potential within which a more explicit dialogue between disparate schools of thought might be able to unfold.

There are several interpretative veins, then, against which I seek to work in my argument for reading the 'Critique of Violence' – not least of which addresses the overemphasis in the secondary commentaries of Benjamin's citation of Schmitt in the *Origin* – but that also seeks to identify the difficulty with which these secondary commentaries are faced in maintaining a distinction between Benjamin and Schmitt, and necessarily, in refusing to succumb to the logic of Derrida's reading of Benjamin. Given that Schmitt's concept of the extreme case informs Benjamin's concept of the unique-extreme (*Einmalig-Extreme*) – itself the tool through which Benjamin comes

to evaluate the conventions of German Tragic Drama – the question arises as to how exactly, or even if, Benjamin is able to engage in a critique of Schmitt's concept of sovereignty. Would Benjamin's critique of sovereignty, to the extent that it draws its force from the logic of Schmitt's discourse on sovereignty, not simply capitulate to that logic? In order to assess the difficulty of asserting and maintaining a conceptual distinction between Benjamin and Schmitt, Benjamin's concept of pure violence comes more closely into focus. Of course, to speak of pure violence as a concept immediately defeats Benjamin's proposal of its singularity, and of its refusal to submit to the limitations of conceptualisation. The question then arises as to whether pure violence, as that which exists from *within* the legal order and refuses conscious willing, is not just continuous with Schmitt's affirmation of order – where the sovereign declaration of the state of exception wills a return to normalcy, and to order.

The sense in which I would like to understand pure violence aims to override this concern. Part of the aim of this dissertation, then, is to posit pure violence as that which is *essential to the structure of violence*, and by extension, essential to a concept of sovereignty that supports itself through law-positing and law-preserving forms of violence. Pure violence, then, is not a purification of violence, and neither is it a specific type of violence. It appears to be a completely arbitrary term upon which Benjamin draws in order to conceptualise the essence of what feeds and destroys sovereignty. Insofar as pure violence refuses to be contained by sovereignty, however, it attests to an economy of difference. It resists power, but also refers to the self-differentiation, or auto-differentiation of power. It is not the coming-to-presence of a possibility, *per se*, but it is as a result of that coming-to-presence that it causes a leap to effect change – socially or politically. In this way, pure violence articulates a resistance to order. Stated more succinctly, pure violence defers power from ever achieving itself. Pure violence, it follows, is dynamic, and manifests itself in the human interaction with structures of power.²⁹ It is thought in Benjamin's essay as a process, and therefore constitutes the naming of an on-going event. Pure violence, then, provides Benjamin with a way to articulate the process that takes place at the structure of power.

If the internal logic of Benjamin's concept of pure violence is difficult to grasp, it is largely because the general system to which it belongs requires

clarification. A further aim of this dissertation, then, is to re-construct the intellectual milieu from which pure violence as a concept emerged. In this sense, this dissertation is merely preparatory: it hopes to function as a prolegomena for the 'Critique of Violence', which is to say that a complete a reading of pure violence cannot be made available until this dissertation has successfully given an indication of the tradition to which pure violence belongs. As an early step in the direction of rendering the concept of pure violence less arbitrary than it might initially appear, an elaboration of its relationship to Schmitt is considered. From this perspective, it will be established that pure violence is the outcome of two conflicting positions: on the one hand, it concedes the determination of the idiom through which it is expressed to Schmitt; on the other, it opens the field of power or sovereignty to debate.

This issue of the idiom through which pure violence is expressed is only complicated further on consideration of the extent to which it requires some decision-making force in order to experience a coming-to-presence. Part of the challenge in establishing the context from which pure violence emerges, then, will involve distinguishing Schmitt's concept of the decision, which is authoritarian in principle, and the decision in Benjamin. Unlike the decision in Schmitt, the factors contributing to the decision in Benjamin are implicit. There must be some formal consensus reached in order to call a strike, yet at the same time, the decision in Benjamin is intimately connected to the exercise of the proletarian general strike, which is conceived as transpersonal, and as collective. In order to establish more fully the difference between the sovereign decision as it emerges in Schmitt, and the sovereign decision as it relates to the pure violence, then, Benjamin's connection to Sorel comes into question. The language of pure violence can only begin to be understood on the clarification of its inextricable connection to Sorel. In order to grasp its constituents, its dynamics, and its political position with respect to Schmitt, an account of Benjamin's position with respect to Sorel will ultimately prove vital.

There are several points to consider before the subject of Sorel can be approached. If there is a tangible point through which pure violence can be evidenced – and I write 'tangible' here in the awareness that pure violence is already resisting its own conceptualisation – it emerges in debates responding to the advent of the Weimar Republic. There is, in Schmitt's conceptualisation of the principle of sovereignty, in his interpretation of Article 48 of the Weimar Constitution, and in his

manipulation of the rule of law, an imperative to accept the constitutional terms of the Republic, and to protect those constitutional terms. Schmitt's argument for granting the sovereign extensive latitude for action in times of crisis, I will maintain, constitutes a broader reaction to the dormant yet future potential of pure violence. Stated differently, Schmitt conceives the principle of sovereignty around the inevitable outbreak of pure violence, but in the name of order. Order, according to the hierarchical ranking of Schmitt's thought, should be prioritized at all costs in the struggle to suppress and confine any possibility for chaos. The irony is that in Schmitt's manipulation of the principle of sovereignty, the heightened paradox of pure violence is given to analysis: pure violence, as it has featured here, shapes Schmitt's response to the emergence and maintenance of an unstable Weimar Republic. Equally, however, pure violence outstrips any determination of the political on the dichotomous terms of chaos and order evident in Schmitt: the more control of the state is concentrated in the hands of a minority elite, or even a dictator, the greater the threat that pure violence poses. This is the obscure trick of pure violence upon which Schmitt's principle of sovereignty sheds light.

4. A framework for reading Benjamin in conjunction with Schmitt

The first chapter of the dissertation serves several purposes. The main current of the chapter seeks to establish the framework for reading Benjamin in conjunction with Schmitt. There are several branches of critical inquiry that feed into this imperative. The first relates to the general historical trajectory in which Benjamin's conjunction with Schmitt is situated. The 1987 revival of Schmitt in *Telos* provides a significant resource for understanding the fraught relationship between Schmitt, stripped, after trial at Nuremberg, of the right to work in the university, and Marxist thought. This intellectual association opens the reader of Benjamin's 'Critique of Violence' to the understanding of a general refusal, on the part of Benjamin, to relinquish to Schmitt the right to determine the idiom in which the political is expressed. Yet fragments of Benjamin's greater corpus confirm that Schmitt's method of political analysis informs Benjamin's art-theoretical considerations. This mixed response on Benjamin's part to Schmitt – Benjamin adopts Schmitt's framework of political analysis, but at the same time expresses a position of incommensurability with respect to Schmitt – demands an inquiry into whether or not Schmitt's method is

sustainable for Benjamin's analysis of art, and first among the points of consideration in this inquiry is an analysis of what exactly, for Schmitt, the political entails.

Schmitt's 1922 *Political Theology* and 1932 *Concept of the Political* introduce the political as that which refers to the opening of a space in which any given politics has the potential to unfold, but which also paradoxically determines the condition of possibility for a particular politics, or system of governance. There are two major tenets through which Schmitt comes to defend the political: the critique of liberalism, and the critique of parliamentary democracy. Liberalism, Schmitt contends, constitutes nothing more than a simulation of the political, and its effects are such that it obscures the actual politics with which it is aligned. The closing down and false determination of the political by liberalism, however, bears strangely upon Schmitt's own project to retrieve a sense of the political. The parliamentary emphasis on discussion is all part of a process of the secularisation and neutralisation of the political against which Schmitt works. Schmitt's critiques of liberalism and parliamentary democracy encapsulate the political as an opening of a space in which any particular politics can unfold, but only insofar as that politics accommodates Schmitt's own agenda – that is, the restoration of political order, and the assertion of an authoritarian moral decisionism. In other words, Schmitt's re-elaboration of the political falls prey to the very objects of critique through which it defines itself: like liberalism, and parliamentary discussion, Schmitt's concept of the political renders the political a transcendental question, and outstrips any particular politics.

Subsequent to the analysis of these contradictions within Schmitt's concept of the political, I pose a series of questions with respect to the conjunction between Benjamin and Schmitt. Has, for example, the intellectual association between Benjamin and Schmitt been overemphasised in order to draw Benjamin into the political arena? Has Benjamin been incorrectly accused of participating in the Weimar Syndrome – the effects of which can be traced to anti-parliamentary, and anti-democratic, revolution? Would it be correct to assert that Benjamin's 'Critique of Violence' is the advocate of Schmitt's conservative radicalism? In response to these questions, I consider the historical stakes involved in Schmitt's effort to restructure the concept of sovereignty, using, as the organising principle of my argument, Schmitt's dictum: 'sovereign is he who decides on the state of exception'. I also, however, elaborate Schmitt's interpretations of the rule of law and of the state

of exception in order to clarify the technique through which Schmitt comes to lend his concept of sovereignty the status of an objective analysis. Key here is Schmitt's transference of the liberal formalisation of the doctrine of rule of law, where the will of the people as expressed through their representatives gives the legislature the sovereign right to modify laws and the law-making process, to the executive. No less significant is Schmitt's interpretation of the state of exception. The state of exception structures sovereignty – thus Schmitt's statement that sovereignty depends 'on' a state of exception – and sovereignty in turn occupies a unique position *beyond the law*, to impose an order that, because it is political, could become legal. From this position, the sovereign decision conflates two separate moments: on the one hand, the moment of normalcy in which a body decides that an exceptional situation exists; on the other, the moment of exception in which the person who is appointed by this body – that is, the sovereign himself or herself – decides what to do in the concrete particulars of the emergency.

Schmitt's imperative of restoring genuine political order – but his refusal to impose task-related or temporal limits to sovereign action – implies that while the sovereign is free to do whatever is necessary in the particular exceptional moment to address a crisis that is identified by another institution and that may never have been foreseen or codified in law, he is under no obligation to return the government to that law. In other words, Schmitt's argument for suspending individual parts of the constitution in a time of emergency or exception, and for allowing the president of the Reichstag extensive latitude for action, not only exempts the constitution from the technical compromise upon which the parliamentary democracy and liberalism are based, but also protects the constitution from revisions. My interest, in this chapter, is in showing that Benjamin recognises alongside Schmitt that the moment of the political is proper to both law and the state, that there can be no law without order, and no order without politics. Underlying this interest, however, is the imperative to demonstrate that the similarity between the two thinkers in their treatment of the state of exception ends at this point. The disparities in their thought emerge through an exposition of Schmitt's collusion with Hitler's judicial programmes. Schmitt's interpretation of Article 48 of the Weimar Constitution gives access, here, to debates surrounding the discrepancy between Schmitt's political prescriptions and the forms of political domination that he actually endorsed. Particular attention is directed to

Schmitt's conversion of the state of exception from that which takes place outside the rule of law, to an interpretation of Article 48 whereby the state of exception actually becomes part of the rule of law.

5. An outline of Benjamin's concept of the state of exception

The second chapter extends the analysis of the conflict between Benjamin and Schmitt's respective interpretations of the state of exception. Where Schmitt determines the recourse to the political in terms of personal will, and understands the space of the political to be structured on a principle of action, Benjamin rejects Schmitt's claim of the extent to which any legal order, sovereign or otherwise, could be positioned outside the law and so ultimately transform the very law upon which it depended. Sovereignty nevertheless proves a necessary condition, for Benjamin, for the widening of the field of social struggle. In this sense, Benjamin concedes the logic of sovereignty to Schmitt in order to engage in its critique. With this in mind, I bring into focus Benjamin's citation of Schmitt in the *Origin*. On the one hand, this citation confirms a resistance on Benjamin's part to the language of decisionism and exception that informs Schmitt's principle of sovereignty. The extent to which Benjamin has appropriated Schmitt's concept of the extreme case in the form of the unique-extreme, however, complicates and even obscures this position of incommensurability. An inquiry into the factors that contribute to the extreme case in Schmitt provides the background against which to attempt to resolve the problem of how and where to draw a line of distinction between his thought, and Benjamin's. Central to this line of inquiry is Schmitt's bifurcation of the political from the moral: this is a strategy on Schmitt's part to regulate the play of individual interests, and to mediate between the otherwise mutually exclusive realms of a purely normative order and the actuality of social life. It is also a strategy, however, that is trapped in a formalism of sorts: it depends on sovereign will, and on historical contingency.

My second point draws attention more specifically to Benjamin's concept of the 'unique-extreme' in relation to Schmitt's extreme case. Both Benjamin and Schmitt are interested in the point at which the generally familiar passes into the territory of the unfamiliar. Where for Schmitt, this constitutes the point at which the sovereign decision finds justification, the relationship between the spectral presence of the idea and the decisive limits of a concept that contribute to the formation of the

unique-extreme are for Benjamin more complicated. The formation of a concept, for Benjamin, is paradoxically but necessarily dependent on the contact or encounter with a singularity that exceeds or eludes the concept. To think the 'idea' as a configuration of singular extremes, for Benjamin, would be to construe its being as a function of that which it is not. It is hardly surprising that the distinction that lies between Schmitt's sovereign, which marks a general order by way of the norm and the concept, and Benjamin's critique of sovereignty, where the moral decision is as imperative, but impossible, is difficult to sustain.

The so-called 'Shakespeare Correspondence' illustrates my point: Schmitt's response to Benjamin's *Origin* depends, for its validity, on the occupation of Benjamin's discourse, and on the incorrect assertion of Benjamin's historical outlook as an inversion of his own. The effect is one that allows Schmitt to use Benjamin's thought as a means by which to secure his own project of maintaining demographic and social order. But it is also one that diminishes the possibility of outlining the terms in which Benjamin rejects Schmitt's prioritisation of static order, and of divine politics. Schmitt's self-interest with respect to his interpretation of Benjamin's thought emerges more clearly in his 1956 study on *Hamlet oder Hekuba*. There, Schmitt's reading of Benjamin is suspect on several counts. It fails to understand that for Benjamin the concept of rule of law is cause for mourning, and that the rise of the rule of law in the era of baroque secularisation intensifies hopelessness. In its neglect for the degree to which hopelessness, for Benjamin, espouses a turn to heavenly salvation, moreover, it diminishes the capacity to effect social change. Schmitt continues, however, to subordinate Benjamin's thought to the framework of a power struggle between the state of exception – the components of which include crisis and indeterminacy – and the appeal to a pre-existent order. Having established the difficulty in locating and maintaining a grasp of the terms of Benjamin's incommensurability with Schmitt, the next stage of my inquiry looks to Benjamin's reference to Schmitt from within the 'Critique of Violence'. The aim is to establish a definitive and explicit point through which to separate Benjamin from Schmitt.

6. Understanding pure violence in the context of sovereignty

The aim of the third chapter is to highlight the significance of Schmitt to Benjamin's reading of pure violence in the 'Critique of Violence'. Pure violence, I argue, is

something analogous to the state of exception: it neither responds to the disintegration of order in order to re-establish a pre-existent order, nor is it solely symptomatic of the permanent state of lawlessness in which history is trapped, that is to say, the dialectical exchange between law-positing and law-preserving violence. In much the same way that the *Origin* saw Benjamin deploy the same instrument of sovereignty examined in Schmitt – namely, the concept of the extreme case – Benjamin’s ‘Critique of Violence’ both risks reinforcing and refuses to capitulate to Schmitt’s appeal to a normative state. With this in mind, the analysis here draws out Benjamin’s concern with locating a technique through which to formalise without reifying Schmitt’s tools for historical evaluation. A specific elaboration of pure violence emerges, as a result, and this, in turn, introduces the secondary aim of this chapter. In an effort to locate the potential for political radicalism in Benjamin’s essay, I consider the relationship pure violence shares with sovereignty. This requires a response to the theoretical trajectory in which pure violence is situated. The existing concept of pure violence put forward by Derrida, I argue, underestimates the intensity of the relationship pure violence shares with the legal order upon which sovereignty depends. Pure violence comes to expression through sovereignty; it exists within the sovereign structure, and from that position makes evident the series of contradictions within that structure.

Thus far, my account of pure violence maintains an air of the abstract: pure violence locates the relationship between critique, as that moment which retains the right to judge, and the tyranny of complete indecision; in this way, pure violence refuses to posit a sovereign power, or to preserve one. Pure violence is part of the very structure that mythologizes the law, and as a spectral presence it could emerge through, for example, the body of the police, to whom law-positing and preserving duties are extended by the sovereign state. Where Derrida interprets this potential within pure violence as supporting the anti-revolutionary cause, I take an alternative view in order to emphasise that it is from within the structure of sovereignty that pure violence wields its most pernicious threat: the greater the appeal to a normative state by the sovereign, the more extensive the president’s latitude of action in extreme crisis, the more intense the threat pure violence can be taken to pose.

In its occupation of, in order to control, the territory of pure violence, sovereignty merely provides pure violence with the leverage necessary to come-to-

presence. To make this point, I consider the imperative of sovereign violence to distribute retribution by fate, and highlight the moments in the 'Critique of Violence' through which Benjamin extends this privilege to the spectrum of the construct of divine violence. Secondly, I bring into question Agamben's account of guilt as that which belongs exclusively to, and is determined exclusively by, Schmitt's concept of the juridical. With Schmitt's broader polemic in mind – it is against the background of an attack on legal positivism that Schmitt posits his argument for the juridical distribution of guilt – I again highlight the moments in the 'Critique of Violence' through which Benjamin shows divine violence as an integral component of guilt.

7. Defining pure violence beyond the parameters of sovereignty

The point of the fourth and final chapter is to move beyond the definition of pure violence through the principle of sovereignty. It has thus far been established that pure violence is not a pocket of heterogeneity, or a passive entity to be enabled or overcome. It has also been established that neither does pure violence seek to oppose the ever-changing face of sovereignty. Pure violence is rather part of the structure of sovereignty, and, it follows, part of the state of exception. Pure violence participates, moreover, in the distribution of guilt through retribution or through punishment by fate, and in the perpetuation of life as sacred. Pure violence is also as much a part of the legal order as the state of exception. Both pure violence and the state of exception are instrumental to the sovereign creation of new laws, and to the sovereign modification of existing concepts of legality. Benjamin's alleged failure, by Derrida's estimation, to isolate pure violence from the structure of the law is, I argue, really a successful demonstration of the fact that pure violence refuses to be isolated from the legal order. As a force made latent by the mythical structure of the law, the question here becomes one of whether pure violence does not simply engage in the transvaluation of structures of power such that it preserves the value of an action against any given enforcement of power. To answer the question in advance of my deliberations over Benjamin's text, I will pronounce here that pure violence refers to a constant process of differentiation from the legal order. In other words, pure violence constitutes a critique of the legal order, and asks to be defined beyond the parameters of the legal order.

There are two points to consider in my re-elaboration of the concept of pure violence here. The first considers pure violence as an opening to the aleatory. Pure violence operates as the condition of possibility for the outbreak of chance insofar as it emerges under unpredictable circumstances, and refuses conscious willing. As the opening to the aleatory, however, and this is my second point, pure violence depends on changes in perception that are impossible to quantify or qualify; catharsis is its driving force. In an effort to reconcile this tension between pure violence as a condition of possibility for the diffusion of power and its presence as a singular entity that is virtually impossible to predict or to map, I bring into question the model of 'pure language'. Pure language, here, can be understood, in a preliminary sense, to refer to the language of proper names. In this preliminary sense, pure language refers to the idea that there is a name for every single thing; there exist only proper names; and there is no mediation between things and their names. If for every singularity there is a name, there is, therefore, an infinite number of singularities and of names. Benjamin makes this point in his essay 'On Language as Such'.

In that same essay, however, Benjamin also refers to the process of naming as an act of violence. The act of institutionalisation, whereby language becomes accessible to people as a way of speaking, occurs with the Edenic fall from grace. This act of institutionalisation gives an entirely new world to a people and in this sense is projective, which is to say that it opens a space in which a people can dwell by way of a particular vocabulary. The institutionalisation of language provides a people with a shared outlook. In this sense, pure language is inceptive, and constitutes the opening up of a world for a people. There are two phases of pure language to which Benjamin refers, then. The first constitutes a pure language before the fall, and in the Edenic sense; the second constitutes a pure language after the fall, which is forever engaged in the attempt to reach the purity of expression inherent to its earlier stage of development, but that in its own right has nothing to do with the language of proper names. This second phase of the development of pure language refers to the way in which things and words come together in a process of co-appropriation, and by extension, to the way in which a people comes into its own. It is this second phase of the development of pure language to which Benjamin refers in the 'Critique of Violence'. Pure language in this projective sense opens up in the

commercial spectrum. It is a problem with which Benjamin is expressly aware: *commerce* facilitates the opening of pure language.

Salient in Benjamin's analysis of pure language in the 'Critique of Violence' is the example of diplomacy. On the one hand, diplomatic procedures of peace negotiation serve the dictates of commercial interest. In this sense, the sphere of commodity production governs the opening to the sphere of pure means, or to the sphere of pure language. Implicit in this governance, however, is the importance of there being some interface between pure violence and structures of power. Without this interface, pure violence becomes too rarefied to be able to respond to the uniqueness of the moment. Similarly, the institutionalised forms of violence from which pure violence aims to differentiate itself in the examples of the conference, and of diplomacy, consummate their positions of authority and exempt themselves from transformation and modification. Pure language, then, constitutes a heightened paradox of extremes. It attests to the diversity of linguistic practice, in its claim to supersede that diversity. In its movement to overcome the spectrum through which language has been reduced to a technique of effective communication, and to the banality of the cliché that in effect suppresses effective communication, however, pure language aims to confirm another sphere of social relations. This hypothetical sphere of relations exists beyond the confines of economics and commodity production.

The fourth chapter of this dissertation renders the contradictions inherent to the concept of pure language, as it appears in Benjamin's 'Critique of Violence', more explicit. This is done through the consideration of pure language as 'technical innovation'. The innovative potential of the pure language of the conference, and of diplomacy, has the potential to dissolve and reformulate existing social relations. Pure language, in this innovative sense, constitutes a response to the uniqueness of the moment. At the same time, however, it is susceptible to techniques such as lying, fraud and corruption. To the extent that the innovative potential of pure language is exposed, in this way, to a sliding scale of technical legitimacy, its effects are counter-revolutionary. To state the case of pure language differently: upon its consideration as a technical innovation, pure language reveals the fact of its being politically produced, and it signifies the process of making a particular way of doing things

legitimate. Similarly, it functions to elevate a certain doctrine, belief, or class of person above all others.

Two questions arise in positing this analogy between pure language and technical innovation. The first relates to how pure language actually succumbs, inevitably, to technical practice, to technical manipulations and to the practice of mediation; the second to how pure language comes to find its analogue in pure violence. The process of *Habeas corpus* from writ to act provides an important resource for a response to the former question. Above all, this process of *Habeas corpus* clarifies how any given discursive practice comes to be formalized by institutional procedure. The stages through which writ is consolidated into act also reveal the sovereign decision in its various dimensions. The sovereign imperative to have, or to produce the body here constitutes a positing of power that depends on the rule of law for its reinforcement. Viewed from another perspective, sovereign discretionary interest is exposed to and consumed by the legal order: it is a testament to how the legal order monopolises authority, the discursive economy as a whole, and the legal control of the distribution of social power. This fraught relationship between discursive practice and its vulnerability to and monopolisation by the legal code asks for a characterisation of Benjamin's second specification of pure violence in the 'Critique of Violence': the proletarian general strike.

In order to assess the way in which pure violence can exist without blood – or even, as Benjamin states the case, without violence – it is necessary to conceive the crowd as sovereign. A crowd achieves its sovereign status in the act of striking, which is to say that at the same time it strikes, it also participates in forms of action that remove its collective body from the means-ends rationality. In this way, the crowd throws away any notion of there being a future: it becomes bereft of itself, naked, or pure. It breaks the relationship to itself and without the cover of an identity, subjects itself to an *exposure* of sorts. An important condition of this tendency to expose itself, however, is fear – which for Benjamin is actually the base determinant of the outbreak of pure violence. The crowd is sovereign and capable of pure violence only when exposed to the risk of appropriation by and subordination to the structures of power against which it turns.

A consideration of the proletarian general strike against the background of French syndicalism provides the final point through which Benjamin's position of

incommensurability with respect to Schmitt is confirmed. Sorel's *Reflections on Violence* provides a context, initially, from which to read the formation of a new agent – the proletariat – as being capable of initiating social transformation.

Consequently, the proletarian general strike merits concern for the extent to which it presumes consensus among members of a homogeneous community. Can, however, the strike be efficacious if it refuses to conform to a paradigm from the historical canon of political or economic systems? Is it possible to aim at the recasting of these systems from beyond the confines of homogeneity? Key here is Sorel's effort to map the 'creative consciousness' of the proletarian general strike. Schmitt's 1923 work on *The Crisis of Parliamentary Democracy* presumes a contrast between a state that is degenerating due to its dependence on intellectual conviction, and the 'creative proletarian force' of violence.³⁰ Schmitt also presumes in this work, more importantly, that a crisis resides in that contrast. This double presumption Schmitt makes with respect to Sorel locates the key through which Benjamin is able to assert pure violence in terms that are, finally, independent of Schmitt.

¹ Friedrich Nietzsche, 'Second Essay: "Guilt", "Bad Conscience", and Related Matters', in *On the Genealogy of Morals*, trans. by Douglas Smith (Oxford and New York, Oxford University Press, 1998). It is precisely this 'instinct of freedom made latent through force... forced back, trodden down, incarcerated within and ultimately still venting and discharging itself only upon itself', that comes to typify the connection between the reactive and the active forces for Nietzsche, pp. 67.

² Nietzsche, pp. 39-76 (p. 59).

³ Nietzsche, pp. 59.

⁴ Nietzsche, pp. 59.

⁵ Nietzsche, pp. 57.

⁶ For more details on the evolution of Benjamin's essay on violence, see Howard Caygill, *Walter Benjamin: The Colour of Experience* (USA, Canada and London: Routledge, 1998), pp. 27.

⁷ See Beatrice Hanssen, 'On the Politics of Pure Means: Benjamin, Arendt, Foucault', in *Violence, Identity, and Self-Determination*, ed. by Hent de Vries and Samuel Weber (Stanford, CA: Stanford University Press, 1997), p. 236-252, endnote 4. Hanssen notes that the second part of the book on *Politics* entitled 'Die wahre Politik' (*True Politics*) was to comprise two chapters, 'Abbau der Gewalt' (*Dismantling Power*) and 'Teleologie ohne Endzweck' (*Teleology Without a Final Goal*), now widely held to be the 'Theologico-Political Fragment'. Also see *The Correspondence of Walter Benjamin, 1910-1940*, ed. by Gershom Scholem and Theodor W. Adorno, trans. by Manfred R. Jacobson and Evelevyn M. Jacobson (Chicago: University of Chicago Press, 1994), pp. 168-169; Gershom Scholem, *Walter Benjamin: The Story of a Friendship*, trans. by Harry Zohn (New York: Schocken, 1981), pp. 93.

⁸ The 'Critique of Violence' was written for the cultural journal *Die Weißen Blätter*, whose editor, Lederer, deemed it better suited to another of his editorial journals, the sociological *Archiv für Sozialwissenschaft und Sozialpolitik*, 47.3 (1921), pp. 809-832. For the editors' comments see Benjamin's GS 2.3, pp. 945.

⁹ See Benjamin's *Correspondence*, pp. 174; see also Gershom Scholem, *Walter Benjamin – die Geschichte einer Freundschaft* (Frankfurt am Main, 1975), pp. 119.

¹⁰ Beatrice Hanssen, 'On the Politics of Pure Means', p. 237.

¹¹ See Beatrice Hanssen, 'On the Politics of Pure Means', p. 237.

¹² See Beatrice Hanssen, endnote 5.

¹³ Jürgen Habermas, 'Walter Benjamin: Consciousness-Raising or Rescuing or Rescuing Critique', in *On Walter Benjamin: Critical Essays and Recollections*, ed. by Gary Smith (Cambridge, MA: MIT Press, 1988), pp. 90-128 (p. 118-119).

¹⁴ Jürgen Habermas, 'The Horrors of Autonomy: Carl Schmitt in English', in *The New Conservatism: Cultural Criticism and the Historians' Debate*, ed. and trans. by Shierry Weber Nicholsen (Cambridge, MA: MIT Press, 1989), pp. 128-139.

¹⁵ Jürgen Habermas, 'The Horrors of Autonomy: Carl Schmitt in English', pp. 137.

¹⁶ Jaques Derrida, 'Force of Law: The Mystical Foundation of Authority', *Cardozo Law Review* 11 (1990), 999-1045. Reprinted in *Deconstruction and the Possibility of Justice*, ed. by D. Cornell and M. Rosenfeld, D.G. Carlson (New York and London, 1992), p. 3-67. I have drawn on the more recent translation of Derrida's essay, in *Acts of Religion*, ed. by Gil Anidjar, trans. by Mary Quaintance (New York and London: Routledge, 2002), pp. 228-299.

¹⁷ See the special issue on Carl Schmitt, *Telos*, 72 (1987) for further comments on Schmitt's reception by the left; see also the history of Schmitt's reception by the leftist press in response to Schmitt's involvement in the debates between 1929-1933 surrounding the Reich strike on Prussia in Joseph Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, New Jersey: Princeton University Press, 1983), pp. 170.

¹⁸ See Derrida, 'Force of Law', pp. 285, 291.

¹⁹ Derrida, 'Force of Law', pp. 261.

²⁰ Derrida, 'Force of Law', pp. 261.

²¹ Derrida, 'Force of Law', pp. 261. The theorists of German Jewish origin to whom Derrida refers as part of the structure of his argument include 'Cohen, Buber, Rosenzweig, Scholem, Adorno, Arendt – and, precisely, Benjamin'.

²² Gary Banham's unpublished paper, 'Critique and the Violence of Spirit' (Manchester Metropolitan University, 2000), has been useful in structuring this analysis of Derrida's essay.

²³ Derrida's essay responds to a broader question of 'the politics of deconstruction' or, as a recent author puts it, the question of deconstruction in relation to the political. Derrida's essay is concerned, above all, with clarifying in some way the relationship between Germans, Jews, and the Final Solution. It also, however, relates to the question of deconstruction in its relationship with justice. Banham, 'Critique and the Violence of Spirit', p. 2, credits Richard Beardsworth for having brought Derrida into the arena of the political in his study *Derrida and the Political* (London and New York: Routledge, 1996).

²⁴ Banham writes in 'Critique and the Violence of Spirit' that 'the connection between these two tasks can easily be seen in a complication of the question of who was responsible for the existence of the final solution'. Derrida's effort to complicate the question of responsibility is not part of a broader project 'to evade or render invisible the fact of a wrong that in its magnitude speaks loudly of the demand for justice', by Banham's account, but rather part of an attempt to accentuate a demand for responsibility – while at the same time making 'impossible any simple connection of that demand with any pre-existent notion of a non-deconstructive "subject"', p. 3.

²⁵ See Banham, 'Critique and the Violence of Spirit', p. 4. See Derrida, pp. 259: 'Zur Kritik der Gewalt is not only a critique of representation as perversion and fall of language, but of representation as a political system of formal and parliamentary democracy. From that point of view, this "revolutionary" essay (revolutionary in a style that is at once Marxist and messianic) belongs, in 1921, to the great antiparliamentary and anti-"Aufklärung" wave upon which Nazism will have, as it were, surfaced and even "surfed" in the 1920s and the beginning of the 1930s'.

²⁶ The argument on violence as a simplex or complex belongs to Tom McCall, 'Momentary Violence', in *Walter Benjamin: Theoretical Questions*, ed. by David S. Ferris (Stanford, CA: Stanford University Press, 1996), pp.185-106 (p. 190). This is reading of violence can be traced to Derrida's 'Force of Law', pp. 233-234.

²⁷ Derrida, 'Force of Law', pp. 233-234; Derrida's reading of 'Gewalt' permeates secondary commentaries on Benjamin's text, an earlier example being Anselm Haverkamp's 'How to Take It (and Do the Right Thing): Violence and the Mournful Mind in Benjamin's "Critique of Violence"', *Cardozo Law Review* 13 (1991), 1159-1171.

²⁸ Banham, 'Critique and the Violence of Spirit', p. 4.

²⁹ This conceptualisation of pure violence as a coming-to-presence, and as an appeal to and bringing to question of the essence of power was common currency at the time Benjamin was writing the Critique. See for example Martin Heidegger, *Introduction to Metaphysics*, trans. by Gregory Fried and Richard Polt (New Haven and London: Yale University Press, 2000).

³⁰ The reference is to Carl Schmitt's 1923 text, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (Cambridge, MA and London: MIT Press, 1985), pp. 72. Banham, 'Critique and the Violence of Spirit', reads Schmitt's text in the context of Derrida's agenda, p. 8.

PART ONE

This part of the dissertation makes an inquiry into the relationship between Benjamin and Schmitt. The first chapter takes Benjamin's interest in the moment of Schmitt's conversion from Catholic conservative principles to Nazism as its starting point. Against Agamben's efforts to formalize the conjunction between Benjamin and Schmitt, and in response to criticisms of Benjamin as a participant in the 'Weimar Syndrome', I consider the historical stakes involved in Schmitt's effort to restructure the concept of sovereignty. Read against the background of a crumbling Weimar, Schmitt's interpretation of Article 48 gives access, here, to debates surrounding the discrepancy between Schmitt's political prescriptions and the forms of political domination that he actually endorsed. The questions central to Article 48 mark Schmitt's transition from legal scholar to constitutional adviser, and ultimately his shift to Nazism. The second chapter extends the analysis of the conflict between Benjamin and Schmitt's respective interpretations of the state of exception. At stake is the extent to which Schmitt's framework of the moral decision and of the extreme case is critically identified (Meier, Zizek), but nevertheless recognised to inform the logic of Benjamin's critique of sovereignty in the *Origin* (Weber, Bredekamp). The difficulty of asserting and substantiating Benjamin's position of incommensurability with respect to Schmitt becomes more evident in the case of the so-called 'Shakespeare Correspondence': there, the force of Schmitt's argument depends, for its validity, on the occupation of Benjamin's discourse, and on a *mis*interpretation of Benjamin's historical outlook as an inversion of his own. Schmitt's argument for the inescapability of historical facts, and for the impossibility of conceiving history as anything other than a power struggle, ultimately sets the stage for a response to Benjamin's 'Critique of Violence'.

Chapter One: Schmitt on Sovereignty

This chapter begins with an analysis of the ways in which Schmitt has been historically recognized to influence Benjamin's *Origin*. The task of this chapter is to establish a framework for reading Benjamin in conjunction with Schmitt. Agamben's efforts to formalize the conjunction between Benjamin and Schmitt come into critical focus, as does Beatrice Hanssen's critique of Benjamin's failure, on

occasion, to make direct reference to Schmitt. In order to respond more fully to these claims by Agamben and Hanssen, Schmitt's concept of the political is carefully outlined. Schmitt's critiques of parliamentary democracy and of liberalism prove central to his conceptualisation of the political. While these critiques to some extent prove discerning, the seductive nature of the rhetoric Schmitt deploys against the nature of democracy and of liberalism reveals an alternative political agenda. Schmitt's critiques of liberalism and democracy are the mechanisms through which Schmitt removes all limits on, and comes to justify, sovereignty. If liberalism constitutes, by Schmitt's estimation, the false determination and closing down of the political, it appears to operate in much the same way as sovereignty: each outstrips the political in order to assert the logic of its respective politics. Further clarification of the terms of sovereignty determines whether accounts of Benjamin's relationship with Schmitt have been exaggerated in order to draw Benjamin into the political arena. Sovereignty as conceived by Schmitt is structured on the state of exception, which is to say that sovereignty occupies a unique position outside the legal order from which it is possible to modify but also to create a new legal order. A less abstract aspect of the state of exception is realized in Article 48 of the Weimar Constitution, and the debates surrounding the exercise of the article in 1932. Schmitt's interpretation of Article 48 provides a crucial point of consideration towards the latter half of this chapter. It is key to understanding where the rule of law and the state of exception were used in support of the Reich's occupation of Prussia. The occupation was a political strategy exercised in an effort, on the Reich's part, to prevent the Prussian bureaucracy and police from falling into the hands of the Nazis and communists. Schmitt's understanding of Article 48 does not only clarify the stakes involved in the Reich's strike on Prussia, however. The strike against Prussia also facilitates the reader with an understanding of how Schmitt made the transition from legal scholar to constitutional adviser. It captures, furthermore, the moment in which Benjamin will prove, in the following chapter, to have been more interested, namely: Schmitt's transition from Catholic conservative principles, to Nazism.

Schmitt's principle of sovereignty is defined by an intimately related series of concepts that begin to emerge upon consideration of the Reich's move to replace the Prussian government with a Reich commissar, but materialise more clearly in light of

the Prussian governments efforts to seek an injunction from the Reich Court in Leipzig to prevent the imposition of commissarial rule. Crucial to the case of Prussia versus Reich in the broadest sense, then, is Schmitt's interpretation of Article 48, which granted the president extensive latitude for action – including the suspension of other articles of the constitution – to restore order in times of chaos and crisis. In order to understand Schmitt's interpretation of Article 48, however, the peculiar, superficial tension Schmitt establishes between the sovereign and commissarial nature of dictatorship requires clarification. Where the terms of a sovereign dictatorship are established by the declaration of the state of exception, and by whoever has the power to suspend the constitution and so redefine the relationship between civil freedom and military power, a commissarial dictatorship functions to protect the constitutional order from social and political threat, and ultimately from collapse. The president acts, in other words, to protect the constitution from becoming an object of political struggle. Schmitt's account of dictatorship justifies the transference of power to the hands of a minority by drawing on the concepts of *protection, action, and will*. His ultimate aim, in doing so, is to render the constitution exempt from the processes to which parliamentary democracy had become beholden: by Schmitt's account, parliamentary democracy had become increasingly depoliticised on account of its increasing bureaucratization. Schmitt's critique of liberalism also functions as an instrument through which all bounds on sovereignty are removed. From within that capacity, however, it also takes recourse to the liberal interpretation of the rule of law that is the object of its critique. This chapter wishes to bring into focus the point through which the state of exception that is the structuring principle of sovereignty, and that is realized through Schmitt's interpretation of Article 48, becomes the rule of law. It also wishes to demonstrate the sovereign assertion of a moral decision as the fulcrum upon which Schmitt makes his nostalgic appeal to a normative, pre-existing state of order.

Insofar as Schmitt's influence on the 'Critique of Violence' is rarely ever made explicit, an interpretation of the historical context to which Benjamin's essay belongs, and more specifically a re-interpretation of its relationship to the *Origin* will prove key. The importance of coming to the 'Critique of Violence' by way of the *Origin* cannot be stressed here enough, especially given that the *Origin* stands as one of the rare instances in which Benjamin makes direct reference to Schmitt. More

importantly, in citing Schmitt's 1922 *Political Theology* in his study on 'Trauerspiel and Tragedy', Benjamin illuminates the moment in which Schmitt turns from his position as the exponent of Catholic conservative principles, to Nazism. It is the absolute moral decision in Schmitt that captures Benjamin's interest: insofar as the principle of sovereignty provides the motif through which Schmitt develops the absolute moral decision, it is also crucial to understanding the terms on which Benjamin engages with Schmitt. Interpretations of the principle of sovereignty as it features in Benjamin's thought aside, the main intention of my current strand of argument is to contextualise briefly the significance of Schmitt's work to Benjamin, and to follow – on a lesser scale, but to some extent – the repercussions of the conjunction between Benjamin and Schmitt on the history of Weimar thought and politics.

Despite Schmitt's political misadventures, his concepts and arguments have had far-reaching consequences for leftist political thought. With this in mind, I open my argument with a brief outline of the history of the dialogue shared between Schmitt and past thinkers of leftist political strategy. Against the background of a spectrum of recent apologist accounts for Schmitt, and in consideration of the recent revival of the Schmittian conception of sovereignty, I provide an account of the correspondence shared between Benjamin and Schmitt, along with its controversial editorial history. Given that there is very little evidence for any other direct contact between Benjamin and Schmitt, I question Agamben's efforts to formalize their conjunction. Counter to Agamben, more specifically, I argue that the dialogue between Benjamin and Schmitt is not only implicit, but for the most part, *necessarily* implicit. There is no question that Schmitt's language of decisionism traverses Benjamin's writings. Its implication, however, is that while Benjamin might flirt with Schmitt's thought, difference and incommensurability marks the relationship between the two. Of course, Benjamin strikes such a fine balance on the edge of his resistance to Schmitt's thought that the terms of this disagreement are sometimes obscured. Fragments of Benjamin's corpus provide a useful resource for understanding the premises by which Benjamin is drawn to Schmitt's analysis of the political, in order to inform his own approach to the problem of aesthetic analysis. These fragments complicate Agamben's claim to a formal relationship between Benjamin and Schmitt. They also, however, demonstrate the challenge inherent in

sustaining my own claim that there is an implicit dialogue between Benjamin and Schmitt.

The second section of this chapter considers Benjamin's aim of distinguishing between the eidetic aspects of Schmitt's concept of the political, and the more historical conditions for analysis that it may or may not open. Schmitt's project to retrieve a sense of the political refers, I argue, to the political as determining the opening of a space in which any given politics can unfold. The result is one, however, that understands the political as determining the condition of possibility for any particular politics or system of governance. Liberalism, I argue, bears upon Schmitt's investigation into what exactly can be legitimated as the political, but liberalism also receives the force of Schmitt's critique insofar as – according to Schmitt – it closes down and falsely determines the political. Its effects are such that it overrides the condition of possibility for any particular politics at all. Particularly problematic, however, is the fact that the mechanics through which Schmitt deploys his critique of liberalism, like liberalism itself, renders the political a transcendental question. Against a background of accounts that legitimate Schmitt's critique of liberalism as discriminating, I bring into focus the extent to which it facilitates Schmitt's position of authoritarian moral decisionism. Given that the basic affinity between Schmitt and Benjamin, as well as other Frankfurters, is that they both engage in very effective critiques of liberalism, the next stage of my argument considers criticisms of Benjamin as a participant in the 'Weimar Syndrome'. Using Schmitt's anti-liberal statement that 'sovereign is he who decides on the state of exception' as the organizing principle of my investigation, I consider the historical stakes involved in Schmitt's effort to restructure the concept of sovereignty. The idiosyncratic space that sovereignty occupies outside the law, and the sovereign determination of the conditions through which the rule of law and exceptional situation will be exercised – these are the points through which Schmitt's principle of sovereignty, I argue, comes to obscure its own mechanics.

The third section of this chapter reads Schmitt's critique of parliamentary democracy as one of the instruments through which Schmitt removes all limits on sovereignty. Schmitt's tirade against modern parliamentary democracy is convincing: the emergence of capitalist economic power has eroded the process through which binding, determinate decisions are represented; the collective will is

subject to a process of interest-based fragmentation before it has even been formed; and the liberal-democratic vision of power legitimised by discussion has therefore been supplanted by a technical and temporary set of compromises and contracts that can simply be rescinded when they are no longer of use. At the core of Schmitt's critique of liberal democracy is the suggestion that the executive be strengthened. Intimately connected to Schmitt's proposal of an unchecked executive is his scrutiny of the rule of law. More specifically, the liberal conversion of the rule of law into formal, technical doctrine threatens the condition of politics, in Schmitt's view, in much the same way as the discursive practices of parliamentary democracy. As the outcome of the process by which liberalism tries to make the state subject to law, the rule of law restricts the ability of democratic legislatures to modify at will specific laws and law-making processes. In Schmitt's formulation, in all cases of exception it is necessary to have recourse to a unitary institution with a monopoly on decisions, so that no such confusion or conflict occurs. Despite the fact that the principle of sovereignty is carefully bound by historical references – these references include the *Kulturkampf* following Bismarck's unification of Germany, and Schmitt's sociological and intellectual-historical roots in the Roman Catholic party of the Weimar period – I argue that the principle of sovereignty is an assertion on Schmitt's part of dogma.

Read against the background of a crumbling Weimar, Schmitt's interpretation of Article 48 gives access here to debates surrounding the discrepancy between Schmitt's political prescriptions and the forms of political domination that he actually endorsed. In this study, I pose the questions central to Article 48, namely: how can a democratic state defend itself in the face of a crisis that threatens its very existence, and can a dictatorship itself be justified as a temporary defence of the Republic in exceptional circumstances? I track the development of Schmitt's interpretation of Article 48, which at the time of the Weimar Republic, had become useful as a device for introducing legislation without the consent of parliament, to Schmitt's argument for limitless presidential power at the Jena conference in 1924. The major tension in Schmitt's interpretation of Article 48 proves to be between the sovereign and commissarial function of dictatorship. This tension, in turn, informs Schmitt's interpretation of the imperative, in Article 48, that the constitution be reinstated in its original form once crisis has subsided. Here, Schmitt's argument for the politics of

the extreme comes into focus. It is only the politics of the extreme, Schmitt contends, that could reliably constitute genuine order. As the source of an unequivocal political imperative, this politics of the extreme, according to Schmitt, stood counter to the technical compromise upon which the political system had come to be based. Article 48, then, provides Schmitt with the grounds from which to justify direct recourse to the political in the purest sense – which is conceived by Schmitt as personal will, and as divine revelation, but not as the technical organs of administration.

The final section of this chapter isolates the problems that emerge from Schmitt's critique of liberalism. Central to these problems is the fact that Schmitt structures his critique of liberalism on the destructive dimension of the constitution. To be more precise, Schmitt's state of exception incorporates the notion that the constitution's primary purpose should be to establish an institution, such as a presidency, to embody exclusively the pre-constitutional sovereign will in a time of crisis. Since, according to Schmitt, the state of exception is a necessary part of the constitution, it follows that the constitution invites its own disposability. The question becomes one of how and under what circumstances Schmitt's interpretation of the state of exception became central to the conventions of the Weimar constitution. In response to this question, I outline the steps through which Schmitt made the transition from legal scholar, to constitutional adviser. I direct particular attention to the 1932 landmark case of Prussia versus Reich, in which Schmitt put his theory of presidential dictatorship into practice before the High Court. Again, Schmitt's contentious interpretation of Article 48 comes into focus: Schmitt based his argument in defence of the German state's 'emergency' seizure of Prussia's government earlier that year on the premises of Article 48; Prussia's jurists protested vigorously that Schmitt was elevating the president above the court in constitutional matters and subordinating law to politics, and went on to challenge the extensive authority Schmitt's interpretation would grant a president. Schmitt had represented the Reich government with the intention of diminishing the strength of the Nazi party, and with the further intention of staving off a four-sided civil war between the Nazis, the Communists, the Reich, and the Prussian government. The prevailing attitude toward Schmitt in Catholic, liberal, and socialist circles, however, was that as an apologist for reactionary forces within the Reich, Schmitt had provided a legalistic

cover for an attack on the republic itself. Ultimately, I seek to emphasise Schmitt's gradual shift to Nazism.

1. Schmitt's significance to Benjamin

It is often documented as something of an anomaly to refer openly and explicitly to the Nazi 'Crown Jurist'¹ in an attempt to trace the nuances of Benjamin's thought.² Schmitt actively collaborated with the Nazis from 1933-1936,³ and is documented as having given Hitler an understanding of the Weimar Constitution that enabled him to take power. He was tried for war crimes at Nuremberg and although released, was stripped of the right to work in a university and died in relative ignominy in the Federal Republic. It is important to note, however, that Schmitt maintained a following of sorts during these years of exile, supervising countless doctorates from his home, and receiving a steady stream of visitors. Even during these years of disrepute, Schmitt's significance as a thinker is very clearly marked. There is strong evidence that people on the left read Schmitt at the time: for example, Lukács wrote a favourable review of Schmitt's 1923 *Political Romanticism*;⁴ and from another perspective Schmitt is even deemed to have made Stalinist purges palatable to leftist thinkers such as Bloch.⁵ His appeal to those who would at an initial glance appear to belong to very different schools of thought is especially illuminated by the departure of Alexander Kojève from a conference on the rebuilding of Germany in 1967.⁶ On the break down of discussion, Kojève famously announced that he was going to see Schmitt, the only person 'worth talking to' in Germany.⁷ Having invited Kojève to the conference, the rabbi and Judaist Jacob Taubes expressed disappointment at Kojève's departure, only to be called into account at the Maison Heinrich Heine in Berlin in 1986 for having visited Schmitt himself.⁸ At the same conference, Taubes initiated a revival of interest in the conjunction between Benjamin and Schmitt, which he marked with Schmitt's own dictum: 'The enemy is the embodiment of your own question'.⁹

Irrespective of Benjamin's regard for Schmitt, the spectrum of recent apologist accounts for Schmitt should be received cautiously – especially in light of the fact that a wide range of Schmitt's primary material has yet to be evaluated. Steps taken to revive Schmitt in issues of *Telos* in 1987 explicitly warn against the

seductive character of his thought, and include his 1978 essay on the 'Legal World Revolution' in order to 'disabuse' the reader of any doubts regarding his anti-Semitic convictions.¹⁰ Schmitt has perhaps confused his reading public: through the period of the declining Weimar Republic, and the rise and fall of Nazism, Schmitt edited anti-Semitic statements both into and out of his work. Counter to Schmitt's own claims, however, it would be incorrect to assume that these editorial acts were Schmitt's sole strategies of survival in a hostile and rapidly fluctuating political environment. Schmitt explicitly defended the use of violence as a means by which to maintain social order and stability, and was absolutely categorical in his defence of the ethnic cleansing principles of the Third Reich. When asked under interrogation at the Nuremberg trials how he could have justified a pursuit of knowledge that ended in the murder of millions of men, Schmitt responded that the Jews were only one group among many who would face persecution and extermination, and that Christianity had after all 'also ended in the murder of millions of men'.¹¹ Schmitt's brutally anti-humanist position is part of larger campaign to defend the political – the subject of which will be addressed in the following pages. On the one hand, this position underlies the spectrum of apologist accounts for Schmitt; on the other, it also stands as the source of the injunction that has prevented research into the broader influences of his work.

While no one today would underestimate Schmitt's influence on the Frankfurt School, Ellen Kennedy's attempt to establish a connection between the two met with strong criticism on its initial publication in *Telos*.¹² Although there is strong evidence that Benjamin read Schmitt, there is a history of the neglect, or perhaps even of the suppression, of evidence of the connection between Benjamin and Schmitt. In a letter to Gottfried Salomon from December of 1923, Benjamin wrote that he had been reading texts on the doctrine of sovereignty in the baroque era during work on his Habilitation.¹³ Benjamin's *Origin*, published two years later, explicitly cited Schmitt's special attention to the executive power of the sovereign in a sequence of comparative statements, the first of which featured the dictatorial sovereign of the baroque:

Whereas the modern concept of sovereignty amounts to a supreme executive power on the part of the prince, the baroque concept emerges from a discussion of the state of emergency, and makes it the most important function of the prince to avert this. The ruler is designated from the outset as the holder of dictatorial power if war, revolt, or other catastrophes should lead

to a state of emergency. This is typical of the Counter-Reformation. With the release of the worldly and despotic aspects of the rich feeling for life which is characteristic of the Renaissance, the ideal of a complete stabilization, an ecclesiastical and political restoration, unfolds in all its consequences. And one of these consequences is the demand for a principedom whose constitutional position guarantees the continuity of the community, flourishing in feats of arms and in the sciences, in the arts and in its Church.¹⁴

With the encouragement of Gottfried Salomon, Benjamin sent a copy of the Habilitation to Schmitt in December 1930, with a letter expressing indebtedness and acknowledging derivations:

Esteemed Professor Schmitt,

You will receive any day now from the publisher my book *The Origin of the German Mourning Play*. With these lines I would like not merely to announce its arrival, but also to express my joy at being able to send it to you, at the suggestion of Mr. Albert Salomon. You will very quickly realize how much my book is indebted to you for its presentation of the doctrine of sovereignty in the seventeenth century. Perhaps I may also say, in addition, that I have also derived from your later works, especially the 'Diktatur,' a confirmation of my modes of research in the philosophy of art from yours in the philosophy of the state. If the reading of my book allows this feeling to emerge in an intelligible fashion, then the purpose of my sending it to you will be achieved.

With my expression of special admiration
Your very humble
Walter Benjamin¹⁵

The letter was famously absent in Scholem and Adorno's edition of the 1966 volume of Benjamin's correspondence,¹⁶ and only became available to a wider audience upon its inclusion by Rolf Tiedemann in the more recent edition of Benjamin's *Gesammelte Schriften*.¹⁷ The secondary literature that has unfolded since has struggled to delineate and come to terms with the precise form Benjamin's style of research assumed under the influence of Schmitt. Commentaries on the relationship between Benjamin and Schmitt tend to focus on the *Origin*: there is little to no formal exegesis, however, of the influence of Schmitt on Benjamin's 'Critique of Violence'. Schmitt's significance to the 'Critique of Violence' is generally noted as a positive gloss, or by means of an uncritical appropriation of the framework of Derrida's essay on the 'Force of Law' – attention to which is relegated to the second half of this dissertation.

A necessarily implicit dialogue: Against Agamben

Given that there is very little evidence for any other direct contact between Benjamin and Schmitt, Agamben's efforts to formalize their relationship in his studies *Homo Sacer*, I argue, should be considered with a degree of caution.¹⁸ Agamben's claim that Schmitt's concept of the state of exception was not only informed by, but derivative of the formulation of pure violence as it appears in Benjamin's 'Critique of Violence' would suggest, I think, that Schmitt actually read the Critique while writing the *Political Theology*¹⁹ at Greifswald in the Autumn and Winter months of 1921.²⁰ While extended archival research and an investigation into the precise nature of the derivation would be required in order to further Agamben's claim, I can assert this much for the purposes of my own argument: it is plausible that Benjamin and Schmitt engaged in some form of dialogue.²¹ Amidst accusations of opportunism, Schmitt himself writes, in a letter to Hansjörg Viesel, in 1973: 'From the fall of 1932, I also have letters from Franz Neumann; most of them – above all Otto Kirchheimer, who did his doctoral work with me in Bonn in 1928 – and the acquaintances shared with W. Benjamin are not documented because we were in daily contact'.²² Counter to Agamben's formalisation of the conjunction between Benjamin and Schmitt, however, I aim to demonstrate how the dialogue between the two is not only implicit but, for the most part, *necessarily* implicit. There is a lack of common space shared between Benjamin and Schmitt that actually prevents the occurrence of a more concrete dialogue. To be more precise, the very notion of a dialogue implies commensurability; it is something that the participants in the dialogue share with respect to the meanings of the terms used in the dialogue.

Evidence of a more concrete dialogue would presume some consensus between the two on the constitution of Schmitt's principles, so that the question would no longer be one of dialogue, but rather one of each party defining the function and operative terms of his dialogue to the other. There is, of course, no question that Schmitt's language of decisionism (*Entscheidung, Ausnahmezustand*) traverses Benjamin's writings from the 'Critique of Violence' through the *Origin*. That language, however, does not signify any affinity between Benjamin and Schmitt. That Benjamin picks up and discusses a selection of Schmitt's principles does not suggest that there is any kind of consensus between the two on the

constitution of those principles. It rather suggests that there is a division within Benjamin himself of which he is not entirely conscious: that he is both drawn to and resistant to Schmitt's principle of sovereignty. The submission of Benjamin to Schmitt, or of Schmitt to Benjamin would not only diminish the profound intensity of their discussion, but would also force the collapse of their respective identities. This idea of an implicit dialogue shared between Benjamin and Schmitt is better illustrated in Benjamin's 1927 interview with the French fascist Georges Valois, former student of Georges Sorel.²³ Benjamin's essay 'Für die Diktatur' was written on the eve of National Socialism's ascent to power, and sees Benjamin reflect on the precarious, perhaps non-existent difference between left- and right-wing violence. Benjamin, in that essay, at once praises Sorel as the 'greatest and most truthful theoretician of syndicalism', but also accuses him for having provided a forum for the development of fascist leaders.²⁴

To complicate matters further, Benjamin's essay on dictatorship was also quick to dispel the myth of a fraternal feud, propagated by the new fascism, which liked 'to confront its movement with Bolshevism, as whose hostile twin brother it sees itself'.²⁵ I have two points to make in response to this complication in Benjamin's essay. The first concerns Beatrice Hanssen's assertion of a failure, on Benjamin's part, to have considered in this essay the gravity and persistence of the myth of a fraternal conflict between fascism and Marxism.²⁶ Hanssen stakes her claim to an absence in the essay of any reference to Schmitt's *The Crisis of Parliamentary Democracy*,²⁷ an absence that for Hanssen is all-revealing given Schmitt's more general claim in that text that both ideologies have celebrated the struggle that was to set an end to all forms of parliamentarism.²⁸ Hanssen's point here is that although Benjamin resolutely rejects the myth of fascism and Marxism as two feuding brothers in his essay 'Für die Diktatur', his silence on Schmitt's *The Crisis of Parliamentary Democracy* suggests a level of discomfort with the question of how the violent tactics of the left might be justified in light of the right-wing exercise of violence.²⁹ My second point finds fault with Hanssen's position. Benjamin's essay, I argue, flirts with the same concepts that are evident in Schmitt's text, but in refusing to refer directly to that text, marks his refusal to accept the terms and conditions of Schmitt's polemic. That Schmitt's text should *have* to be mentioned by Benjamin, as Hanssen claims, is incorrect. Benjamin's clear refusal to

acknowledge Schmitt in this essay 'Für die Diktatur' actually opens a space of future potential within which an explicit dialogue between disparate schools of thought might be able to unfold.

Benjamin 'Curriculum Vitae' (I) and (III)³⁰

In remaining silent on the issue of Schmitt's text on parliamentary democracy, Benjamin's essay 'Für die Diktatur', I argue, demonstrates that each thinker lacks a shared sense of the political. My aim, here, is to complicate Agamben's claim that this is a formal relationship between Benjamin and Schmitt, but also to demonstrate the temptation to revert to that formalisation, given that its alternative is difficult to sustain. I begin with Albert Salomon, Social Democrat and Professor of Political Philosophy at the Deutsche Hochschule für Politik in Berlin, to whom Benjamin had written in 1923, and by whom Benjamin had been encouraged to send Schmitt his *Origin*. Salomon organised a series of lectures called 'Problems of Democracy' in the winter of 1929-1930, in which Schmitt participated. Shortly thereafter, Benjamin had a long discussion with Bertolt Brecht, which he summarized in a diary entry: 'Schmitt/Agreement/Hate/Suspicion'.³¹ Benjamin strikes such a fine balance on the edge of his resistance to Schmitt's thought, however, that the terms of this disagreement are sometimes obscured. Benjamin's brief 1928 'Curriculum Vitae', for example, sees him confirm the parallel between Schmitt's contemporaneous work and his own attempt

to bring about a process of integration in scholarship – one that will increasingly dismantle the rigid partitions between the disciplines that typified the concept of the sciences in the nineteenth century – and to promote this through an analysis of the work of art. Such an analysis would regard the work of art as an integral expression of the religious, metaphysical, political, and economic tendencies of its age, unconstrained in any way by territorial concepts.³²

It is in his efforts to shatter the appearance of an illusion – the illusion here referring to the falsely segregated categories of nineteenth century scholarship – that Benjamin draws on Schmitt's analysis of the political.

Although Benjamin voices his intention clearly, here, the actual parallel between his thought and Schmitt's own method of political analysis is more subtle and difficult to trace. This is largely because Benjamin himself is struggling with an approach to the problem of artistic analysis. Benjamin's earlier 1925 'Curriculum

Vitae' expresses a concern with the means by which to articulate the all too obscure 'meaning of the connection between the beautiful and the appearance [Schein]'.³³ In this earlier 'Curriculum Vitae', Benjamin states his project as one that aims to connect the aesthetic concerns of the *Origin* with the great works of the German literary tradition.³⁴ In Benjamin's 1928 version of the 'Curriculum Vitae' it is more specifically 'work done by Carl Schmitt, who in his analysis of political phenomena has made a similar attempt to integrate phenomena whose apparent territorial distinctness is an illusion'³⁵ that contributes to the conditions underlying Benjamin's 'effective physiognomic definition of those aspects of artworks that make them incomparable and unique'.³⁶ On the one hand, Schmitt provides a unique resource for Benjamin's attempt to regard the work of art as an integral expression of the religious, metaphysical, political, and economic tendencies of its age, unconstrained by territorial concepts. Whether Schmitt's influence on Benjamin's method for the analysis of art is sustainable, however – this is a point on which Benjamin himself is uncertain. Benjamin's aim, as it is articulated in the later 'Curriculum Vitae', is to determine whether the 'eidetic' aspect of Schmitt's political analysis should be replaced with a more historical technique for the observation of phenomena.³⁷ It is with this aim in mind, that I further my analysis of Schmitt's principle of sovereignty.

2. The political

Given that Benjamin aims to distinguish between the eidetic aspects of Schmitt's political critique, and the more historical conditions for analysis to which it may or may not provide an opening, the terms of Schmitt's political critique, as it appears in the *Political Theology*, have to be established. There are two major points through which to define Schmitt's defence of the political, namely: Schmitt's critique of liberalism, and Schmitt's critique of parliamentary democracy. These two critiques are not mutually exclusive, and although they become more clearly delineated and intensified later in Schmitt's thought – notably in his 1932 *Concept of the Political*³⁸ – their earlier development in the 1922 *Political Theology* is vital to understanding precisely what the political entails for Schmitt. What I would like to contend, in reference to these 1922 and 1932 studies, is that for Schmitt the political refers to the opening of a space in which any given politics can unfold. In doing so, Schmitt's concept of the political also paradoxically determines the condition of possibility for

any particular politics, or any particular system of governance. These are precisely the premises from which Schmitt develops his critique of liberalism: liberalism presents a false image of the political; it represents itself as the political, when it is in fact a particular politics in and of itself. To be more precise, the fact that the political is a condition of possibility for a potential politics is occluded by liberalism.³⁹

It is against the background of a liberalism that is becoming increasingly analogous to a simulacrum of the political – where liberalism obfuscates or usurps the political – that Schmitt launches his critique of liberalism. The *Political Theology* in particular presents the early phases of Schmitt's project to retrieve a sense of the political. If the notion of the political and politics had become increasingly obscured in the Weimar period, it was because liberalism, as Schmitt indicates in the *Political Theology*, had usurped the space of the political, and in turn contributed to a withdrawal from the political as such. Problematic for Schmitt, in the *Political Theology*, was the issue of how to re-open the question concerning the political – of allowing the political to function as an opening again, and of allowing it to be a question. Liberalism, from Schmitt's perspective, closes down this question of the political, but simultaneously bears upon his investigation into precisely what can be legitimated as the political. Here, the dual function of liberalism encapsulates the paradoxical and perhaps most problematic aspect of Schmitt's project: at the same time that the *Political Theology* engages in a re-elaboration of the political in the case of what for Schmitt is the closing down and false determination of the political by liberalism, liberalism also renders the political a transcendental question, and in so doing, Schmitt argues, outstrips any particular politics. The problem, I argue, is that Schmitt's critique of liberalism similarly renders the political a transcendental question.

In spite of Schmitt's temporary collusion with Hitler's programmes – to which more attention will be devoted in the case of Article 48 of the Weimar Constitution – it is possible that his thought is more discriminating than it might initially appear.⁴⁰ Schmitt sees the process of secularisation as a process of neutralisation, in which the substantial basis of genuine political order is undermined by the technologisation of industrial production and the technical rationality of democratic government.⁴¹ Insofar as parliamentary democracy engages in polycratic definitions of politics, which grasp political order as fleeting compacts between

technical or economic organisations, it falls short of the very specific criteria employed by Schmitt's *Concept of the Political*. Equally inadequate for Schmitt in this study of the political, however, are the liberal conceptions that reduce politics to the negative defence of liberties against the state:

The negation of the political, which is inherent in every consistent individualism, leads necessarily to a political practice of distrust toward all conceivable political forces and forms of state and government, but never produces on its own a positive theory of state, government, and politics.

In a very systematic fashion liberal thought evades or ignores state and politics and thus moves instead in a typical always recurring polarity of two heterogeneous spheres, namely ethics and economics, intellect and trade, education and property... In case of need, the political entity must demand the sacrifice of life. Such a demand is in no way justifiable by the individualism of liberal thought. No consistent individualism can entrust to someone other than to the individual himself the right to dispose of the physical life of the individual.

Every encroachment, every threat to individual freedom and private property and free competition is called repression and is eo ipso something evil. What this liberalism still admits of state, government and politics is confined to securing the conditions for liberty and eliminating infringements on freedom.

We thus arrive at an entire system of demilitarized and depoliticalised concepts.⁴²

To be more precise: Schmitt's concept of the political provides an opening to a particular space of politics, and it is in this opening that contradictions within Schmitt's critique of liberalism can be deciphered. More specifically, in that opening the political moment is rendered a mode of *action* that is ideally anterior to all other forms of association, even to the constitution of the nation itself. This principle of *action*, as it features in the *Concept of the Political*, in turn, structures both law and state.⁴³ My point here is that Schmitt is correct in his assertion that the logic of liberalism and political democracy – insofar as that logic neutralizes political substance and depoliticises genuine politics – is open to critique. At issue for Schmitt is the liberal conviction that the 'legal order' (*Rechtsordnung*) is the foundation of politics: it is a conviction, Schmitt argues, that fails to account for the fact that in the juxtaposition of law and order, order comes before the law; that the positing of law constitutes a reaction to the disintegration of order.⁴⁴ The result, however, is that Schmitt's critique of liberalism and parliamentary democracy not

only comes to define his concept of the political, but also facilitates Schmitt's position of authoritarian moral decisionism.⁴⁵

The 'Weimar Syndrome'

It is clear that Schmitt's political critique stands among the more controversial influences on Benjamin's thought, and that the parallels between Benjamin and Schmitt give rise to a series of heavy criticisms directed towards Benjamin specifically.⁴⁶ There are also those, however, who contend that Schmitt's programme of thought has actually been overemphasised in order to draw Benjamin into the arena of the political.⁴⁷ This line of argument criticises Benjamin as a participant in the 'Weimar Syndrome' – which is described as consisting of anti-parliamentarianism, anti-democratic revolutionism and decisionism.⁴⁸ It draws the force of its position from the interpretation of an analogy between these effects of the Weimar syndrome, and their historical characterisation in terms of both left-wing and conservative politics in the aftermath of the First World War.⁴⁹ It is from within this context that Benjamin's 'Critique of Violence' is blamed for having assumed an attitude of conservative radicalism, and for having made Schmittian anti-liberal ideas presentable to critical theory.⁵⁰ This controversy demands, firstly, a deeper understanding of the constituents of the syndrome, and secondly, some clarification of the method through which Benjamin develops its effects.

The basic affinity between Schmitt and Benjamin, as well as other Frankfurters, is that they both engage in very effective critiques of liberalism. Before I can clarify exactly how Schmitt's critique of liberalism cuts directly into the nexus of themes surrounding Benjamin's own 'Critique of Violence', the terms and conditions from which his critique of liberalism rises must be delineated. Much of my discussion of the history of liberalism and its significance to Schmitt arises from Schmitt's statement in the *Political Theology*: 'Sovereign is he who decides on the state of exception'.⁵¹ From the outset, Schmitt's statement renders endless debates about principles of political obligation irrelevant. It also encapsulates, as Hirst notes in his account of Schmitt, a refusal on Schmitt's part to acknowledge the historical development of the formal constitutional powers of different bodies.⁵² Given this critique of Schmitt by Hirst, the question, I believe, becomes one of how Schmitt comes to lend his concept of sovereignty, something that appears to be a statement of

mere value preferences, the status of an objective analysis of the defects of parliamentarism and liberalism. Hirst is helpful here again in outlining Schmitt's manipulation of the 'rule of law' – a concept that underwent intensive debate during the Weimar period – as the source of response to this question. It has already been discussed above how liberalism attempts to make the state subject to law; but for Schmitt, the 'rule of law' more specifically confirms, by Hirst's account, that any given law is lawful – as long as it is properly enacted according to set procedures.⁵³

Schmitt's interpretation of the rule of law stems from the liberal democratic constitutional doctrine that holds the legislature to be 'sovereign' – which is to say that the legislature derives its law-making power from the will of the people as expressed through their representatives. Schmitt's dissatisfaction with liberalism's procedures begins with a critique of the extent to which they rely on a 'constituting political moment': that moment, in turn, disempowers the "sovereignty" implied in democratic legislatures' and ultimately modifies 'not only specific laws but also law-making processes' – 'at will'.⁵⁴ This 'constituting political moment' in liberal theory is 'threatened by a condition of politics which converts the "rule of law" into a merely formal doctrine': in this case, 'the "rule of law" is simply the people's will expressed through their representatives', and the result is one where the rule of law has 'no determinate content and the state is no longer substantively bound by law in its actions'.⁵⁵ The subtleties of the antagonistic relationship between liberalism and democracy aside, I would like to consider Hirst's point that democracy is problematic for Schmitt insofar as it depends on there being an outside – a point beyond the reach of – the legal order, that is 'prior to and not bound by the law'.⁵⁶ When Schmitt states, in the *Political Theology*, that 'sovereign is he who decides on the state of exception', he also implicitly suggests that sovereignty is a matter of determining which particular agency has the capacity – outside of the law – to impose an order which, because it is political, can become legal. The main point to remember here is that Schmitt endorses his own re-conceptualisation of sovereignty as a solution to a crumbling Weimar: 'From a practical or theoretical perspective', he goes on to state in the *Political Theology*,

it really does not matter whether an abstract scheme advanced to define sovereignty (namely, that sovereignty is the highest power, not a derived power) is acceptable. About an abstract concept there will be no argument... What is argued about is the concrete application, and that means who decides in a situation of conflict what constitutes the public interest or interest of the

state, public safety and order, *le salut public* and so on. The exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a preformed law.⁵⁷

It is from his critiques of liberalism and democracy that Schmitt determines sovereignty to be neither a matter of formal constitutional doctrine (as in the case of liberalism) nor the embodiment of essentially hypocritical references to the people (as in the case of democracy). The inadequacies of liberalism and democracy, or what Schmitt perceives to be their inadequacies, provide him with the means by which to express his dissatisfaction with the historical development of the principle of sovereignty. But the imperative on Schmitt's part to actually restructure the concept of sovereignty can only be understood by some analysis of the historical stakes involved in that process.⁵⁸ This brings me to the subject of the Weimar constitution, which came into effect on August 11, 1919. Schmitt was faced with the crucial decision, at that time, of either accepting the republic or remaining in opposition to it, and it has been argued that he assumed the stance of a *Vernunftrepublikaner*, who accepted the republic out of 'good sense' rather than sentiment.⁵⁹ In doing so, he followed the precedent set by the Catholic Centre Party, which had been an active participant in the formation of the republic and supported the new constitution. The Centre Party's capacity to block more radical trends, particularly those associated with Bolshevism which could lead into unknown spheres of political experimentation, was especially appealing to Schmitt.⁶⁰

Among Schmitt's concerns in the acceptance of the Weimar framework was the question of legality.⁶¹ Once the constitution had been ratified by the popularly elected National Assembly, a new legally constituted authority had replaced the monarchy. Unlike most conservative jurists and bureaucrats, who reluctantly adjusted to the new legal order – and among whom anti-republican biases were evident – Schmitt accepted the authority of the new regime at its inception, in keeping with the principle of obedience to any legally constituted authority of which he himself was advocate.⁶² Underpinning Schmitt's series of considerations vis-à-vis the Weimar Constitution was the concept of the state. In Schmitt's mind the German state, the sovereign political entity with which the German people identified, had not appreciably changed as a result of the revolution. Although its internal political nature had been transformed, the state had retained its paramount importance as a

central institution in society, and still represented Germany as a national unit.⁶³ In the immediate post-war situation, however, the unity of the German state was constantly threatened, and the dangers of civil war and revolution were ever present. Adding to these internal problems of the state, to Schmitt's dismay, were the draconian terms of the Versailles Treaty. Now that the authoritarian hand of the monarchy had been removed, Schmitt hoped that the new constitution would provide the basis on which the future security and stability of the state could be assured.⁶⁴

In Schmitt's view, in the early 1920s modern mass politics seemed to be veering towards permanent revolution. Indeed, within a matter of months after the constitution had been ratified the government was on the verge of collapse, challenged by overt assaults from extremists. In March of 1920, the ardent monarchists Wolfgang Kapp and General Walther von Lüttwitz, backed by a brigade of soldiers, staged a coup in Berlin, forcing the Eberg government to flee the city. Shortly thereafter the communists in the highly industrialized Ruhr area led a Red Army of 50,000 men in revolt against the republic. It was only a general strike by German workers against the rightist seizure of power that brought a quick end to Kapp's adventure. While eliminating this short-lived rightist regime, however, the strike reemphasised the tremendous power of the working classes and, in the minds of the bourgeoisie, indicated a potential for further revolutionary activity. During this crisis the army demonstrated that its own sympathy for the republic was quite limited. It took part in the brutal suppression of its ideological enemy on the left, ending the communist revolt, but it had not come to the assistance of the government during the Kapp Putsch. More importantly, these events, along with suspicion and antagonism among the pluralistic forces in Germany, were clear indications that the reconciliation of class and ideological differences was still exceptionally difficult. In the elections to the first Reichstag on June 6th, 1920, those parties supporting the republic failed to acquire a majority. With voting trends moving to the extreme right and left, the potential for further disorder still existed.⁶⁵

The State of Exception

Given the fragile state of the Weimar republic, the *Political Theology* sees Schmitt looking for a perspective on the present that could inform a radical counter-offensive, an alternative to a fatalistic acceptance of the decline of European political

civilization.⁶⁶ It follows from this, however, that sovereignty in Schmitt does not stand as an independent concept; it is intimately connected to the state of exception. On the one hand, the exceptional situation calls for the emergence of a potentially all-powerful sovereign who must not only rescue a constitutional order from a particular political crisis but also charismatically deliver it from its own constitutional procedures.⁶⁷ Conversely, an unlimitedly powerful sovereign takes the initiative in a time of crisis to restore existential substance to constitutional orders, or to regenerate the normal, liberal political order, which is why Schmitt writes that the exception provides a space through which ‘the power of real life breaks through the crisis of a mechanism that has become torpid by repetition’.⁶⁸ The result is one that, according to Schmitt, recognises the sovereign as a definite agency for whom a determinate decision is imperative.

Such is the idiosyncratic space that sovereignty occupies: sovereignty is outside the law, since the actions of the sovereign in the state of exception cannot be bound by laws; and to claim its position outside the law as anti-legal would be to ignore the fact that all laws have an outside, that they exist because of a substantiated claim on the part of some agency to be the dominant source of binding rules within a given territory. Similarly idiosyncratic is the sovereign determination of the possibility of the rule of law by its decision on the state of exception: ‘For a legal order to make sense’, Schmitt writes, ‘a normal situation must exist and he is sovereign who definitely decides whether this normal situation actually exists’.⁶⁹ The sovereign’s position outside the law also facilitates the merging of normal and exceptional moments – thus Schmitt’s statement that sovereignty depends ‘on’ a state of exception. The sovereign decision conflates two separate moments: on the one hand, the moment of normalcy in which a body decides that an exceptional situation exists; on the other, the moment of exception in which the person who is appointed by this body – that is, the sovereign himself or herself – decides what to do in the concrete particulars of the emergency.⁷⁰

Insofar as the position of sovereignty is outside the law, its effects on the law are subtle and far-reaching. The idiosyncratic position of sovereignty becomes evident in Schmitt’s opening statement in the *Political Theology*, which is in turn so direct it obscures its own mechanics. Although further into the *Political Theology* Schmitt brings together these two separate moments more explicitly and deliberately

to say that the sovereign 'decides whether there is an extreme emergency as well as what must be done to eliminate it',⁷¹ Schmitt never prescribes a time frame, or imposes task-related limits on a sovereign's action in the exceptional situation. Schmitt's underlying implication is that to do so would be impossible: 'If measures undertaken in an exception could be circumscribed by mutual control, by imposing a time limit, or finally, as in the liberal constitutional procedure governing a state of siege, by enumerating extraordinary power, the question of sovereignty would then be considered less significant'.⁷² Schmitt's refusal to impose task-related or temporal limits to sovereign action also implies, however, that while the sovereign is free to do whatever is necessary in the particular exceptional moment to address a crisis that is identified by another institution and that may never have been foreseen or codified in law, he is under no obligation to return the government to that law:

The exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state or the like. But it cannot be circumscribed factually and made to conform to a preformed law.

It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty. The precise details of an emergency cannot be anticipated, 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 how it is to be eliminated. The preconditions as well as the content of a jurisdictional competence in such a case must necessarily be unlimited.⁷³

3. Schmitt's treatment of parliamentary democracy

The last section clarified Schmitt's principle of sovereignty as having obscured, in the *Political Theology*, its own mechanics. There, the principle of sovereignty was shown to have expanded such that its intimate connection to the exceptional state and to the rule of law was virtually impossible to decipher. As the instruments through which Schmitt removes the limits of sovereignty, these critiques of liberalism and parliamentary democracy were more clearly delineated by Schmitt in the *Concept of the Political*. In Schmitt's view, parliamentarism and liberalism are fundamentally antagonistic: they existed in a particular historical epoch between the 'absolute' state of the eighteenth century and the 'total state' of the twentieth century, during which time parliamentary discussion and a liberal 'private sphere' presupposed the depoliticisation of a large area of social, economic and cultural life.⁷⁴ From another perspective, but along the same vein of argument, the state provided a legally

codified order within which social customs, economic competition, religious beliefs and so on could be pursued without becoming ‘political’.⁷⁵ The result is a depoliticisation of the modern ‘total state’: in Schmitt’s own words, ‘state and society penetrate each other’,⁷⁶ and politics as such ceases to be exclusively a matter of the state:

Heretofore ostensibly neutral domains – religion, culture, education, the economy – then cease to be neutral... Against such neutralizations and depoliticizations of important domains appears the old state, which potentially embraces every domain. This results in the identity of state and society. In such a state... everything is at least potentially political, and in referring to the state it is no longer possible to assert for it a specifically political characteristic.⁷⁷

As one of the instruments through which Schmitt removes the limits of sovereignty, Schmitt’s critique of parliamentary democracy is more explicit in his study on the *Crisis of Parliamentary Democracy*. There, the general framework of Schmitt’s argument stands as follows: parliamentary democracy is itself a contradiction in terms because it does not in fact represent democracy proper, but rather ‘an elected committee of responsible people’.⁷⁸ Schmitt continues:

So the familiar scale originated: Parliament is a committee of people, the government is a committee of parliament. The notion of parliamentarism thereby appears to be something essentially democratic. But in spite of all its coincidence with democratic ideas and all the connections it has to them, parliamentarism is not democracy any more than it is realized in the practical perspective of expediency. If for practical and technical reasons the representatives of the people can decide instead of the people themselves, then certainly a single trusted representative could also decide in the name of the same people...

The *ratio* of parliament rests... in a “dynamic-dialectic”, that is, in a process of confrontation of differences and opinions, from which the real political will results. The essence of parliament is therefore public deliberation of argument and counterargument, public debate and public *discussion*, parley, and all this without taking democracy into account.⁷⁹

Parliamentary democracy for Schmitt is a form of mass politics, then, which necessarily broadens the political agenda to include the affairs of all society, so that everything is potentially political. The effects of this broad inclusion are two-fold: at the outset, mass politics threatens existing forms of legal order, which is to say that the politicisation of all domains increases pressure on the state by multiplying the competing interests demanding action; once all social affairs become political, the

liberal legal framework – the regulating of the ‘private sphere’ – ultimately becomes inadequate. This is precisely how, according to Schmitt, the existing constitutional framework comes to threaten the social order, and politics becomes a contest between, rather than an effort to achieve reconciliation among, the interests of organised parties. The result is a state bound by law to allow every party an ‘equal chance’ for power: a weak state threatened with dissolution.⁸⁰

Schmitt is very precise in his analysis, in the *Crisis of Parliamentary Democracy*, of how these forms of legal order and social order have been destabilised under the parliamentary democratic system. At the root of his concern is the extent to which the parliamentary system allows minority bodies, especially strong economic organisations⁸¹ to gain disproportionate access to power. Modern parliament, Schmitt claims, is therefore no longer a place where binding, determinate decisions are represented;⁸² it has rather taken on the quality of an insurance house for the organs of capitalist economic power.⁸³ For this reason, Schmitt argues, the composition of the collective will in modern democratic systems cannot be truly legitimate or democratic – for the collective will is subject to processes of interest-based fragmentation before it has even been formed. The liberal-democratic vision of power legitimised by discussion has therefore been supplanted by a technical and temporary set of compromises and contracts that can simply be rescinded when they are no longer of use.⁸⁴ Consequently, the operations of parliament, Schmitt argues, can no longer be viewed as democratic discussion in the true sense. The discussions that take place in parliament do not genuinely constitute power; power is formed instead through extra-parliamentary deals and alliances. As a result, proper democratic debate has undergone a kind of reification, in the sense that its function has become purely mechanical. The technical character of the parliamentary system ensures the failure of the task for which the party system was conceived – the task of resolving differences of interest in the civil sphere by means of party-mediation.

Schmitt views the Weimar state as a ‘fragile coalition-party state’, in which governments are merely ‘social or economic power-groups’, based on technical compromise rather than on fundamental agreement.⁸⁵ Schmitt writes:

Normally one only discusses the economic line of reasoning that social harmony and the maximization of wealth follow from the free economic competition of individuals, from freedom of contract, freedom of trade, free enterprise. But all this is only an application of a general liberal principle. It is exactly the same: That the truth can be found through an unrestrained clash

of opinion and that competition will produce harmony. The intellectual core of this thought resides finally in its specific relationship to truth, which becomes a mere function of the eternal competition of opinions. In contrast to the truth, it means renouncing a definite result. In German thought the notion of eternal discussion was more accessible in the Romantic conception of an unending conversation, and it may be remarked in passing that all the intellectual confusion of the conventional reading of German political Romanticism, which characterizes it as conservative and antiliberal, is revealed in precisely this connection. Freedom of speech, freedom of press, freedom of assembly, freedom of discussion, are not only useful and expedient, therefore, but really life-and-death questions for liberalism... One can easily see that freedom of the press is only a means for discussion and openness and not an independent factor...⁸⁶

Schmitt continues to argue, in essence, that liberal democracy can never be genuine democracy, because it is merely an instrument that transposes the private-legal interests of powerful capitalist groups into the public-legal system *of the executive*. Because of this, liberal democracy cannot produce truly legitimate governments, and can at best engender systems of authority that justify themselves by the inferior, technical criteria of legality.⁸⁷ At the core of this critique is the suggestion by Schmitt that the executive should be strengthened in order to protect democracy itself. More specifically, Schmitt proposes the replacement of the democratic balance between legislature and executive with an unchecked executive. In a critique of the contrast established between law and authority that emerges from the thought of Aristotle and spans the rationalism of the French Enlightenment, which ‘emphasized the legislative at the expense of the executive’, Schmitt looks to the executive as the point in which law and authority should be united.⁸⁸ Schmitt continues:

The executive must be in the hand of a single man because its energy and activity depend upon that; it is a general principle recognized by the best politicians and statesmen that legislation is deliberation and therefore must be made by a larger assembly, while decision making and protection of state secrets belong to the executive...⁸⁹

To maintain a rift between law and authority is to maintain, similarly, a rift between the ‘rational and irrational (if this is what one calls things that are not accessible through rational discussion), and even here’, Schmitt writes, ‘there is negotiation and compromise’.⁹⁰ Schmitt’s proposal to strengthen the executive, however, is problematic insofar as it engages in something of a transvaluation, rather than radical upheaval of, the democratic principles with which it expresses concern. Schmitt writes, for example, that ‘the idea of parliamentarism finds itself in a crisis because

the perspective of a dialectic-dynamic process of discussion can certainly be applied to the legislative but scarcely to the executive'.⁹¹ Not only does Schmitt define the executive in terms of the legislative, but also, for Schmitt, the inadequacy of the democratic system stems largely from its validation through a belief in the rightness of the majority. To the extent that Schmitt justifies his critique through this inadequacy, he also preserves some value, I argue, in the notion of *protection*: firstly, Schmitt promotes the elite minority as the more appropriate inheritor of the right to *protect* the well-being of the majority; secondly, Schmitt emphasises the importance of maintaining the right to suspend democracy in order to *protect* democracy. In mapping the process through which the 'first theories of the division and balance of power developed' into a 'constitutional theory with a constitutional concept of legislation', Schmitt notes the way in which 'dictatorship' came to be understood as 'not just as an antithesis of democracy but also essentially as the suspension of the division of powers, that is, as a suspension of the constitution, a suspension of the distinction between legislative and executive'.⁹² Ultimately, Schmitt argues that dictatorship, with the fullness of power in the hands of one person, is a more democratic means of protecting and representing the general will than the interest-based discussions of the parliamentary system.

This unchecked executive assumes various forms throughout Schmitt's work,⁹³ but in the *Political Theology* it takes on the very specific form of absolute sovereignty. It has already been established that for Schmitt, sovereignty is a matter of determining which particular agency has the capacity – outside of the law – to impose an order that, because it is political, can become legal: 'The controversy always centred on the question' Schmitt writes, of 'Who assumes authority concerning those matters for which there are no positive stipulations, for example, a capitulation? In other words, Who is responsible for that for which competence has not been anticipated?'.⁹⁴ In the case of the extreme exception, Schmitt writes, the same 'legal-logical structure' repeats itself so that once again 'it is always asked who is entitled to decide those actions for which the constitution makes no provision; that is, who is competent to act when the legal system fails to answer the question of competence'.⁹⁵ Insofar as this unchecked executive is realized in the form of sovereignty, it sees Schmitt rely on the constitutional law to discern sovereign 'competence', without establishing any qualification of the conditions of that

‘competence’.⁹⁶ In this way, Schmitt reinforces the structure of institutional diversity – or the liberal regime, with its constitutionally enumerated ‘division and mutual control of competences’,⁹⁷ or what is more generally known as a separation of powers – that he seeks to destabilize. Having done so, Schmitt opens this structure of diversity to the possibility of seizure by extremist political entities.

Schmitt’s critique of the liberal rule of law⁹⁸

It is in an effort to defend the political, then, that Schmitt argues against the entire history of private-legal (capitalist) encroachment upon the power of the state as insufficient and illegitimate. In doing so, he summarily denies the law-giving authority of extra-political interests, and renders activities outside the executive sphere irrelevant to power.⁹⁹ Schmitt’s reflections on politics and order always turn against the liberal doctrines of legal positivism,¹⁰⁰ and most especially against the suggestion that law itself might limit or even replace the power of the state.¹⁰¹ ‘The crucial distinction’, Schmitt writes, ‘always remains whether the law is a general rational principle or a measure, a concrete decree, an order’.¹⁰² This is how the effects of Schmitt’s argument against parliamentary democracy also come to inform his very radical argument against the formalisation of law in liberal legal theory. Liberalism, as opposed to parliamentary democracy, Schmitt contends, is a matter of formal constitutional doctrine; it implies a highly conservative version of the rule of law and a concept of sovereignty that is limited to a constitutive political act beyond the reach of normal politics. The rule of law is the point upon which Schmitt’s critique of liberalism hinges: as the outcome of a process which in liberalism tries to make the state subject to law, it renders laws as lawful only if properly enacted according to set procedures. The liberal interpretation of the rule of law relies on a constituting political moment in order that the sovereignty implied in democratic legislatures be unable to modify at will not only specific laws but also lawmaking processes. The liberal conversion of the rule of law into a merely formal doctrine actually comes to threaten the condition of politics, in Schmitt’s view.¹⁰³

The point that Schmitt cannot stress enough is that this liberal conversion inevitably paralyses a state in the face of an exception because it obscures the sovereign, who must decide and act at that moment:

If such action is not subject to controls, if it is not hampered in some way by checks and balances, as is the case in a liberal constitution, then it is clear who

the sovereign is. Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety. All tendencies of modern constitutional development point toward eliminating the sovereign in this sense.¹⁰⁴

In Schmitt's formulation, in all cases of emergency it is necessary to have recourse to a unitary institution with a monopoly on decisions, so that no such confusion or conflict occurs.¹⁰⁵ Because the likelihood of such an occurrence is great – especially in the fragile Weimar state of the 1920s – and because the same figure who acts on the exception must first declare that it exists, it is also best to have such a person vigilant even during normal times. Thus in violation of the main principles of classical dictatorship, normalcy and exception are collapsed, and the ordinary rule of law is dangerously encroached on by either conflicting parties, or exceptional absolutism.¹⁰⁶

Where Schmitt uses a critique of liberalism in the *Concept of the Political* to remove the boundaries of sovereignty as it appears in the *Political Theology*, the principle of sovereignty as it is implied in *The Crisis of Parliamentary Democracy* is more explicitly circumscribed – that is, it is bound by historical references. Given that Schmitt's critique of liberalism can also – and in fact, must also be understood in the context of the historical argument between Catholics and liberals, and by summarising and demonstrating how Schmitt contributes to that argument, it becomes possible to outline the dogmatic underpinnings of the principle of sovereignty. In order best to articulate sovereignty as dogma, however, a series of disclaimers surrounding Schmitt's allegiance to Catholicism must be considered. The argument for Schmitt's allegiance to Catholicism should be received guardedly, particularly in the case of those who suggest that Schmitt's sociological and intellectual-historical roots in the Roman Catholic party of the *Kaiserreich* and the Weimar period – the *Zentrum* – has been critically neglected.¹⁰⁷ This is not to say that Schmitt's political collusions should exclusively inform his theory of politics, or that the history of German Catholicism does not provide a complex context for Schmitt's ideas. Although anti-liberalism was a more or less inevitable component of Roman Catholic political perceptions in late nineteenth and early twentieth century,¹⁰⁸ the Roman Catholic background to Schmitt's thought can also be linked to

the determinate cultural-political conditions of Roman Catholicism after unification.¹⁰⁹

The first decade after Bismarck's unification of Germany was marked not only by the short-lived influence of the liberal parties but also by a series of aggressive anti-Catholic laws and strategies known as the *Kulturkampf*. These were designed to increase the state's control of the Catholic Church and to weaken the Zentrum, in order to cement the liberal-conservative hold on power. The temporary liberalization of the economic order in Germany in the 1870s, and the liberal-conservative coalition that brought it into effect were, therefore, firmly associated with anti-Catholic policies. Schmitt himself grew up in the Sauerland, an area strongly connected with the Zentrum, noted for its anti-Bismarckian tradition and directly affected by the *Kulturkampf*. After the fragmentation of the liberal parties following 1878, the bitter opposition between Catholics and liberals continued. After 1880, the Zentrum became a crucial force in imperial politics. Its political orientation – and especially its openness in issues of economic policy – allowed it to form anti-liberal coalition-governments with most other parties. Bismarck himself deliberately reintroduced the Zentrum into the fold of acceptable politics after the dissolution of the liberal-conservative government in the late 1870s, thus transforming the Zentrum into a banker against liberalism and against liberal reform. The Zentrum was in many respects a natural ally of the conservative factions, as the electoral strength of the Zentrum relied in large part on the preservation of the three-class electoral system.¹¹⁰

Although there were short-lived periods of co-operation between the National Liberals and the Zentrum, the bitterness between these parties remained an important political factor throughout the Wilhelmine era. The contribution of the Zentrum to the collapse of the Bülow bloc¹¹¹ and the renewed formation of a conservative catholic alliance in 1909 further reinforced the inherited antagonism between liberals and Catholics. It was not until the Weimar period that the possibility of representative collaboration between liberals and Catholics was taken for granted. However, the period of collaboration between the Zentrum and the various liberal parties coincided directly with a loss of electoral power by the Zentrum. Schmitt's critique of the inorganic coalition system of the Weimar state, his anti-liberalism, and his condemnation of economic theories of politics can be understood more clearly in

the context of the politics of Catholicism in the early twentieth century.¹¹² The politics of Catholicism, in turn, lend context to Schmitt's analysis of the neutralization of modern politics that is, in short, a critique of liberalism, and the formalization of law in liberal legal theory.

4. Schmitt's interpretation of Article 48

Thus far it has been established that decisionism, in the *Political Theology*, creates political order as a quasi-theological decision from above, which is made by the sovereign in the state of exception. In the *Political Theology* alone, the state of exception develops from a purely functional-political problem for a regime to a moment of divine intervention likened to a miracle.¹¹³ As the projection of a political system based on positive principles of order, however, its effects are far-reaching and difficult to trace. This is largely because the concept of decisionism lacks homogeneity within Schmitt's own conceptual apparatus. This much, however, can be asserted: insofar as Schmitt elevates the political system of the *Political Theology* above systems of technical and economic need, he renders it dissymmetrical to the modes of governance that he supported and approved.¹¹⁴ Owing to the constant threat of political sabotage during the early 1920s, and given that, more often than not, the parliament remained paralysed in times of crisis, the politics of exception was a crucial area of debate in the Weimar period. The Weimar Constitution itself contained extraordinarily far-reaching provisions for emergency legislation and the dissolution of parliament in cases of political threat to the government – the most controversial of which was Article 48.¹¹⁵ It is the subtleties of Article 48, then, that give access to debates surrounding the discrepancy between Schmitt's political prescriptions and the forms of political domination that he actually endorsed.

The originary question of Article 48 is that of how a democratic state defends itself in the face of a crisis that threatens its very existence. For example, can dictatorship be justified as a temporary defence of the Republic in exceptional circumstances, a severe crisis, an emergency, or the threat of revolution? Article 48 was conceived initially as a means of protecting the republic in its early years against insurrection from extremist groups on both left and right, and was used in some instances to introduce anti-inflationary budgetary measures. It defined vaguely the

state of situations of exception (*Ausnahmezustände*) in which normal parliamentary executive and legislative processes could be suspended and the power of execution given directly to the President of the Weimar Republic; but as a continuation of the nineteenth-century provisions for the state of siege that had naturally been extended during the war, Article 48 also gave the President supreme command over the military.¹¹⁶ Under these circumstances, the Article soon became useful as a device for introducing legislation without the consent of parliament. Such deployment began as early as 1919 under the presidency of Ebert, a Social Democrat devoted to the constitution, who used the article 135 times.¹¹⁷ Ebert himself was well aware of the more authoritarian possibilities for governance that Article 48 presented, and his employment of the Article led to early debates – in which Schmitt was involved – about the legitimacy of such parliamentary suspension. Schmitt formulated his interpretation of the commissarial nature of Article 48 as early as 1919, and went on to defend his interpretation of presidential power at the first conference of the Association of German Constitutional Lawyers held at Jena on April 14 and 15, 1924.¹¹⁸ The conference took place in a heated atmosphere, and its focus was on the interpretation of the constitutional limitations of presidential emergency powers as enumerated in paragraph two of Article 48, and on the interpretation of the basic intent of this provision:

If public order and security are seriously disturbed or endangered within the Federation, the President of the Federation may take all necessary steps for their restoration, intervening, if need be, with the aid of the armed forces. For the said purpose he may suspend for the time being, either wholly or in part, the fundamental rights described in Articles 114, 115, 117, 118, 123, 124, and 128.¹¹⁹

Schmitt's legal arguments for limitless presidential power swam against the current of the majority opinion of participating jurists, and rested on a significant ambiguity in the wording of Article 48. He not only perceived the president as the defender of the Weimar state and constitution, and held that the president must assume extensive powers in times of disorder, but he also opposed the passage of any specific law that would restrict such authority. Although the first sentence of paragraph two stated that the president could take 'necessary measures' to re-establish public order and security, whereas the next sentence listed seven articles he may suspend to achieve this goal, Schmitt pointed out that in times of crisis, 'necessary measures' might entail the suspension of other constitutional articles.

Therefore, Schmitt concluded, the second sentence could not serve as a limitation on the first. Provided he had the consent of the Reichstag, the president could infringe upon most constitutional articles.¹²⁰ The major tension in Schmitt's interpretation of Article 48 was between the sovereign – that is, whoever has the power 'to suspend the constitution and so redefine the relationship between civil freedom and military power' – and the commissarial function of dictatorship – or rather, the President's duty 'to take decisions which otherwise would have led to the collapse of the constitutional order'.¹²¹ It was not Schmitt's objective, in his earlier thought, to elevate the president to the status of a sovereign dictator:¹²² a president, in a state of exception, functions as a commissarial dictator whose sole purpose is to preserve the existing constitutional order, and may suspend individual parts of the constitution, but these measures are, Schmitt stresses, always temporary. In other words, Schmitt's interpretation of the limitless power conferred upon the president by Article 48 was based on the imperative that the constitution be reinstated in its original form once the crisis has subsided.

Schmitt failed to convince many of his colleagues at Jena or thereafter of his interpretation of Article 48, and many jurists persisted in their efforts to define the limits of presidential emergency powers.¹²³ However firmly Schmitt believed that attempts to limit the emergency powers would only heighten demands for general constitutional revisions and further aggravate an already volatile situation, the use of Article 48 as a means of overruling the legislative body was taken to new heights under Hindenburg's presidency, 1925-1933.¹²⁴ Against the background of this period, where the Article was routinely used to pass laws without parliamentary agreement, and where it ultimately became the basis for rule by emergency decree, Schmitt still argued that only the politics of the extreme could reliably constitute genuine order. It was, Schmitt argued, only in the limiting moments of normative order that the fundamental principles of this order rise above the technical dissolutions to which they are ordinarily subject. This is how Schmitt came to concentrate the authority of the law in the hands of one person in the state of exception: as the source of an unequivocal political imperative, it stood counter to the technical compromise upon which the political system had come to be based. The technical apparatus of modern government was, Schmitt suggested in the *Political Theology*, a merely normative order that could not, by its own will, force adherence to its own norms:

... whoever takes the trouble of examining the public law literature of positive jurisprudence for its basic concepts and arguments will see that the state intervenes everywhere. At time it does so as a *deus ex machina*, to decide according to positive statute a controversy that the independent act of juristic perception failed to bring to a generally plausible solution; at other times it does so as the graceful and merciful lord who proves by pardons and amnesties his supremacy over his own laws. There always exists the same inexplicable identity: lawgiver, executive power, police, pardoner, welfare institution. Thus to an observer who takes the trouble to look at the total picture of contemporary jurisprudence, there appears a huge cloak-and-dagger drama, in which the state acts in many disguises but always as the same invisible person. The ‘omnipotence’ of the modern lawgiver, of which one reads in every textbook on public law, is not only linguistically derived from theology...¹²⁵

One can understand the *Ausnahmezustand* in terms of an exception to the Rule of Law, but in the case of Article 48, the exception actually becomes part of that Rule. According to the above passage, law is not truly valid unless it can enforce an exception that stands outside the limits of its own norms. It is through this paradox, and the disruption of the normative order of modern government to which it applies, that Schmitt is able to assert the maintenance of the integrity of the state through pre-technical, personal sources of order. Insofar as the state, as a substantive body, is already vanishing, or cannot at least be taken for granted, order can only be treated through direct recourse to the political in the purest sense – which is conceived by Schmitt as a personal will,¹²⁶ and as divine ‘revelation’, but not as the technical organs of administration.¹²⁷

5. From legal scholar to constitutional adviser

Without engaging in a defence of liberalism here,¹²⁸ it is still possible to isolate the problems that emerge from Schmitt’s critique of liberalism. Among the most important of these for the purposes of my argument is the extent to which Schmitt so dramatically asserts a direct and exclusive link between emergency provisions and the ‘original’ political will in the *Political Theology*.¹²⁹ Apposite, here, is Schmitt’s statement in the *Political Theology* that ‘it is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty’.¹³⁰ Schmitt’s assertion is problematic on two counts: firstly, it is incorrectly based on the presupposition that a liberal constitutional convention lacks any proper scheme for separating powers; secondly, it imparts power to any one branch of the Weimar

constitution, whether explicitly responsible or not, to lay an independent claim to sovereignty.¹³¹

In this sense, Schmitt's emergency powers explicitly aim for the prolonged endurance of a constitution. While Schmitt states the terms and conditions of these emergency powers in no uncertain terms, however, their effects are less stable. Incorporated into Schmitt's concept of the state of exception is the claim that if the constitution's primary purpose is to establish an institution, such as a presidency, to exclusively embody the pre-constitutional sovereign will in a time of crisis – and Schmitt implies in his critique of liberalism that it should be – then the constitution would also invite its own disposability.¹³² It is precisely this destructive dimension of Schmitt's concept of the state of exception which is interesting here, and which raises the question of how, or under what circumstances, it ever became important to the conventions of the Weimar constitution.

Schmitt's transition from prominent legal scholar to constitutional adviser began in March of 1929, when he first introduced the concept of the president as the defender of the constitution. Later that year, he also established a personal relationship with Johannes Popitz, a state secretary in the Reich finance ministry, and with General Kurt von Schleicher, who as Hindenburg's confidante was instrumental in the appointment of Franz von Papen as the Reich Chancellor.¹³³ Schleicher's forte was political intrigue and behind the scenes manoeuvres; from 1929 to 1930 he began to exercise political strategies that would see Papen restore a rightist parliament, and diminish the political appeal of the Hitler movement. Schleicher could not have been more mistaken: his plans for a non-Nazi rightist party not only failed in the July 31, 1932 elections, but the Nazis also had achieved a spectacular victory and, with the communists, took control of the Reichstag.

Despite having attained an absolute majority between them, neither of the two radical parties could co-operate. Equally, Schleicher's failure to acquire support was exacerbated by the Reich's pre-election action two weeks earlier against the state of Prussia. Having placed all of Prussia under martial law and having removed the state government, the Reich had drawn angry protests of unconstitutionality from various parties and more specifically, alienated the Centre Party and moderate left, two groups that had previously tolerated the presidential emergency decree. The crucial point to note here is that the Staatsreich had been carried out under the auspices of

Article 48, which empowered the president of the Reich to intervene in the event of Prussia's inability to maintain order and security – or rather, with what the Reich claimed to be Prussia's inability to maintain order and security.

The struggle for power in Prussia was actually more complex, and the Reich's main political objective was to prevent the Prussian government's bureaucracy and police from falling into the hands of either the Nazis or the communists. Schmitt himself identified this as the political crux of the controversy in an article that appeared on 29 July in the *Deutsche Allgemeine Zeitung*: 'There is no doubt that the essential point of controversy in the case concerns the political evaluation of two parties, the National Socialists and the Communists'.¹³⁴ The stakes in Prussia were after all high: constituting two thirds of Germany's territory, three fifths of its population, and with its police force of 85,000 men closely approximating the size of the German army, the Prussian state was a tremendous counterweight to the authority of the Reich.¹³⁵

The strike against Prussia and the events of 1932 mark a turning point in Schmitt's relationship to the Weimar Republic. Among the most important of these events was the Reich's move to replace the Prussian government with a Reich commissar,¹³⁶ and the Prussian government's subsequent efforts to seek an injunction from the Reich Court in Leipzig to prevent the imposition of commissarial rule.¹³⁷ Although the injunction against the imposition of commissarial rule was not granted, the Reich Court did not accede to the Reich initiative either, and on July 25, hearings were scheduled for later that autumn.¹³⁸ On the same day, the Papen cabinet met to discuss preparation of the Reich's case, and Schmitt was taken into consultation as representative of Gutachtern for the Reich government¹³⁹ – thereby consolidating his previously unofficial position of legal adviser for the government.

Schmitt's High Court appearance

In October of 1932 Schmitt had a chance to put his theory of presidential dictatorship into practice before the High Court by defending the German state's 'emergency' seizure of Prussia's government earlier in July.¹⁴⁰ Schmitt was called upon to represent the Papen Cabinet's claim that only the Reich, not a state government, could decide which parties were anti-constitutional, and thus could be discriminated against. He argued that the Prussian government did not have the same right as the

Reich President to impose such repressive measures, because while the latter occupied a position above parties, no government representing the interest of a party should have at its disposal the 'political surplus value' to persecute its enemies in another party.¹⁴¹

Even before the Papen government's strike against Prussia, however, Popitz's plan to dissolve the Prussian state and bring its municipalities directly under the control of the Reich was problematic. The potency of the string of constitution-bending precedents that had reinforced the presidential system to this point was waning: although Article 18 gave the Reichstag the power to change the border of any of the federal states, a two-thirds majority was necessary in order to enable this action. It was within the bounds of government policy to issue decrees by force of law, but not in the case of issue requiring more than a simple majority – to do so would set the precedent for making changes to the Constitution. But because the Prussian government was now no longer based on a majority in the Landtag, and no new majority could be formed, the possibility had opened up that the Reich might be able to impose its will unilaterally.

That in the past Article 48 had been invoked against both national socialist and communist parties was a known fact, but it had always been by a president who, standing above parties, acted as a neutral force. *The current danger was that this type of executive action might become the instrument of antagonistic political parties, each of which would use any legal means available to outlaw its opponents.* Some explanation here is required of Schmitt's interpretation of the conflicts between the Reich and Prussia. Schmitt's argument that a state government might become the instrument of the incumbent party, which would then deny an equal chance to its political competitors, was not something he invented at this time to condone Papen's action against the Prussian government. It had been a major point in Schmitt's writing for years, and already in 1931 he had noted that 'in many law suits between the Reich and a state which are brought before the supreme court, it is obvious that not the Reich and a state, but two competing party coalitions are the real parties in the proceedings'.¹⁴²

For Schmitt, it was vital that the president should initiate a policy that denied political parties access to the principle of equal chance. Schmitt's argument for the institution of a Reich commissar for Prussia¹⁴³ was largely the outcome of his

concern with the independent actions the Prussian government might take against the Nazis – which from his perspective presaged the imminent outbreak of civil conflict. It was a landmark case, in which Schmitt received a great deal of publicity – from both within and beyond intellectual circles. And Schmitt's involvement in the case inspired much controversy: on the Left, his former student Otto Kirchheimer questioned his assessments of political significance, and especially took issue with Schmitt's interpretation of the rule of law;¹⁴⁴ as far as the right was concerned, the case saw Schmitt adopt an increasingly sympathetic perspective vis-à-vis National Socialist doctrine.¹⁴⁵

Article 48: Prussia versus Reich

Schmitt drew his argument for the Reich's strike against Prussia from Article 48: he contended that the president had acted out of necessity, with the best interests of Germany in mind, and in accordance with his constitutional duties. By Schmitt's interpretation, Article 48 authorised the president to force a state to fulfil its obligations under the constitution and Reich law (paragraph one): 'If a state fails to perform the duties imposed upon it by the federal constitution or by federal law, the President of the Federation may enforce performance with the aid of the armed forces'.¹⁴⁶ Article 48, according to Schmitt, also authorised the president to take necessary measures to re-establish order and security (paragraph two). Both paragraphs were interrelated in this case and should be considered as such by the court. By failing to maintain order and security, and by refusing to follow the policies of the Reich, Prussia had not fulfilled its obligations to the constitution or the Reich. Consequently, the president had the authority to invoke paragraph one to compel Prussia to fulfil its constitutional obligations, and concurrently to deploy paragraph two as a means to re-establish security.

The jurists for Prussia argued, however, that each paragraph represented a different type of authority, each of which must be handled separately. They tried to show that each paragraph of Article 48 had derived from distinct parts of the former constitution and had remained separate in the Weimar constitution precisely in order to prevent authority from, firstly, the suspension of certain constitutional rights, as authorised under paragraph two, and secondly and more importantly, from the application of the terms of that suspension of constitutional rights to the first section

of the Article. Equally significant, Prussia had always fulfilled its duties under constitution and Reich law; its having deviated from certain political policies of the central government did not signify a constitutional violation. But it was also the Prussian position that the president had erred in invoking paragraph two because order and security were not seriously disturbed in Prussia, and the state government had the situation firmly under control. Furthermore, nowhere in the constitution, even in Article 48, was it stated or implied that a president could authorise the removal from office of a legally constituted state government.

Prussia's jurists protested vigorously that Schmitt was elevating the president above the court in constitutional matters and subordinating law to politics. They went on to challenge the extensive authority Schmitt's interpretations would grant a president: a president was not the ultimate interpreter of the authority he had under Article 48; his actions were subject to judicial review; and the constitutionality of the actions of a state, like the legality or illegality of a political party, was to be determined not by the president but by the courts. They charged that Schmitt's attempt to make constitutional interpretations dependent upon an existing situation could lead constitutional law to the point of absurdity, and frequently employed the term '*situationsgemäss*' (according to existing conditions) to describe Schmitt's position – at one point interrupting his presentation with the accusation 'situation-jurisprudence'.¹⁴⁷

The plaintiffs consisted of parties that had a stake in making sure that Article 48 could not be used to suspend a state government. In their argument against Schmitt as having rendered the constitution relative,¹⁴⁸ they argued that the purges of the Prussian bureaucracy were unconstitutional, and motivated by the government's plan to strike a deal with the Nazis.¹⁴⁹ In response, Schmitt reiterated that when divergent state policies threaten to disrupt order and security, that state is certainly not satisfactorily discharging its constitutional duty; and that a constitution is a political document, not just a collection of legal norms, and as such must be viewed in the context of political realities. He conceded that from a legal standpoint the court was the 'defender of the constitution' and the final arbiter in legal disputes regarding the constitution: but insofar as it was still a court, it was 'unprepared and unable to render those political decisions and to take the political action which might

be required to protect the constitution' – to do so would jeopardise its already precarious authority.¹⁵⁰

For this reason, the president had been designated under Article 48 by oath as the lawful political defender of the constitution. In this position, a president must have, and in fact did have, the constitutional authority to react according to the dictates of a concrete political situation. With this authority came the right, in extreme cases, to remove a negligent state government from office and to institute a Reich commissar – particularly if the stability of the constitution and state were in question. In his concluding summary, Schmitt stated bluntly that 'the formalities ... in this process before the supreme court are no mere formalities, but very real political matters'.¹⁵¹

The ruling

Schmitt had always rejected the idea that the court could sit in judgement over a political conflict. But in this case, if the Reich had tried to reject the jurisdiction of the court, and attempted to impose a commissar, the result would have been an at least four-sided civil war. The ruling on October 25 confirmed Schmitt's worst fears about political justice: the court reaffirmed its own right of judicial review and its claim of being the legal defender of the constitution. In its ruling that the Prussian government had been unlawfully suspended, it also rejected allegations that Prussia had failed to fulfil its constitutional obligations. Consequently, paragraph one of Article 48 was not applicable to the aims of the strike against Prussia, and the Reich had no authority to remove the Prussian cabinet. On the other hand, the court agreed that the institution of a Reich commissar for Prussia under paragraph two was justified, because there did exist a serious danger to public order and security.

Not only did the ruling fail to resolve the conflict, but insofar as it installed a Reich commissar alongside the Prussian state government, it also rendered the question of who controlled Prussia even more confusing. There were now three governments in Berlin: the Reich national government, the commissarial government imposed by the Reich on Prussia, and the still official Prussian Braun-Severing government. Although the decision was greeted at the time as a victory by those who supported the Republic, it was perhaps more resonant insofar as it encapsulated defeat for those who supported Papen. Where it convinced Hindenburg that from

now on things had to proceed with a more outward respect for legality, however, it struck Schmitt as a personal and political defeat. Schmitt believed that because the government had not clearly emerged as master of the situation, it would be impossible to strike with a free hand against the remains of the Weimar system without simultaneously strengthening the Nazis.¹⁵²

In reality the political power and constitutional authority of the president under Article 48 proved more decisive than the legal judgements the court had handed down regarding the constitutional rights of the Prussian government. For a while the Prussian cabinet returned to office, but its authority became meaningless, as the real power in Prussia shifted to Papen's commissar, who governed the state through emergency decrees.¹⁵³ But most importantly, the trial saw Schmitt become a public personality of some importance. Leo Strauss's long essay on 'Der Begriff des Politischen', published in late summer 1932, was in particular directed to Schmitt's critique of liberalism, and showed that Schmitt's ideas and analyses were taken quite seriously in the scholarly community.¹⁵⁴

Schmitt nevertheless became a logical target for criticism in the liberal and leftist press,¹⁵⁵ the views of which more accurately gauged his gradual shift to Nazism. The conclusion drawn by the leftist *Weltbühne*¹⁵⁶ was that Schmitt had become the apologetic crown jurist (*Kronjurist*) of the government. The prevailing attitude toward Schmitt in Catholic, liberal, and socialist circles was that as an apologist for reactionary forces within the Papen government, he had provided a legalistic cover for an attack on the republic itself. Decisive in the minds of many republicans was the fact that Schmitt appeared to have 'lost control over his own ideas'¹⁵⁷ and to have sided with the anti-democratic forces.

But most importantly, Schmitt received a great deal of attention in the conservative press. And although Schmitt had lent his intellectual support to the attempts of Papen and Schleicher to usurp the authority of the Parliament and govern Prussia through Hindenburg's elected office, members of the National Socialist party were present at the hearing and were impressed with Schmitt's arguments. When Schleicher's scheme to out-manoeuvre the Nazis – a strategy that Schmitt supported publicly¹⁵⁸ – failed, he resigned in January of 1933. When Hitler subsequently became chancellor, Papen, who himself had always been less wary of the Nazis than Schleicher, called on Schmitt to help legalise the new coalition fascist regime. As the

regime became more exclusively National Socialist, Schmitt stood by as his leftist and Jewish colleagues began in April of that year to be dismissed from their university positions.¹⁵⁹

Schmitt joined the Nazi party with Heidegger on May 1, and quickly assumed party leadership roles in academia as well as the professorship that he had sought for so long at Berlin's Friedrich-Wilhelms-Universität. He revised his previous written work to conform to party dogma and authored treatises that integrated his Weimar theories into a justification for the power-consolidating National Socialist regime.¹⁶⁰ Schleicher, along with his wife, was murdered in the Night of the Long Knives, June 30, 1934.¹⁶¹ And Popitz was arrested and hanged for his role in the plot to assassinate Hitler in July of 1944.¹⁶² Schmitt however authored an article that 'legally' justified these actions, 'The Führer Protects the Law'.¹⁶³ He went on to accept the position, under the influence of Hermann Göring and Hans Frank, of chief counsellor of Prussia and sought to become the pre-eminent architect of National Socialist law.¹⁶⁴

¹ See Mark Lilla, 'The Enemy of Liberalism', *The New York Review of Books*, 15 May 1997, p. 38, for an account of Schmitt's popular investiture as 'Crown Jurist' of the Third Reich.

² See Jan-Werner Müller, *History of European Ideas* 29 (2003), 459-473. Müller's opening paragraph is typical in its concern for the comparison of Benjamin, appropriated by the left, and Schmitt, who is explicitly right-wing: 'To talk about Carl Schmitt and Walter Benjamin in one breath still seems to have an air of the sacrilegious, maybe even an air of violence – doing violence to Benjamin, that is of course'.

³ Schmitt's alignment with the Third Reich is explicit in his texts 'The Führer Protects the Law' (*Der Führer schützt das Recht*, 1934) and 'German Jurisprudence in Its Struggle against the Jewish Spirit' (*Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist*, 1936). See Samuel Weber, 'Taking Exception to Decision: Walter Benjamin and Carl Schmitt', *Diacritics* 22 (1992), 5-18 (p. 5).

⁴ Carl Schmitt, *Politische Romantik*, 5th edn (1919; Berlin, 1991). See Paul Piccone and U.G. Ulmen, 'Introduction to Carl Schmitt', *Telos* 72 (1987), 3-14 (p. 12).

⁵ See Piccone and Ulmen, p. 12; See Ernst Bloch on Kelsen and Schmitt in chapter 18 of *Natural Law and Human Dignity*, trans. by Dennis J. Schmidt (Cambridge, MA; London: MIT Press, 1986).

⁶ For an account of the conference, held at Berlin's Freie Universität, see Jacob Taubes, *Ad Carl Schmitt: Gegenstrebige Fügung* (Berlin, 1987), pp. 24. Cited by Horst Bredekamp, 'From Walter Benjamin to Carl Schmitt, via Thomas Hobbes', *Critical Inquiry* 25 (1999), 247-266 (p. 248).

⁷ Taubes, pp. 24; in Bredekamp, p. 248.

⁸ Taubes, pp. 24; in Bredekamp, p. 248.

⁹ See Bredekamp, p. 248-249. See Taubes, pp. 26, 51. Bredekamp states that Taubes borrowed the phrase 'Der Feind is deine eigne Frage als Gestalt', from his poet friend Theodor Däubler, *Hymne an Italien* (Munich, 1916), pp. 58. Bredekamp attributes Meier with the having discovered this source.

¹⁰ See Carl Schmitt, 'The Legal World Revolution', *Telos* 72 (1987), 73-90. See Piccone and Ulmen, p. 4.

¹¹ Schmitt, Interrogation, No. 1942, p. 1-2, in Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich*, (Princeton, NJ: Princeton University Press, 1983), pp. 269, 290. See also 'Interrogation of Carl Schmitt by Robert Kempner (I-III)', *Telos* 72 (1987), 97-107.

¹² See Ellen Kennedy, 'Carl Schmitt and the Frankfurt School', *Telos* 71 (1987), 37-66; Martin Jay, 'Reconciling the Irreconcilable? A Rejoinder to Kennedy', *Telos* 71 (1987), 67-80; Alfons Söllner, 'Beyond Carl Schmitt: Political Theory in the Frankfurt School', *Telos* 71 (1987), 81-96; Ulrich K. Preuss, 'The Critique of German Liberalism: A Reply to Kennedy', *Telos* 71 (1987), 97-110; Ellen Kennedy, 'Carl Schmitt and the Frankfurt School: A Rejoinder', *Telos* 73 (1987), 101-116.

¹³ See Chryssoula Kambas, 'Walter Benjamin an Gottfried Salomon: Bericht über eine unveröffentlichte Korrespondenz', *Deutsche Vierteljahrsschrift für Literaturwissenschaft und Geistesgeschichte* 56 (1982), 609-621 (p. 609) in Bredekamp, footnote 8, p. 249.

¹⁴ *Origin*, pp. 65; GS 1.1, 245-246.

¹⁵ GS 1.3, 887, trans. by Samuel Weber, p. 5. See also Bredekamp, who cites Weber's translation of the text, p. 12.

¹⁶ Walter Benjamin, *Briefe*, ed. by Gershom Scholem and Theodor W. Adorno (Frankfurt am Main: Suhrkamp, 1966).

¹⁷ Rolf Tiedemann deemed the letter 'denkwürdig' for inclusion in the 1977 GS 1.3, 887. There is no explanation attached to this comment, notes Weber, p. 6.

¹⁸ See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. by Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), and *Stato di eccezione* (Torino: Bollati Birighieri, 2003). Translation forthcoming, 2005. See Brett Neilson's précis of *Stato di eccezione* in *Fiberculture* (August 2003), accessed on-line on 24 September, 2003: www.mail-archive.com/nettime-1@bbs.thing.net/msg00974.html

¹⁹ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. by George Schwab (Cambridge, MA: MIT Press, 1985). First published *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität* (Munich/Leipzig, 1922).

²⁰ For accounts of Schmitt's time at Greifswald, see Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London and New York: Verso, 2000), pp. 43; John P.

McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997), footnote 22, pp. 142.

²¹ Carl Schmitt, letter to Hansjörg Viesel, 11 May 1973, in Viesel, *Jawohl der Schmitt: Zehn Briefe aus Plettenberg* (Berlin, 1988), pp. 60-61. Schmitt writes: 'From the fall of 1932, I also have letters from Franz Neumann; most of them – above all Otto Kirchheimer, who did his doctoral work with me in Bonn in 1928 – and the acquaintances shared with W. Benjamin are not documented because we were in daily contact'. In Bredekamp, footnote 44, p. 261; Schmitt's reference is to a letter of 7 July, 1932, written to him by Karl Korsch.

²² Schmitt, letter to Hansjörg Viesel, 11 May 1973, in Viesel p. 14.

²³ Walter Benjamin, 'Für die Diktatur: Interview mit Georges Valois', *Gesammelte Schriften*, 8 vols, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp, 1974-) 4.1, pp. 487-492.

²⁴ GS 4.1, 489. See Beatrice Hanssen. 'On the Politics of Pure Means: Benjamin, Arendt, Foucault', p. 238. Hanssen notes that this is an allusion, no doubt to Mussolini, who, as a young socialist had found inspiration in Sorel's school of thought. Hanssen attributes Benjamin's 'Critique of Violence' to Valois' appropriation of Sorel's notion of the bloodless revolution, as well as the workers' insurrection for the fascist cause. Hanssen characterises the 'Critique of Violence' as right wing, stating that as a clear announcement of a 'philosophico-political attempt to offer a classification or taxonomy of different modes of violence... the term "critique" in the essay's title signalled not only the attempt to lay bare the transcendental conditions of possibility of the phenomenon', but was also greatly at odds with Benjamin's acknowledgement of the increasingly fluid demarcation line between left- and right-wing violence in his later 'Für die Diktatur'.

²⁵ GS 4.1, 491, in Beatrice Hanssen, p. 238.

²⁶ Hanssen, p. 238.

²⁷ Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Munich: Dunker & Humblot, 1923); Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (Cambridge, MA: MIT Press, 2000). Hanssen, p. 238. Hanssen refers to the Schmitt's text as the 'Crisis of Parliamentarism', whereas the English-language translation of the work by Ellen Kennedy reads 'Crisis of Parliamentary Democracy'. Kennedy's translation is the more conventional, but it is also misleading as – according to Balakrishnan, 'not only is there no mention of democracy in the original title, but it links parliament and democracy in a way that runs counter to Schmitt's whole argument'. See Balakrishnan, endnote 2, pp. 278.

²⁸ The significance of this text to my own argument emerges more clearly in the final chapter of this dissertation.

²⁹ Hanssen, p. 238.

³⁰ 'Curriculum Vitae (I)', SW1, 422-423; 'Lebenslauf I' *Gesammelte Schriften* 6, 216. 'Curriculum Vitae (III)', SW2, 78; 'Lebenslauf III' *Gesammelte Schriften* 6, 217.

³¹ 'Schmitt/ Einverständnis Haß Verdächtigung', (Benjamin, diary entry, 21 April, 1930, *Gesammelte Schriften*, 2.3, 1372. See Bredekamp, footnote 65, p. 266, who refers to the lectures, and to Chryssoula Kambas, 'Walter Benjamin an Gottfried Salomon', p. 611.

³² SW2, 78; GS 6, 217.

³³ SW1, 422; GS 6, 216.

³⁴ SW1, 422-423; GS 6, 216.

³⁵ SW2, 78; GS 6, 217.

³⁶ SW2, 78; GS 6, 217.

³⁷ SW2, 78; GS 6, 217.

³⁸ Carl Schmitt, *Concept of the Political*, ed. and trans. by Charles Schwab (Chicago and London: University of Chicago Press, 1996).

³⁹ See Ronald Beiner's 'Foreword' to David Dyzenhaus, *Law as Politics: Carl Schmitt's Critique of Liberalism* (Durham, NC: Duke University Press, 1998), pp. vii-x.

⁴⁰ See Chris Thornhill, *Political Theory in Modern Germany: An Introduction* (Cambridge, UK: Polity Press, 2000), pp. 58-60. Thornhill argues that Schmitt's critiques of parliamentarism and of Protestantism are indebted to Max Weber's theories of legitimisation and secularisation. According to Thornhill, where Weber's critique of modern political life sees the rationality of Protestantism as the rationality of progress, Schmitt in contrast sees Protestantism as in an inexorable process of decline. Schmitt's critique of liberalism, it follows by Thornhill's line of argument, stands in a broad historical trajectory of German Catholicism, and as such, constitutes a critique of Protestantism, and is based on the understanding of its having emerged as a political form of Protestantism.

⁴¹ See Thornhill, pp. 61. Legitimate government must, Schmitt asserts, consist of more than the series of technical administrative devices evident in parliamentary democracy. For the state to be legitimate, he argues, it must be political: it must maintain primacy and authenticity; be underscored by a guiding political ethics; and resist the neutralisation of modern life.

⁴² Schmitt, *Concept of the Political*, pp. 70-71.

⁴³ Schmitt, *Concept of the Political*, pp. 26. Schmitt writes: 'The specific political distinction to which political actions and motives can be reduced is that between friend and enemy. This provides a definition in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content.' Also see Thornhill, pp. 61, who notes that the political is a structure of 'action (or *existence*) which marks the last moment of substance in the secular crisis of the modern age'.

⁴⁴ Schmitt, *Political Theology*, pp. 16. For Schmitt, there can be no law without order, and no order without politics.

⁴⁵ See Karl Löwith, 'The Occasional Decisionism of Carl Schmitt', in *Heidegger and European Nihilism*, ed. by Richard Wolin, trans. by Gary Steiner (NY, NY; Chichester, West Sussex: Columbia University Press, 1995), p. 137-158.

⁴⁶ See Ralf Rogowski, 'The Paradox of Law and Violence: Modern and Postmodern Readings of Benjamin's "Critique of Violence"', *New Comparison* 18 (1994), 131-151 (p. 138-139). Rogowski draws a connection between Benjamin's critique, in the 'Critique of Violence', of degenerate parliaments, where parliament is a 'woeful spectacle' incapable of reaching decisions, and Schmitt's concept of a permanent state of exception (*Ausnahmezustand*), in which the moral decision is favoured over liberal political romanticism's emphasis on discussion, or 'endless conversation'. Rogowski notes, moreover, that Benjamin's assertion within the 'Critique of Violence' that states of emergency are normal for working class politics under democratic governments picks up Schmitt's argument, encapsulated by Ellen Kennedy in her argument in *Telos* for Schmitt's influence on the Frankfurt School, that the exception (*Ausnahme*) is a possibility which exposes both the essence of politics and the ultimate structure of sovereignty.

⁴⁷ Rogowski, p. 138-139.

⁴⁸ Rogowski, p. 138.

⁴⁹ Rogowski, p. 138.

⁵⁰ Rogowski, p. 138. Rogowski also refers to the reactions of Jay, Preuss, and Söllner against Ellen Kennedy's reading of the conjunction between Schmitt and the Frankfurt School in *Telos* 71 and 73.

⁵¹ Schmitt, *Political Theology*, pp. 5, 13.

⁵² Paul Hirst, 'Carl Schmitt's Decisionism', in *The Challenge of Carl Schmitt*, ed. by Chantal Mouffe, Phronesis (London and New York: Verso, 1999), pp. 7-17 (p. 11).

⁵³ Hirst, p. 11.

⁵⁴ Hirst, p. 11, my emphasis.

⁵⁵ Hirst, p. 11.

⁵⁶ Hirst, p. 11-12.

⁵⁷ Schmitt, *Political Theology*, pp. 5.

⁵⁸ See a selection of essays by David Dyzenhaus, John P. McCormick, Manfred H. Wiegandt, in *From Liberal Democracy to Fascism: Legal and Political Thought in the Weimar Republic*, ed. by Peter C. Caldwell and William E. Scheuerman, Studies in Central European Histories (Boston: Humanities Press, 2000).

⁵⁹ See Bendersky, pp. 29-30, who documents Schmitt's alignment with prominent conservative intellectuals such as Max Weber, and Friedrich Meinecke: 'None of these figures were ever enthusiastic about the new order, yet they all came to believe that under the circumstances it was the best alternative for Germany. Thereafter, Schmitt favoured the stabilization of the political situation in Germany within the context of the Weimar constitution'.

⁶⁰ Bendersky, pp. 27-28.

⁶¹ David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (Oxford, Clarendon Press, 1999).

⁶² Bendersky, pp. 28.

⁶³ Bendersky, pp. 29.

⁶⁴ Bendersky, pp. 28-30.

⁶⁵ Bendersky, pp. 30-31.

⁶⁶ See Balakrishnan, pp. 43.

⁶⁷ McCormick makes this point regarding the dual aspect of sovereignty and the state of exception, pp. 122.

⁶⁸ Schmitt, *Political Theology*, pp. 15, pp. 22.

⁶⁹ Schmitt, *Political Theology*, pp. 13.

⁷⁰ See McCormick, pp. 134.

⁷¹ Schmitt, *Political Theology*, pp. 7.

⁷² Schmitt, *Political Theology*, pp. 12.

⁷³ Schmitt, *Political Theology*, pp. 6-7.

⁷⁴ Schmitt, *Concept of the Political*, pp. 22.

⁷⁵ Schmitt, *Concept of the Political*, pp. 22.

⁷⁶ Schmitt, *Concept of the Political*, pp. 22; see Hirst, p. 10.

⁷⁷ Schmitt, *Concept of the Political*, pp. 22; see Hirst, p. 10.

⁷⁸ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 34.

⁷⁹ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 34-35, quoting Rudolf Smend. My emphasis is on 'discussion'.

⁸⁰ This is Hirst's reading of Schmitt's critique of parliament, p. 10.

⁸¹ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 62. Schmitt's critique of economic organisations lies within a critique of the 'scientific certainty of Marxism'. Schmitt continues: 'His discussion remains limited to goods and values, and therefore to the concepts of bourgeois capitalism; thus he remained trapped in classical, and therefore bourgeois, political economy', pp. 63.

⁸² Thornhill, pp. 56, in reference to Schmitt's *Verfassungslehre* (Duncker & Humblot: Berlin, 1928), pp. 319. Schmitt's *Verfassungslehre* is often used in support of arguments in *The Crisis of Parliamentary Democracy*, among other texts. See Howard Caygill, *Hegel and the Speculative Community*, UEA Papers in Philosophy, New Ser. 3 (Norwich: University of East Anglia, 1994), pp. 41.

⁸³ Thornhill, pp. 56, in reference to Schmitt's *Verfassungslehre*, pp. 312.

⁸⁴ Thornhill, pp. 56-57; see Schmitt, pp. 35.

⁸⁵ Thornhill, pp. 56-57. According to Thornhill, this aspect of Schmitt's political thought ie his argument against the compromised, technical nature of parliamentary representation, which has come to devalue its claim to legitimacy - has been influential in subsequent left-leaning political theories (especially amongst thinkers connected with the Frankfurt School).

⁸⁶ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 35-36.

⁸⁷ Thornhill, pp. 57.

⁸⁸ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 45.

⁸⁹ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 45.

⁹⁰ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 45.

⁹¹ Schmitt, *The Crisis of Parliamentary Democracy*, pp. 48.

⁹² Schmitt, *The Crisis of Parliamentary Democracy*, pp. 41.

⁹³ The spectrum of Schmitt's proposals for the supplanting of the democratic balance between legislature and executive with an unchecked executive is covered by Thornhill, pp. 57-58. Schmitt's proposals, as listed by Thornhill, include the 'executive as the total state, as absolute sovereignty, as commissarial dictatorship, as sovereign dictatorship, or most fatefully, as Hitler's *Führertum*'.

⁹⁴ Schmitt, *Political Theology*, pp. 10.

⁹⁵ Schmitt, *Political Theology*, pp. 11.

⁹⁶ Schmitt, *Political Theology*, pp. 11.

⁹⁷ Schmitt, *Political Theology*, pp. 11.

⁹⁸ This exposition of Schmitt's relationship to German Catholicism is thoroughly indebted to Thornhill. Schmitt's allegiance to German Catholicism consistently arises in secondary literature on Schmitt (see McCormick; Hirst; Bendersky; Balakrishnan), but receives more extended exegesis in the case of Thornhill – who argues its centrality to Schmitt's political theory.

⁹⁹ See Schmitt, *The Crisis of Parliamentary Democracy*, pp. 41. In a satiric response to Locke's attempt to justify the balance of power theory, i.e. to separate legislative from executive power, Schmitt writes: 'It would be dangerous if the offices which make the laws were also to execute them; that would be too much temptation to the human desire for power'.

¹⁰⁰ Thornhill contends that it is in opposition to Hans Kelsen, the major exponent of twentieth-century positivism, that Schmitt develops the central traits of his own legal theory, pp. 60.

¹⁰¹ Thornhill, pp. 61.

¹⁰² Schmitt, *The Crisis of Parliamentary Democracy*, pp. 43.

¹⁰³ See Hirst, p. 13, in reference to Schmitt's *Political Theology*. For Schmitt, by Hirst's account, the rule of law is simply the people's will expressed through their representatives, such that it has no determinate content. It is by this logic that Schmitt argues the state to be no longer substantively bound by law in its actions. In other words, gone, by the time of the *Political Theology*, are the neo-Kantian attempts by Schmitt to keep his authoritarian tendencies within a rule of law framework that characterizes his earlier writings and governs their moderating impulses.

¹⁰⁴ Schmitt, *Political Theology*, pp. 7.

¹⁰⁵ See McCormick, pp. 137.

¹⁰⁶ See McCormick, pp. 137.

¹⁰⁷ See Thornhill, pp. 56, who claims too much critical attention has been directed to Schmitt's political collusions in the late Weimar DNVP (German National People's Party) and NSDAP (German National Socialist Party).

¹⁰⁸ See Thornhill, pp. 59-60 regarding the integrating power of the Catholic Church that had been severely undermined during the establishment of liberal ideas in the pre-1848 period. Throughout the nineteenth century liberalism was widely represented as the main adversary of the church.

¹⁰⁹ Thornhill, pp. 59-60. Notable is the infallibility of the pope in the late 19th century – and this is again problematic because it presupposes some dogmatic assertion in Schmitt's allegiance to Catholicism.

¹¹⁰ Thornhill, pp. 59-60.

¹¹¹ Thornhill, pp. 59-60.

¹¹² Thornhill, pp. 60.

¹¹³ Schmitt, *Political Theology*, pp. 36.

¹¹⁴ See Thornhill, pp. 75.

¹¹⁵ See Bendersky, pp. 77; Thornhill, pp. 68.

¹¹⁶ Thornhill, pp. 68.

¹¹⁷ Bendersky, pp. 74.

¹¹⁸ Bendersky, pp. 74 notes that Schmitt based his interpretation of presidential powers on the events of 1923. Ebert had ended the state of emergency in February, but the Hitler trial had kept the entire affair in the public eye until the beginning of April. In the light of these events, it is not surprising that the conference attracted some of the most renowned constitutionalists in Germany. Where Schmitt, according to Bendersky, 'felt the recent crisis had vindicated his position', other jurists 'were wary of the potential abuse of Article 48'.

¹¹⁹ 'Die Weimarer Verfassung' in *Staatsverfassungen*, ed. by Günther Franz (Munich, 1950), pp. 188-189; see Heinrich Oppenheimer, *The Constitution of the German Federation* (London: Stevens and Sons Ltd, 1923), pp. 230-231.

¹²⁰ Bendersky, pp. 75-76.

¹²¹ Caygill, *Hegel and the Speculative Community*, pp. 40-41, 45.

¹²² This is the perspective of Bendersky, pp. 76.

¹²³ At the thirty-third German Jurist Conference at Heidelberg in September 1924, Article 48 was again debated and a bill for a specific law actually written, the *Aufführungsgesetz*, but subsequent political manoeuvres prevented the introduction of the bill before the Reichstag. See Bendersky, pp. 76.

¹²⁴ See Thornhill, pp. 69.

¹²⁵ Schmitt, *Political Theology*, pp. 38. The lead in to this passage contains a critique of sociologists: 'Adolf Menzel noted in an essay that today sociology has assumed functions that were exercised in the seventeenth and eighteenth centuries by natural law, namely, to utter demands for justice and to enunciate philosophical-historical constructions or ideals. He seems to believe that sociology is inferior to jurisprudence, which is supposed to have become positive. He attempts to show that all heretofore sociological systems end up by making "political tendencies appear scientific". But whoever takes the trouble of examining the public law literature of positive jurisprudence...'

¹²⁶ See McCormick, footnote 14, pp. 136: 'Weber's category of charisma may hold the key to Schmitt, because it is only as a charismatically imbued figure that the sovereign dictator can possibly be seen to deliver a constitutional regime from the danger of technicity'.

¹²⁷ Thornhill pp. 68.

¹²⁸ See McCormick, footnote 39, pp. 142 for an explicit defence of liberal constitutional convention; also see William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge, MA; London, England: MIT Press, 1994).

¹²⁹ See McCormick, footnote 40, pp. 152. According to McCormick, 'an emergency provision should be seen as one mechanism among many constitutional provisions'. It follows, for McCormick, that Schmitt's concept of the state of emergency overrides the principle of sovereignty as that which

concerns self-defined political entities that, through non-coercive procedures, such as constitutional conventions, transfer a political will into a constitution that allows for further expression of that will through formally correct laws, and even change of that will through recommendations to the constitution itself. Constitutional mechanisms, such as parliamentary procedure and separation of powers, are not meant to thwart, stymie, or retard the political will of a populace but rather to ensure that this will does not behave self-destructively through rash demands and abuse of numerical minorities...

¹³⁰ Schmitt, *Political Theology*, pp. 6.

¹³¹ This is what McCormick calls the 'devious acumen' of Schmitt's Weimar political strategy: it 'lies in the fact that he points out liberalism's theoretical deficiencies vis-à-vis the exception at the very historical moment when liberalism is grappling with the socio-political reality of the exceptional or situation-specific measures implemented by the 20th century welfare state in the German context. Schmitt intimates that his authoritarian interventionism is more appropriate to the historical reality of such exceptionalism than anything liberalism could ever offer', footnote 39, pp. 152.

¹³² McCormick, pp. 153.

¹³³ Bendersky, pp. 113.

¹³⁴ Balakrishnan, pp. 168.

¹³⁵ Bendersky, pp. 155.

¹³⁶ Bendersky pp. 154-155, writes that the move against Prussia at this point was intended to bolster the Papen government's position on the right during the elections by showing that it was decisive and that it could act effectively against the left. Papen and Interior Minister Gayl also saw this as an opportunity to destroy the power of the social Democrats in Prussia, whereas Schleicher viewed it from the perspective of his scheme to out-manoeuvre the Nazi's. By assuming authority in Prussia, the Reich government could prevent the state from continuing to impose restrictions on the National Socialists, a gesture Schleicher felt might make them more conciliatory. With Prussia ruled by emergency decrees, the Nazi's would also be unable to acquire the institutions of power in that state; indeed, Reich control over the Prussian police would strengthen its hand against the Nazis.

¹³⁷ Balakrishnan, pp. 168. The Prussian Social Democrats sought to avoid any mass actions against this coup from above that might scare away conservative state governments which were also opposed to unilateral changes in the federal status quo, but did not want to be seen as standing side by side with the Social Democrats.

¹³⁸ Bendersky, pp. 156; Balakrishnan, pp. 168-169.

¹³⁹ See Bendersky, pp. 157-159 for a more precise account of Schmitt's transition from legal scholar to official adviser to the state: '...the chancellor stated that "it is already decided that counsellor Meidinger as well as Professors Carl Schmitt in Berlin, Jacobi in Leipzig and Bilfinger in Halle would be taken into consultation as representatives of *Gutachtern* for the Reich government." Papen also reported that "Professor Schmitt will publish an article on July 29 in *Deutsche Juristen-Zeitung*, regarding the constitutional dispute between the Reich and the Prussian state government, and in this article explain the legality of the Reich government's position"'.¹³⁹

¹⁴⁰ McCormick, footnote 29, pp. 147. McCormick refers (for an account of the historical events leading up to the state's coup and the theoretical-political stakes involved in the subsequent court hearing), to David Dyzenhaus, *Truth's Revenge: Carl Schmitt, Hans Kelsen, and Hermann Heller* (Oxford: Oxford University Press, 1997).

¹⁴¹ McCormick, pp. 147.

¹⁴² Bendersky, pp. 160.

¹⁴³ Bendersky, pp. 162, refers to the fact that Schmitt's own convictions on this point were reinforced by knowledge of certain political realities that he could not explain in public without further undermining the position of the Reich government. As an adviser to Schleicher, he was well aware that the army could not cope with a simultaneous revolt by the communists and Nazis, a common nightmare within the Schleicher coterie. Like Schleicher, Schmitt thought that handling the

Nazis should be left to the Reich government. And after their impressive electoral victories showed that the Nazis appealed to more than a third of the nation, he felt that the government must proceed cautiously. Thus, the position he defended in court was that a state, particularly one that might incite civil war, did not have the right to pursue a course that deviated from the policies of the Reich.

¹⁴⁴ For a consideration of the relationship between individual and state – which is intimately related, in turn, to the struggle over the rule of law between Schmitt and the legal Frankfurters especially Kirchheimer and Neumann – see William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*, as well as the essays from the early 1930s in a volume edited by Scheuerman entitled: *The Rule of Law under Siege* (Berkeley, CA; London: University of California University Press, 1996).

¹⁴⁵ Balakrishnan pp.168, contradicting Bendersky, pp. 157-160.

¹⁴⁶ Heinrich Oppenheimer, *The constitution of the German Federation*, pp. 230.

¹⁴⁷ Bendersky, pp. 164-165.

¹⁴⁸ Bendersky, pp. 164-165.

¹⁴⁹ Balakrishnan, pp. 169.

¹⁵⁰ See Bendersky, pp. 164.

¹⁵¹ See Bendersky, pp.164.

¹⁵² Bendersky, pp. 165-166; Balakrishnan, pp. 169-170.

¹⁵³ Bendersky, pp. 165-166.

¹⁵⁴ Bendersky, pp.169-170.

¹⁵⁵ Bendersky, pp. 169.

¹⁵⁶ ‘Schmitt was compared with the Kronjurist who had contrived legal justification for Frederick the Great’s seizure of Silesia and Bismarck’s claims on Schleswig-Holstein. And this was just the beginning of Schmitt’s public vilification...’, Bendersky, pp. 171.

¹⁵⁷ In Bendersky, pp. 168.

¹⁵⁸ See Schmitt, ‘Der Mißbrauch der Legalität’, *Tägliche Rundschau*, 19 July 1932 in McCormick, footnote 31, pp. 266.

¹⁵⁹ See McCormick, footnote 32, pp. 266. McCormick writes: ‘Schmitt was either completely silent about, or actively involved in, Hans Kelsen’s expulsion from the Law Faculty at Cologne. Kelsen was decisive in securing Schmitt’s own position there only months before’. McCormick refers to Klaus Günther, ‘Hans Kelsen (1881-1973): Das nüchterne Pathos der Demokratie’, in *Streitbare Juristen: Eine Andere Tradition*, ed. by Thomas Blanke et al. (Baden-Baden: Nomos, 1988), pp. 367; Frank Golczewski, *Kölner Universtätslegerer und der Nationalsozialismus* (Cologne: Böhlhly, 1988), pp. 117; and Hans Meyer, *Ein Deutscher auf Weiderruf: Erinnerungen*, vol. 1 (Frankfurt am Main: Suhrkamp, 1982), pp. 144.

¹⁶⁰ McCormick, footnote 33, pp. 266, refers to Schmitt’s ‘Das Gesetz zur Behebung der Not von Volk und Reich’, *Deutsche Juristen-Zeitung* 1 April, 1933; *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1934); and *Über der drei Arten des Rechtswissenschaftlichen Denkens* (Hamburg: Hanseatische Verlagsanstalt, 1934).

¹⁶¹ McCormick, pp. 266-267.

¹⁶² McCormick, pp. 293.

¹⁶³ In McCormick footnote 34, pp. 267. Carl Schmitt, ‘Der Führer schützt das Recht’, in *Positionen und Begriffe in Kampf mit Weimar – Genf – Versailles: 1923-1939*, (Hamburg: Hanseatische Verlagsanstalt, 1940), pp. 199-203. McCormick writes: ‘To whatever extent this is a “defence” of Schmitt, he more explicitly condones eliminating the paramilitary threats to Hitler’s power than the execution of civilians murdered during the purge’.

¹⁶⁴ See McCormick, footnote 35, pp. 267, on the ‘fierce competition to become “Crown Jurist of the Third Reich”...’.

Chapter Two: Schmitt and the *Origin*

The last chapter engaged in an exposition of Schmitt's principle of sovereignty. More importantly, it clarified Benjamin's imperative of maintaining a position of incommensurability with respect to Schmitt. My argument began with Benjamin's concern for the rapidly diminishing differences between left- and right-wing violence in modernity, travelled through Benjamin's subsequent resistance to any acknowledgement of Schmitt's analysis of the political, and arrived at the explicit analogy drawn by Benjamin between his own aesthetic considerations and Schmitt's characterisation of the state of exception. As effective critics of liberalism and the degeneracy of parliamentary democracy, both Benjamin and Schmitt advocated a state of exception, and disregarded liberal, democratic emphasis on discussion. Indeed, from one perspective Benjamin was shown to recognise, alongside Schmitt, that the moment of the political is also proper to both law and the state, that there can be no law without order, and no order without politics. The similarity between the two thinkers in their treatment of the state of exception, however, was shown to end at this point. The disparities in their thought emerged through Schmitt's collusion with Hitler's judicial programmes – to which attention was directed in the exposition of Article 48 of the Weimar Constitution. Schmitt's interpretation of Article 48 converted the state of exception from that which takes place outside the Rule of Law, to an interpretation of Article 48 where the state of exception actually becomes part of the Rule of Law.

The effects of this transition in Schmitt's thought revealed three significant flaws in the structure of sovereignty as conceived by Schmitt. The first revealed the structure of sovereignty to have been falsely determined by Schmitt. Sovereignty was not the instrument of an objective analysis that Schmitt claimed, but rather a statement of mere value preferences through which the entropy and decline of liberalism could find expression. Insofar as Schmitt's critiques of liberalism and parliamentary democracy were shown to discriminate effectively between the closing down and false determination of the political by liberalism, and to function as the mechanisms through which Schmitt removed all bounds on sovereign power, they rendered the political a transcendental question, outstripping any particular politics. Finally, Schmitt's endorsement of a sovereign whose rights to determine which

particular agency has the capacity, *outside of the law*, to impose an order that, because political, could become legal was called into question. Insofar as Schmitt's principle of sovereignty was shown to invite the disposability of the legislative body to which it expresses allegiance, it was also shown to embody a destructive element. It was against this background that Schmitt was revealed to have given Hitler an understanding of the Weimar Constitution that enabled the National Socialist rise to power. Related intimately to these criticisms of Schmitt's interpretation of the state of exception was the tension Schmitt established between the sovereign and commissarial functions of dictatorship.

Schmitt's purpose in establishing this tension was revealed as a strategy, primarily, through which to base the limitless authority conferred upon a president by Article 48 on the imperative that the constitution be reinstated in its original form once the crisis had subsided. Above all, however – and this was the point at which Benjamin was seen to take issue explicitly with Schmitt – to suspend individual parts of the constitution in a time of emergency or exception, and to allow the president of the Reichstag such extensive latitude for action, was shown, from Schmitt's perspective, not only to exempt the constitution from the technical compromise upon which the parliamentary democracy and liberalism were based, but also to protect the constitution from revisions. Benjamin's participation in the effects of the so-called Weimar Syndrome, those being anti-parliamentary, anti-democratic revolution, and a reinforcement of the authoritarian moral decision, I argued, did not constitute the radical conservatism evident in Schmitt, but rather the necessary condition for the widening of the field of social struggle.¹ Benjamin picked up Schmitt's criteria for the evaluation of history only to reject Schmitt's claim about the extent to which any legal order, sovereign or otherwise, could be positioned outside the law, as it were, so as ultimately to transform the very law upon which it depended. This recourse to the political was conceptualised by Schmitt in the terms of personal will, where the space of the political was structured on a principle of action. Sovereign will and action, however, were the most important points against which Benjamin's polemic was seen to work.

This chapter extends the analysis of the historical connection between Benjamin and Schmitt. It also, however, highlights the question of where to draw the line of distinction between these two thinkers. Given that the *Origin* stands as the

only instant in which Benjamin makes direct reference to Schmitt, it provides the source of the response to this question. Published in 1925, but conceived in 1916, the *Origin* explicitly cites Schmitt's special attention to the principle of sovereignty as that 'which takes as its example the special case in which dictatorial powers are unfolded' and 'positively demands the completion of the image of the sovereign as tyrant'.² The secondary commentaries that address the conjunction between Benjamin and Schmitt as it appears in the *Origin* are vital to the broader reaches of my own argument. Not only do they provide an important framework for reading the means by which Benjamin comes to internalise the components of moral decisionism and exception (*Entscheidung, Ausnahmezustand*) that can be identified in Schmitt's own discourse. They also point to the fact that the *Origin* marks a fraught territory between the two thinkers, and functions as an example of where Benjamin resists the terms of Schmitt's discourse. There are three layers of textual exegesis and criticism that come to constitute the structure of this chapter and that lend momentum to its argument.

The fulcrum of Benjamin's critique of Schmitt's principle of sovereignty lies in the concept of the 'unique-extreme'. A determining concept of the *Origin*, the 'unique-extreme' shares an analogy with Schmitt's concept of the extreme case. A preliminary investigation into the background of the 'unique-extreme', then, can be found by reading Žižek's account of Schmitt's concept of the extreme case against the grain of Meier's. Both Meier and Žižek account for Schmitt's moral decisionism as something that draws its potency from a spurious severance of the political from the moral. Žižek immediately identifies this bifurcation, from one perspective, as a strategy on Schmitt's part to regulate the play of individual interests, and to mediate between the otherwise mutually exclusive realms of a purely normative order and the actuality of social life, and from another perspective as being ultimately trapped in a formalism that depends on sovereign will and on historical contingency. Of particular interest, however, is Heinrich Meier's account of the false separation Schmitt initiates between the sovereign restoration of order, and the actual content of that order, as its point of departure. Meier clarifies this double nature of the foundational act of the moral decision as a symptom of the energy Schmitt directs against those who reject divine providence – or whatever is pre-ordained by an external authority – for a faith in the efficacy of individual will and action that not

only pre-empts the state of exception, but also discards the idea and principle of a transcendent God. Stated more simply, Schmitt directs his efforts, according to Meier, against those who aim to usurp his movement to preserve the state of exception as something that functions independently of any positive content. Both Zizek and Meier identify a problem in Schmitt's prioritisation of the sovereign act of ordering over the content of the order. Each recognizes, moreover, that Schmitt defines the political theology through a vanishing point of sorts, at the locus of which the dissolution of traditional values and authorities occurs. The implications of that vanishing point are clear for Zizek: it is an instrument through which Schmitt raises the accidental to the level of the transcendental, or stated differently, the point through which a sliding scale of relative values is lent the authority of objective representation.

The second stage of my argument draws a definitive line of connection between the extreme case in Schmitt, and the 'unique-extreme' in Benjamin. In order to do so, this part of the chapter engages with Samuel Weber's efforts to adduce a 'methodological extremism' shared between Benjamin and Schmitt. An exposition of the concept of the extreme case as it comes to be articulated by Schmitt, and as Weber reads its occurrence in Benjamin, is vital on two counts. Not only does Weber assert the false separation between order and the content of that order upon which Schmitt founds his own principle of sovereignty. He also locates the concept of the unique-extreme as vital to Benjamin's evaluation of German Tragic Drama. The relationship shared between the spectral presence of the idea and the decisive limits of the concept as it receives attention in Weber's argument brings the connection between Schmitt's extreme case and Benjamin's 'unique-extreme' to fruition. A borderline concept for both Benjamin and Schmitt, the 'unique-extreme' locates the point at which the generally familiar is on the verge of passing into something else. This translates to the point, for Schmitt, at which the sovereign decision finds justification. The formation of a concept, for Benjamin, is paradoxically but necessarily dependent on a contact or encounter with a singularity that exceeds or eludes the concept. To think the 'idea' as a configuration of singular extremes, for Benjamin, would be to construe its being as a function of that which it is not. The unique-extreme, then, provides a background for understanding Benjamin's response to Schmitt's notion of the sovereign transcendence of the state. But it is also the

concept in which Benjamin posits his attempt to override any appeal to a normative state. This includes, for Benjamin, the normative appeal to conditions of total anarchy that presuppose and thereby reinforce the authoritarian, moral decision.

This brings me to the third point of my argument in this chapter, which responds to the question of history as it arises in the conjunction between Benjamin and Schmitt. Central to this argument is Bredekamp's assertion that Benjamin views history as something other than Schmitt's dialectic of disintegrating order. Implicit in Bredekamp's reading is the idea that Schmitt's re-establishment of order through the state of exception, through historical rupture, and through cessation, works in opposition to Benjamin's understanding of history as a permanent and endless cycle of lawlessness. There is at the same time, however, room in the mechanics of Bredekamp's assertion to allow for a liaison between Benjamin and Schmitt. A tentative inquiry into the instability of Bredekamp's argument raises the question of how, and why, the difference between Benjamin and Schmitt is so precarious and difficult to maintain. Tangential to the ambiguity in Bredekamp's reading of the conjunction between Benjamin and Schmitt, is Schmitt's response to the *Origin*. A series of letters by Schmitt written in 1973 demonstrate the difference between Benjamin and Schmitt: there Schmitt draws an analogy between Benjamin's alleged view of the permanent instability of history with Hobbes's concept of the eternal intact body politic. The analogy allows Schmitt to use Benjamin's thought as a means by which to secure his own project of maintaining demographic and social order, or in other words the means by which to control a population. Underlying this analogy, however, is the fact that Schmitt draws his argument from a framework supplied by Benjamin. Thus the force of Schmitt's argument depends, for its validity, on the occupation of Benjamin's discourse, and on a *mis*interpretation of Benjamin's historical outlook as an inversion of his own. The point of my argument is to demonstrate the element of self-interest that informs Schmitt's reading of Benjamin, but that also forecloses the possibility of asserting a definitive difference between the two.

This element of self-interest underlying Schmitt's reading of Benjamin emerges more clearly in his 1956 study *Hamlet oder Hekuba*. The major force of Schmitt's criticism is directed to the very last section of the first chapter of the *Origin*, 'Trauerspiel and Tragedy', where Benjamin praises Shakespeare for having

Christianised Hamlet. Schmitt's reading of Benjamin is important to my own argument insofar as it fails to glean from Benjamin's analysis the consciousness of what was lost in the process of baroque secularisation. That Benjamin sees the concept of the rule of law as cause for mourning, and faults the German Trauerspiel for never having reached beyond this pragmatic conception of history; that for Benjamin the rise of the rule of law in the era of baroque secularisation also intensifies hopelessness; that this degree of hopelessness inculcates a turn to heavenly salvation – which for Benjamin is simply delusional, especially insofar as it diminishes the capacity to effect social change – these are the subtleties of Benjamin's analysis that Schmitt overlooks. The inadequacy of any categorical distinction for Benjamin, I argue, extends through his understanding of the relationship between the conventions of Trauerspiel and Tragedy. Yet irrespective of Benjamin's efforts to convey the Trauerspiel as an intensification of, rather than a reaction to the impact of tragic convention, Schmitt continues to read the relationship between the two on the basis of a false dichotomy. Schmitt thus gives himself every opportunity to argue a more dogmatic version of an historical reality. To be more precise, Schmitt argues for the inescapability of historical facts and for the impossibility of conceiving history as anything other than a power struggle. To the extent that Schmitt's version of the historical subordinates Benjamin's interpretation of tragedy, it obscures any difference between their respective systems of thought. Having outlined the difficulty in asserting a difference between Benjamin and Schmitt, the stage is set for a response to Benjamin's 'Critique of Violence'.

1. Schmitt's decisionism: the extreme case

The last chapter established that Schmitt's texts often take the form of polemical interventions in ongoing debates, and make reading Schmitt difficult without knowledge of his usually obscure references and contexts. Among the finer and more confusing points in interpreting Schmitt is his declaration in the *Political Theology* that 'the demanding moral decision' is the 'core the of the political idea'.³ The analogy Schmitt draws between the moral decision and the political idea sets the context for my argument here because it features heavily in secondary literature on Schmitt – namely, in Meier and in Žižek's accounts⁴ – and because it provides an appropriate background against which to critique debates on the relationship between

Benjamin and Schmitt. Meier understands Schmitt's *Political Theology* to subject everything to the commandment of obedience, and for this reason holds it accountable to three criticisms. Not only does 'the defence of the moral position itself' appear to be 'a moral duty', but '[i]ndignation is transformed from an affect of moral need into a morally imperative act', and 'the polemic is assigned the task of supplying the moral disjunction with validity, a disjunction that holds reality together in its innermost core'.⁵ That Schmitt places his declaration of morality at the centre of his political ideal, according to Meier, contradicts Schmitt's own claim to the status of 'a theoretician of pure politics', or if not this, then at least Schmitt's claim to the status of an 'observer of political phenomena' who 'persistently sticks to his political thinking'.⁶ Meier notes that this bifurcation of the political and the 'demanding moral decision' is among the more important contradictions upon which Schmitt develops his intellectual strategy. Žizek similarly notes that Schmitt's severance of the moral and the political is based on a strategic intellectual programme: insofar as Schmitt grounds the political 'in some presupposed set of neutral-universal norms or strategic rules' Žizek writes, Schmitt's efforts are directed to the regulation of the 'interplay of individual interests'.⁷

It is precisely in the process of regulating relations between individuals that Schmitt's account of moral decisionism becomes trapped by formalism, Žizek notes. For Schmitt, the moral decision is directly analogous to an act of will. As that which is 'grounded only in itself', it 'imposes a certain order or legal hermeneutics (reading of abstract rules)' and stands as the means by which to mediate between the otherwise mutually exclusive realms of a purely normative order and the actuality of social life.⁸ Although Žizek concedes that any normative order 'remains stuck in abstract formalism, that is to say, it cannot bridge the gap that separates it from actual life', Žizek's interest is in the extent to which Schmitt's moral decision aims to bridge this gap. Insofar as Schmitt's model constitutes the decision for the formal principle of order itself, rather than the decision for some concrete order, however, Žizek is also quick to note that it gives rise to several problems, the first and most obvious of which recognizes the concrete content of the imposed order as arbitrary, dependent on the sovereign's will, and on historical contingency.⁹ Where Schmitt's reversion to decisionistic formalism opposes liberalism and the liberal conventions of legal normative formalism, it is 'necessarily ambiguous': it 'stands simultaneously

for the intrusion of the Real (of the pure contingency which perturbs the universe of symbolic *automaton*) and for the gesture of the Sovereign who (violently, without foundation in the symbolic norm) imposes a symbolic normative order...'.¹⁰ The heightened intensity of the decision to which Zizek refers, with its contradictions intact, could not be more clearly articulated by Schmitt in the *Political Theology* itself:

De Maistre spoke with particular fondness of sovereignty, which essentially meant decision. To him the relevance of the state rested on the fact that it provided a decision, the relevance of the Church on its rendering of the last decision that could not be appealed. Infallibility was for him the essence of the decision that cannot be appealed, and the infallibility of the spiritual order was of the same nature as the sovereignty of the state order. The two words infallibility and sovereignty were 'perfectly synonymous'. To him, every sovereignty acted as if it were infallible, every government was absolute – a sentence that an anarchist could pronounce verbatim, even if his intention was an entirely different one. In this sentence there lies the clearest antithesis in the entire history of political ideas. All the anarchist theories from Babeuf to Bakunin, Kropotkin, and Otto Goss revolve around the one axiom: 'The people are good, but the magistrate is corruptible'. De Maistre asserted the exact opposite, namely, that authority as such is good once it exists: 'Any government is good once it is established', the reason being that a decision is inherent in the mere existence of a governmental authority, and the decision as such is in turn valuable precisely because, as far as the most essential issues are concerned, making a decision is more important than how a decision is made. 'It is definitely not in our interest that a question be decided in one way or another but that it be decided without delay and without appeal'. In practice, not to be subject to error and not to be accused of error were for him the same. The important point was that no higher authority could review the decision.¹¹

Like Zizek, Meier is also clear in outlining the double nature of the foundational act of the moral decision. As that which is clearly discernible in religion, the double nature explains, in part, the energy Schmitt directs against those who hold fast to a 'pure this-worldliness' or who, at least, fall prey to it in their actions.¹² In Meier's reading, among the cardinal objects of Schmitt's indignation is the hubris of men who replace divine Providence – meaning that which is preordained by an external authority – with 'the plans of their will and the calculation of their interests and who imagine themselves able to force the advent of an earthly paradise in which they would be relieved of having to decide between good and evil and from which the dire emergency would remain banned forever'.¹³ Both Zizek and Meier note that a 'religion of technicity' marks the efforts of these men to pave the

way to an unlimited dominance of security that promises ‘all the glories of an unleashed productive power and a power of consumption, which is increased to infinity’.¹⁴ More importantly for both, the effects of this ‘age of security’ are such that, and this is the core of Schmitt’s argument, these men *turn against the transcendent God*.¹⁵ It is in this movement to an ‘age of security’ that Schmitt believes he discerns the most persistent adversary of politics and religion, of the Pope and God, of idea and spirit – and of sovereignty.¹⁶ Insofar as the ‘age of security’ is contingent upon a ‘religion of technicity’, it should, Schmitt feels, be sociologically mapped:

This sociology of concepts transcends juridical conceptualisation oriented to immediate practical interest. It aims to discover the basic, radically systematic structure and to compare this conceptual structure with the conceptually represented social structure of a certain epoch. There is no question here of whether the idealities produced by radical conceptualisation are a reflex of sociological reality, or whether social reality is conceived of as the result of a particular kind of thinking and therefore also of acting. Rather this sociology of concepts is concerned with establishing proof of two spiritual but at the same time substantial identities. It is thus not a sociology of the concept of sovereignty when, for example, the monarchy of the seventeenth century is characterized as the real that is ‘mirrored’ in the Cartesian concept of God. But it is a sociology of the concept of sovereignty when the historical-political status of the monarchy of that epoch is shown to correspond to the general state of consciousness that was characteristic of western Europeans at that time, and when the juristic construction of the historical-political reality can find a concept whose structure is in accord with the structure of metaphysical concepts. Monarchy thus becomes as self-evident in the consciousness of that period as democracy does in a later epoch.¹⁷

This ‘sociology of concepts’ marks the point at which Žižek and Meier’s respective readings of Schmitt refuse to collaborate. Meier’s reading of Schmitt’s adoption of the concept of a political theology emphasises Schmitt’s effort to delineate the appearance of the ‘true enemy of all traditional concepts of Western European culture’ in the form of the bourgeois ‘virtuoso of disguise’ – the born embodiment of the system of accountability and calculation.¹⁸ The French revolutionary bourgeois class receives the force of Schmitt’s criticism most intensely: not only is the figure of the French revolutionary class responsible for having ‘spat out’ the ‘genial representatives of art and literature in the nineteenth century’; more importantly, bourgeois dominance has discredited ‘conceptions of transcendence’ to most educated people, who in turn will be likely to ‘settle for either a more or less clear

immanence-pantheism or a positivist indifference toward any metaphysics'.¹⁹ The figure of the bourgeois shuts his eyes to the inevitability of the 'oppositions between good and evil, God and Devil, between whom there is an Either-Or which is a matter of life and death, an Either-Or that knows no synthesis and no "higher third," and he hopes that the definitive confrontation can be 'eternally suspended by an eternal discussion'.²⁰

In keeping with Meier's reading of Schmitt, Žižek notes initially that the 'sociology of juristic concepts' encapsulates everything that Schmitt is working against. Žižek correctly extracts from the *Political Theology* the fact that this sociology is problematic to Schmitt insofar as it pushes thinking into 'metaphysics and theology' and in doing so usurps Schmitt's efforts to preserve the state of exception as that which is independent of its positive content.²¹ In Žižek's words, this sociology of concepts undermines 'the perception that what really matters is the act as such, independently of its content' or that the act of 'ordering' functions 'independently of the positive determinate order'.²² Now, while both Žižek and Meier identify Schmitt's concept of a political theology as that which comes to define itself through a vanishing point of sorts, their respective interpretations of Schmitt end decisively on this point. For Meier, that vanishing point represents all that Schmitt is prepared to defend – namely, the certainty of his *faith*. In defending the certainty of his faith, Schmitt defends his theory of political theology. Žižek, however, provides a more helpful account of this vanishing point for the purposes of my own argument. On the one hand, Žižek writes, this vanishing point marks the locus at which 'the dissolution of the traditional set of values and/or authorities' occurs.²³ In both a critique and redemption of Schmitt, Žižek notes that the outcome of this dissolution suggests that 'there is no longer any positive content which could be presupposed as the universally accepted frame of reference'.²⁴

2. Benjamin's appropriation of the unique-extreme

If the extreme case, by Žižek's analysis, is an instrument through which Schmitt raises the accidental to the level of the transcendental, or stated differently, is the point through which a sliding scale of relative values is lent the authority of objective representation, the question becomes one of why it should be of use to Benjamin's *Origin*. An exposition of the 'Epistemo-Critical Prologue' (*Erkenntniskritische*

Vorrede) of Benjamin's *Origin* provides a response to this question. Especially significant to this exposition, furthermore, is Weber's argument for the shared 'methodological extremism' between Benjamin and Schmitt.²⁵ Weber's argument continues along the following lines. For Weber, the consequence and expression of Schmitt's *Political Theology* is his categorical attention to the moral decision. According to Weber's reading of the Prologue to the *Origin*, Benjamin, like Schmitt, makes an appeal to the 'extreme' in order to elaborate the premises and implications of his reading of the German baroque theatre as an 'idea'. The passage Weber cites from the Prologue is one that should indicate, according to Weber, the extent to which Benjamin wishes to distinguish the 'idea' from the subsumptive generality of the concept:

The idea is best explained as the representation of the context in which the unique and extreme [Einmalig-Extreme] stands alongside its counterpart. It is therefore erroneous to understand the most general references which language makes as concepts, instead of recognizing them as ideas. It is absurd to attempt to explain the general as the average. The general is the idea. The empirical, on the other hand, can be all the more profoundly understood the more clearly it is seen as an extreme.²⁶

Weber argues that it is this turn towards the extreme in the Prologue (*die notwendige Richtung aufs Extreme*) that imports to the reader the influence of Schmitt's *Political Theology*, the first chapter of which concludes by insisting on the significance of 'the extreme case'.²⁷

Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper than the clear generalizations inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception.²⁸

Weber is not alone in his assertion that Benjamin and Schmitt are bound to one another by a 'methodological extremism'.²⁹ Bredekamp, following Weber in suit, is also explicit in his claim that each bears the trace of the other. The unique-extreme for Benjamin, Bredekamp writes, adopts a contrast between the serious case (*Ernstfall*), the borderline concept (*Grenzbegriff*), and the exception (*Ausnahme*), on the one hand, 'and the phenomenon of continuous normality, on the other'.³⁰ 'Ideas', Benjamin writes after all,

are timeless constellations, and by virtue of the elements' being seen as points in such constellations, phenomena are subdivided and at the same time redeemed so that those elements which it is the function of the concept to elicit from phenomena are most clearly evident at the extremes.³¹

The concept of the extreme case for Schmitt is also a borderline notion: it extends to and is situated at the extremity of what is familiar, identically repeatable, and classifiable; it is the point at which the generally familiar is on the verge of passing into something else, the point at which it encounters the other, the exterior. And it is in the unique-extreme that the sovereign decision finds justification: 'Contrary to the imprecise terminology that is found in popular literature', Schmitt writes, 'a borderline concept is not a vague concept, but one pertaining to the outermost sphere. This definition of sovereignty must therefore be associated with a borderline case and not with routine'.³²

The connection between Benjamin and Schmitt becomes increasingly apparent on reading Benjamin's negotiation of the idea and the concept. According to Weber, the formation of a concept is, for Benjamin, paradoxically but necessarily dependent upon a contact or encounter with a singularity that *exceeds* or *eludes* the concept.³³ Weber attaches his claim to the relationship between the idea and the concept to a series of passages from Benjamin, the most obvious of which begins:

Philosophical history, the science of the origin, is the form which, in the remotest extremes and the apparent excesses of the process of development, reveals the configuration of the idea – the sum total of all possible meaningful juxtapositions of such opposites. The representation of an idea can under no circumstances be considered successful unless the whole range of possible extremes it contains has been virtually explored. Virtually, because that which is comprehended in the idea of origin still has history, in the sense of content, but not in the sense of a set of occurrences which have befallen it.³⁴

Earlier in the *Origin*, Benjamin states explicitly that the 'concept [of the idea] has its roots in the extreme':

Just as a mother is seen to begin to live in the fullness of her power only when the circle of her children, inspired by the feeling of her proximity, closes around her, so do ideas come to life only when extremes are assembled around them. Ideas – or to use Goethe's term, ideals – are the Faustian 'Mothers'. They remain obscure so long as phenomena do not declare their faith to them and gather round them. It is the function of concepts to group phenomena together, and the division which is brought about within them thanks to the distinguishing power of the intellect is all the more significant in that it brings about two things at a single stroke: the salvation of the phenomena and the representation of ideas.³⁵

Weber draws a vital link, then, between the figure of the extreme in Schmitt, and the criterion by which Benjamin evaluates German tragic drama.³⁶ Benjamin is explicit in his efforts to decipher (*abzulesen*) the figure of the extreme:

That characteristic feeling of dizziness which is induced by the spectacle of the spiritual contradictions of this epoch is a recurrent feature in the improvised attempts to capture its meaning.... Only by approaching the subject from some distance, and initially, forgoing any view of the whole, can the mind be led, through a more or less ascetic apprenticeship, to the position of strength from which it is possible to take in the whole panorama and yet remain in control of oneself.³⁷

The danger of plunging from the ‘heights of knowledge’ into the ‘profoundest depths of the baroque state of mind’ is not, by Benjamin’s own admission ‘a negligible one’.³⁸ Benjamin is all too aware that the circle of potential extremes has become a series of contradictions, and of antitheses, that are never fully present or realized as such.³⁹ If, according to Weber, the staging of a singular idea can be traversed – and Benjamin states as much when he identifies the concept of being a prerequisite to absorbing all the history of the phenomenon⁴⁰ – then so can the extreme case. According to Weber the ‘total scope’ of the idea for Benjamin is not only the outcome of, but also and actually depends on, an historical perspective that exceeds space, and in some sense, even time. Weber’s argument is based on the notion of the idea as what refers to a spectral presence: every idea, Weber writes, articulates itself historically in terms of a split into a pre- and post-history which constitutes ‘the abbreviated and obscured figure of the remaining world of ideas’.⁴¹ Benjamin himself writes that ‘this historical perspective can be extended, into the past or future, without being subject to any limits of principle’:

The idea is a monad. The being that enters into it, with its past and subsequent history, brings – concealed in its own form – an indistinct abbreviation of the rest of the world of ideas, just as, according to Leibniz’s *Discourse on Metaphysics* (1686), every single monad contains, in an indistinct way, all the others. The idea is a monad – the pre-stabilized representation of phenomena resides within it, as in their objective interpretation. The higher order of the ideas, the more perfect the representation contained within them. And so the real world could well constitute a task, in the sense that it would be a question of penetrating so deeply into everything real as to reveal thereby an objective interpretation of the world. In the light of such a task of penetration it is not surprising that the philosopher of the *Monadology* was also the founder of infinitesimal calculus. The idea is a monad – that means briefly: every idea contains the image of

the world. The purpose of the representation of the idea is nothing less than an abbreviated outline of this image of the world.⁴²

What Weber makes clear is that Benjamin's use of the idea is not based on a separation from the concept, or on a division, or split from historical moments. It is rather part of the structure of the concept. The next stage of my argument seeks to establish how this interpretation of the unique-extreme – so suspiciously close to Schmitt's declaration of decisionism – begins to unfold the potential for political radicalism in Benjamin's thought.

Benjamin's contextualisation of sovereignty

The first chapter of this dissertation argued that the concept of the state of exception, central to the *Political Theology*, was the expression of Schmitt's polemic against the conventions of liberal democracy. The state of exception provided Schmitt with a medium through which to expose the tendency of democracy to facilitate different factions in their pursuit of divergent interests, and to dispute the effects of that tendency. The state of exception, in this sense, was revealed to function as a critique of a democratic but splintered political system no longer able to guarantee the security of law. Furthermore, the state of exception was established as the structure of sovereignty; sovereignty, in turn, constituted the power to decide and to declare the state of exception. Two separate moments were recognised in that decision or declaration: from the decision that a state of exception exists, the state of law previously in force had to be suspended so that the state could meet and surmount the challenge of the exception. In deciding upon the state of exception, the sovereign was revealed effectively to determine the limits of the state.

This interpretation of the two moments of sovereignty in Schmitt conforms to Weber's. Weber clarifies Schmitt's reading of the state of exception etymologically: it is the delicate balance of similarity and distinction in the relationship between the state (*Staat*) and the exception (*zustand*), according to Weber, that determines political sovereignty for Schmitt. Weber declares that the state of exception (*Ausnahmezustand*) is a 'state' in the sense of having a relatively determinate status, but that as an exception (*zustand*) it is always – and Weber cites the following passage from Schmitt in order to make his point –

...different from an anarchy and a chaos, [and thus] order in the juristic sense still prevails even if it is not of the ordinary kind.

The existence of the state is undoubted proof of its superiority over the validity of the legal norm. The decision frees itself from all normative ties and becomes in the true sense absolute. The state suspends the law in the exception on the basis of its right of self-preservation, as one says.⁴³

Some exposition of Weber's reading of this passage is prerequisite to understanding its significance to Benjamin. Firstly, Weber highlights that Schmitt develops the state of exception in terms of a very specific tension between norm and exception. The focal point of Weber's reading of the passage is Schmitt's claim to the radical independence of the decision from the norm, a claim, according to Weber, that suggests the decision of the state to suspend its laws is justifiable, even given that any justification would involve precisely the appeal to a norm.⁴⁴ Weber's reading, moreover, depends on a very literal interpretation of Schmitt as having separated, in this passage, what belongs to the norm, from what does not. According to Weber, this separation is intimately related to an exception: not only does Schmitt write in the passage cited above that the decision distinguishes itself from the simple negation of order, and from 'chaos and anarchy'. In distinguishing itself from the simple negation of order, the decision provides Schmitt with the means by which to lay claim to a 'legal status'; a claim, moreover, that can be evaluated and judged only after the fact, and from a point of view that is situated within a system of norms.

Schmitt's declaration of the radical independence of the decision from the norm provides Weber with the ground from which to demonstrate the contradictions inherent to his concept of sovereignty. Thus Weber's attention to sovereignty as it is conceived by Schmitt, in relation to the sovereign of the baroque mourning play, for whom, Benjamin stresses, the decision is as imperative as it is impossible. The reference is to the following passage by Benjamin:

The antithesis between the power of the ruler and his capacity to rule led to a feature peculiar to the Trauerspiel, which is, however, only apparently a generic feature and which can be illuminated only against the background of the theory of sovereignty. The prince, who is responsible for making the decision to proclaim the state of emergency, reveals, at the first opportunity, that he is almost incapable of making a decision.⁴⁵

This sovereign of the baroque drama is incapable of making a decision, Weber writes, because a decision, in the strict sense, is not possible in a world that leaves no place for *heterogeneity*. In placing the 'natural' history of the 'rise and fall' of princes in the baroque drama in the sphere of the heterogeneous, Weber suggests that

the baroque allows for no possibility for the interruption or radical suspension of its perennial interruptions.⁴⁶ There is indeed, I argue with Weber here, a conflict of interests evident in Benjamin's sovereign figure: 'At the moment when the ruler indulges in the most violent display of power', Benjamin writes, 'both history and the higher power, which checks its vicissitudes, are recognized as manifest in him'; the result, as he 'loses himself in the ecstasy of power', is that 'he falls victim to the disproportion between the unlimited hierarchical dignity, with which he is divinely invested and the humble estate of his humanity'.⁴⁷ Weber is correct to assert in this sense that the completion of the sovereign figure in the baroque drama depends on both decisive and indecisive tendencies: each aspect of the sovereign presents one side of the same coin; together, Benjamin writes, they constitute 'the necessarily extreme incarnations of the princely essence'.⁴⁸

The most salient aspect of Weber's analysis for the purposes of my own argument, however, lies in his reading of Schmitt's position of sovereignty to mark the relationship of a general order – of the law, of the norm, of the concept – in contrast to a radically *heterogeneous* chaos. Subsequent to this distinction, Weber states that the sovereign faculty in Schmitt is built on a paradox of sorts. There are two points from Schmitt upon which I will draw in order to elaborate the conditions of Weber's reading of Schmitt. Firstly, Schmitt's inquiry into how it can 'be possible to trace a host of positive attributes to a unity with the same point of ascription when what is meant is not the unity of a system of natural law or general theory of the law but the unity of a positive-valid order' reveals that authority, in this sovereign sense, may create rights, but need not be legal in order to do so.⁴⁹ 'Words such as *order*, *system*, and *unity*' Schmitt goes on to write – and this is my second point – are after all 'only circumscriptions of the same postulate, which must demonstrate how it can be fulfilled in its purity'.⁵⁰ Schmitt renders the decision sovereign; insofar as the decision is sovereign, it stands independent of all possible derivation from or subsumption by a more general norm; as such, the decision is a pure act, somewhat akin to the act of creation. The sovereign decision is the necessary measure Schmitt must take in order to demonstrate the paradox, articulated in the *Political Theology*, of 'how a system can arise on the foundation of a "constitution" (which is either a further tautological circumscription of the "unity" or a brutal socio-political reality)'.⁵¹

For Benjamin, according to Weber, the decision is less a creative force than one that breaks with and interrupts the suspension of a norm. In this sense, according to Weber's reading of the following passage from the *Origin*, the principle of sovereignty as it is appropriated and featured by Benjamin actually resists consideration as an absolute.⁵² The relevant extract from Benjamin is as follows:

The level of the state of creation, the terrain on which the Trauerspiel is enacted, also unmistakably exercises a determining influence on the sovereign. However highly he is enthroned over subject and state, his status is confined to the world of creation; he is the lord of creatures, but he remains a creature.⁵³

In reading sovereignty in Benjamin as resisting any consideration as an absolute, Weber finds a critique of sovereignty. Benjamin outlines the creative force of the Trauerspiel as justifying the legal or a-legal status of the sovereign and exceptional decision. Sovereignty in this sense only ever exists in a relationship with its historical context: to subtract the creative force of the Trauerspiel from the equation would collapse the structure of sovereignty.

Schmitt, then, defines sovereignty purely in terms of the state of exception, where Benjamin deems the principle of sovereignty peculiar to its historical context. Benjamin's case in point is the German baroque theatre: 'The German drama of the Counter-Reformation', Benjamin writes, 'never achieved that suppleness of form which bends to every virtuoso touch, such as Calderón gave the Spanish drama. It took shape... in an extremely violent effort, and this alone would suggest that no sovereign genius imprinted his personality on this form'.⁵⁴ According to Weber, Benjamin finds a lack of sovereignty in the German baroque drama, and this lack, in turn, provides him with a means by which to transpose the German baroque drama into the terms of modernity. Weber's interpretation does not end on this point, but rather continues in the following vein: Benjamin's efforts to infuse the baroque drama with a lack of sovereignty are part of a larger programme, on Benjamin's part to compensate for that lack of sovereignty. What appears to be a distinction between Schmitt's concept of sovereignty, and Benjamin's critique of sovereignty, according to Weber, is actually a reinforcement of the concept of sovereignty by Benjamin. The implication is that Benjamin identifies a missing sovereignty in the baroque drama only in order to render the need for sovereignty all the more imperative. Where Schmitt's state of exception constitutes the centre around which all political

considerations revolve, and is opposed to the duration of an unstable order, the *Origin* associates the principle of sovereignty with the broader methodological and theoretical problems of history. The sovereign of the baroque drama, Benjamin writes,

holds the course of history in his hand like a sceptre. This view is by no means peculiar to the dramatists. It is based on certain constitutional notions. A new concept of sovereignty emerged in the seventeenth century from a final discussion of the juridical doctrines of the middle ages... Whereas the modern concept of sovereignty amounts to a supreme executive power on the part of the prince, the baroque concept emerges from a discussion of the state of emergency, and makes it the most important function of the prince to exclude this.⁵⁵

Weber clarifies two significant features with respect to the conjunction between Benjamin and Schmitt. The first is demonstrated in terms of Benjamin's appropriation of the tools of historical evaluation evident in Schmitt. The principle of sovereignty as it is structured on the state of exception in relation to the norm informs not only Schmitt's concept of the extreme case, but also Benjamin's concept of the unique-extreme. Yet Benjamin describes the task of the sovereign in the baroque form of drama – and this is Weber again – 'in the very terms that Schmitt rejects'.⁵⁶ The suggestion is that Benjamin refuses to submit entirely to the conditions of sovereignty, or conversely, to the conditions of chaos and anarchy. The conclusion I draw from the complication Weber illustrates in the relationship between Benjamin and Schmitt, is that Benjamin is interested in the relationship that occurs between sovereignty and these conditions of chaos and anarchy. From within the space that is shaped by their interaction, the conditions of possibility for a critique of sovereignty begin to emerge.

3. The Shakespeare correspondence

The last section argued, drawing on Weber and Bredekamp's response to the *Origin*, that Benjamin shares a fraught relationship with the terms of the sovereign moral decision as it appears in Schmitt. Benjamin was shown to appropriate the concept of the extreme case as it appears in Schmitt, yet to inscribe its conditions into a model of the 'unique-extreme' that expressed dissension with respect to the concept of sovereignty. This dissension was realised largely through the baroque mourning play: where for Schmitt the concept of sovereignty depended 'on' a state of

exception, Benjamin was clear that the German Trauerspiel lent sovereignty its authority. With the subtraction of its historical context, the concept of sovereignty would simply collapse. The aim of this part of the chapter is to strengthen and elaborate the terms of Benjamin's critique of sovereignty. In order to do so I shall first clarify the premises upon which Bredekamp reads the relationship between Benjamin and Schmitt. Key here is Bredekamp's statement that Benjamin views history as something other than Schmitt's dialectic of disintegrating order. According to Bredekamp, Schmitt's interpretation of the state of exception depends on the re-establishment of order through historical rupture and cessation.⁵⁷ Bredekamp argues that Benjamin unlike Schmitt sees history as a permanent and endless cycle of lawlessness.⁵⁸ Consider the following passage by Bredekamp:

What Schmitt views as the event of historical rupture, as the state of exception and a cessation, Benjamin sees as trapped in the permanence of a power that now, in the worst possible sense, truly is 'barbarian'. As in the Trauerspiel book, however, Benjamin once again concurs with Schmitt's demand for a true state of exception – in order, now, to turn it against Schmitt's concept of history. Benjamin's conception of the shocklike liberation acquires the character of a Last Judgment of Fascism.

As powerful as this image may seem, without knowledge of its real addressee it remains obscure. It adopts Schmitt's state of exception in order to formulate a version of 'political theology' that is immediately turned back against Schmitt. It is worth noting, moreover, that Benjamin, even while he seeks to attack Schmitt's *Politische Theologie*, remains caught in the framework of its conception. Theses 14-17, in which Benjamin seeks to 'destroy' the idea of linear progress, likewise contain an echo of Schmitt's time-construct of the state of exception, inasmuch as they crystallize the idea of the 'shock' in a 'messianic cessation of activity'.⁵⁹

Implicit in Bredekamp's reading is the notion that Benjamin establishes no authority to instate or end chaos; that the abrogation of the law becomes the state of normalcy in the Trauerspiel; and finally, that the criteria for evaluating the representation of reality are obscured. The distinction Bredekamp establishes between Benjamin and Schmitt by means of their interpretations of the historical, however, is not entirely clear. This lack of clarity is the result, firstly, of Bredekamp's reference beyond the parameters of the text in question to the 'Theses on the Philosophy of History'. Written some twenty years after the *Origin*, this reference to the 'Theses' in order to support a claim to the historical differences between Benjamin and Schmitt in the *Origin* provides an early indicator of the problems inherent to reading and substantiating the friction between Benjamin and Schmitt. Equally ambiguous,

however, are the series of letters written by Schmitt in 1973⁶⁰ through which Bredekamp brings his argument into focus.

Of particular importance is the analogy Schmitt draws, in the content of these letters, between Benjamin's alleged view of the permanent instability of history and Hobbes's concept of the eternal, intact body politic.⁶¹ To begin with, Schmitt claims that his article of 1937, 'Der Staat als Mechanismus bei Hobbes und Descartes', had implicitly criticised Benjamin's failure in the *Origin* to deal with the symbolism of the Leviathan: 'The important thing is the symbolism of the Leviathan, of which, strangely, W. Benjamin says nothing (as far as I can tell)'.⁶² Furthermore, Schmitt claims that his influential book of 1938 on Hobbes, *Der Leviathan in der Staatslehre des Thomas Hobbes*, was intended as an answer to Benjamin's *Origin*:

'Unfortunately, my attempt to respond to Benjamin by examining a great political symbol (the Leviathan in the political thought of Thomas Hobbes, 1938) went unnoticed'.⁶³ There is, admittedly, much to be said for Schmitt's sequence of claims, and in this sense, some ground must be conceded to the logic of Bredekamp's argument. Bredekamp correctly states that although Benjamin never refers to the Leviathan in the *Origin* itself, the sovereign tyrant's apparent inability therein to 'claim the state of emergency'⁶⁴ is not entirely dissimilar to Hobbes's Leviathan figure as it is characterised by Schmitt. The authority of the Leviathan figure is not as stable as it pretends to be: in fact, like the unstable sovereign in the *Origin*, Schmitt implies in his 1938 study, it functions as a slow poison to undermine the foundations of the state, to weaken its bones, and to instigate its collapse.⁶⁵

The apparent legitimacy of the parallel Schmitt draws between the 'undecidability' (*Entschlußunfähigkeit*) of the sovereign of the Trauerspiel⁶⁶ and the critique of Hobbes' Leviathan figure is highly problematic. Bredekamp acknowledges that Schmitt's rejection of both Hobbes and Benjamin in the same breath, although in different terms, is part of a strategy to reinforce his own theory of the exception. 'Since the state of exception remains the core of his political thought', Bredekamp writes, 'Schmitt's Leviathan book separates him from both Hobbes' concept of an earthly god of state and the perpetual absence of the Leviathan posited by Benjamin'.⁶⁷ Implicit in Schmitt's interpretation of the Leviathan figure is the notion that Benjamin's reading of the Trauerspiel is entirely entropic. Bredekamp goes so far as to state that, insofar as the *Origin* may encapsulate a firm statement on

Benjamin's part of the impossibility of sovereignty, it clears a space for the emergence of an authority even more powerful than the Leviathan – to validate perhaps even the sovereignty of Schmitt's own theory of the state of exception.⁶⁸ Within that statement by Bredekamp is an awareness of Schmitt's use of Benjamin as a means by which to secure his own project of maintaining demographic and social order. That Schmitt draws his argument from a framework supplied by Benjamin; that the force of Schmitt's argument depends for its validity on a *mis*interpretation of Benjamin's historical outlook as an inversion of his own – these are examples of where Schmitt occupies Benjamin's discourse in order to reinforce his own.

This all-pervasive element of self-interest underlying Schmitt's reading of Benjamin emerges on consideration of Schmitt's 1956 study 'On the Barbaric Character of Shakespearean Drama: A response to Walter Benjamin on the Origin of German Tragic Drama' – itself part of a broader project by Schmitt, *Hamlet oder Hekuba*.⁶⁹ Schmitt's statement on Benjamin is important to Bredekamp on two counts: firstly, Schmitt argues that Shakespearean drama shares a reciprocal relationship with its historical situation; that insofar as English drama 'belongs entirely to the specific historical evolution of the island of England', it lacks artistic autonomy.⁷⁰ Secondly, Schmitt's interpretation of Hamlet as an extreme form of the 'elemental' constitutes an effort to reinforce the natural supremacy of the state of exception.⁷¹ According to Bredekamp's synopsis of Schmitt's arguments, the more the drama is subject to elemental forces, the more it demands clarification and verification of the sovereign as the highest form of order.⁷² The major force of Schmitt's criticism is directed to the very last section of the first chapter of the *Origin*, 'Trauerspiel and Tragedy', where Benjamin praises Shakespeare for having Christianised Hamlet. The relevant passage sees Benjamin contextualise the emergence of the figure of Hamlet from the Trauerspiel form, itself a reaction to the Counter-Reformation, and begins as follows:

This age succeeded (at least once) in conjuring up the human figure who corresponded to this dichotomy between the neo-antique and the mediaeval light in which the baroque saw the melancholic. But Germany was not the country which was able to do this. The figure is Hamlet. The secret of his person is contained within the playful, but for that very reason firmly circumscribed, passage through all the stages in this complex of intentions, just as the secret of his fate is contained in an action which, according to this, his way of looking at things, is perfectly homogeneous.⁷³

That Schmitt concedes to Benjamin the importance of ‘the antithesis of play and fate’ here,⁷⁴ and that he does not doubt the magnificence of Benjamin’s passage is clear. ‘[O]therwise obscure’ to Schmitt, however,⁷⁵ is Benjamin’s subsequent statement: ‘For the Trauerspiel, Hamlet alone is a spectator by the grace of God; but he cannot find satisfaction in what he sees enacted, only in his own fate’.⁷⁶

The specific problem for Schmitt is Benjamin’s recognition of something Christian *in a special sense* in the instance where, shortly before his death, Hamlet speaks of Christian providence. Even when Benjamin writes that Hamlet’s ‘life, the exemplary object of his mourning, points, before its extinction, to the Christian providence in whose bosom his mournful images are transformed into a blessed existence’,⁷⁷ Schmitt remains secure in the fact that Hamlet can and should be understood neither in terms of Christianity, nor in terms of ‘the sovereign state of the European continent, which had to remain neutral with respect to religion because it was founded on the overcoming of the confessional civil war. Even when this state recognized a state religion and a state church it based this act on a sovereign political decision’.⁷⁸ Although Schmitt is aware that Benjamin’s *Origin* makes mention of his definition of sovereignty, he does not value what he sees to be Benjamin’s underestimation of the ‘dissimilarity between insular England and continental Europe, and therewith also between English drama and 17th century German baroque Trauerspiel’.⁷⁹ Schmitt continues:

This dissimilarity is also essential for an interpretation of intellectual categories like the Renaissance and the Baroque. The dissimilarity can be characterized most quickly and accurately with a catchword antithesis whose richness of meaning is symptomatic for the intellectual history of the concept of the political. It is a question of the antithesis between the barbaric and the political.⁸⁰

Shakespeare’s England, for Schmitt, was ‘more barbaric’ than Benjamin was ready to admit – and as such, it was void of polemical meaning.⁸¹ According to Schmitt, England had become ‘the centre of an overseas empire and even the original home of the industrial revolution’ without ever having passed through ‘the corridor of continental statehood’.⁸² The Stuart line had not only failed to perceive the ‘phenomenal transformation from a terrestrial to a maritime existence’ undertaken by Elizabethan England and in doing so ‘to extricate itself from the religious and feudal Middle Ages’, but it had also failed through the rule of ‘James I, with his arguments

about the divine right of kings’, ‘to grasp the intellectual or spiritual position of sovereignty on the European continent’.⁸³ Schmitt concludes then that ‘when the great appropriation of the sea was decided and a new global order of land and sea found its documentary recognition in the Treaty of Utrecht (1713)’ England had no other option but to disappear ‘from the world stage’.⁸⁴

David Pan’s reading of Schmitt helps to outline this as the point at which Schmitt carries out an ‘instructive misreading’ of Benjamin,⁸⁵ and to assist in my own clarification of where Bredekamp risks succumbing to Schmitt’s reading of Benjamin. Among the components of Schmitt’s misreading, according to Pan, stands a failure to have gleaned from Benjamin’s analysis the consciousness of what was lost in the process of baroque secularisation.⁸⁶ For Benjamin – and Schmitt closes his eyes to this analysis by Benjamin – the rise of the rule of law in the era of baroque secularisation is directly proportional to the intensification of hopelessness: ‘Whereas the Middle Ages present the futility of world events and the transience of the creature as stations on the road to salvation’, Benjamin writes, ‘the German Trauerspiel is taken up entirely with the hopelessness of the earthly condition’.⁸⁷ Benjamin faults the German Trauerspiel for never having reached beyond this pragmatic conception of history. With the intensification of hopelessness, according to Benjamin, comes an inevitable turn to heavenly salvation: Benjamin cites Christian salvation as the locus of all ‘hopelessness’.⁸⁸ The second sees Benjamin go so far as to characterise the idea of heavenly salvation as ‘icy disillusion’.⁸⁹ The turn to heavenly salvation is delusional, insofar as it diminishes the human capacity to affect social change.⁹⁰ There is a subtlety to Benjamin’s manoeuvre here that Schmitt makes an unremittingly obstinate refusal to acknowledge. Benjamin denounces the turn to heavenly salvation, but does not deny the conception of a heavenly beyond. The idea of leaving behind the notion of the heavenly is unacceptable for Benjamin, not only because it would depend on the determination of a particular conception of the human, but also because it would foreclose, in a sleight of hand, any kind of understanding of what that heavenly conception means.

Dual insight

At issue in this final section is Benjamin’s refusal of Schmitt’s prioritization of static order and of divine politics. In order to understand Benjamin’s position with respect to Schmitt more clearly, some clarification must be made of the conditions

underlying Schmitt's idea that the spirit cannot reveal itself through anything but the decision-making figure of 'a sovereign who has already revealed divine truths once and for all, and whose authority offers the sole foundation for those truths'.⁹¹ In his commentary on Shakespeare's development of Hamlet, Schmitt declares the inescapability of historical fact. According to Schmitt, there is no dramatic form that goes without reference to 'current events', nor is there a dramatic form that exists beyond a 'public sphere'.⁹² The historical intersects dramatic form and in turn 'all possible and contradictory rules' are 'circumscribed' by the concept of 'play'.⁹³ As a theology of sorts, the play even holds 'the fundamental negation of the serious situation, the state of emergency'.⁹⁴ Schmitt continues:

The son of a king and the murder of a father are for Shakespeare and his public present and inescapable realities from which one shrinks out of timidity, out of moral and political considerations, out of a sense of tact and natural respect. This accounts for the two historical intrusions into the otherwise closed circle of the play – the two doors through which the tragic element of an actual even enters into the world of the play and transforms the Trauerspiel into a tragedy, historical reality into myth.⁹⁵

For Benjamin, however, it does not follow – as Schmitt's interpretation of sovereignty suggests – 'that every primitive "fact" should straightaway be considered a constitutive determinant' in a decision-making process.⁹⁶ Schmitt's line of reasoning is at odds with Benjamin's, especially Schmitt's notion that an inexplicably selected array of historical facts should intersect the totality of the play. For Benjamin, by contrast, the crude outer form of the Trauerspiel has dissipated to reveal 'an object of knowledge which has settled in [its] consciously constructed ruins'.⁹⁷ Furthermore, Benjamin cites the spectrum of facts as the locus of the investigation into their authenticity: 'Indeed, this is where the task of the investigator begins', Benjamin writes, 'for he cannot regard such a fact as certain until its innermost structure appears to be so essential as to reveal it as an origin'.⁹⁸ Where for Schmitt the 'tragic ends where play begins',⁹⁹ for Benjamin, the intrusion of reality does not indicate the point at which the play succeeds at tragedy, but rather the point at which it fails as an idea. It follows, for Benjamin, that dramatic form is not subservient to the historical; it is actually and necessarily closed 'in order to achieve that totality which is denied to all external temporal progression'.¹⁰⁰

Thus far, it has emerged that Schmitt fails to account for Benjamin's emphasis on closed dramatic form. Schmitt reads the inescapability of historical fact,

and its role in the determination of dramatic form, as the point that distinguishes between the end of Tragedy and the beginning of Trauerspiel. Insofar as Schmitt rejects closed form as mere 'play', he also blinds himself to Benjamin's project of redeeming facts in the world of ideas. Benjamin, on the contrary, reads closed dramatic form as a means by which to redeem dramatic form from the tyranny of the historical. Benjamin's commitment to the closed dramatic form of the Trauerspiel resists Schmitt's determination of the dramatic form by historical fact, and as a process also resists any blithe identification with the notion that being can be ascribed to becoming. This is why Benjamin understands the notion of origin (*Ursprung*) as a process of 'becoming' as well as a process of absenting:

[o]rigin is an eddy in the stream of becoming, and in its current it swallows the material involved in the process of genesis. That which is original is never revealed in the naked and manifest existence of the factual; its rhythm is apparent only to a *dual insight*. On the one hand it needs to be recognized as a process of restoration and reestablishment, but, on the other hand, and precisely because of this, as something imperfect and incomplete.¹⁰¹

It is this 'dual insight' to which Benjamin is predisposed that suggests the Trauerspiel should be considered an intensification of, rather than a reaction to and separation from, Tragedy. On the one hand the ideal of being as becoming, and the ideal of being as that which undergoes continual flux and change gives itself to being determined. On the other, however, it resists determination: in giving itself to identification as 'becoming' and yet in refusing the phantasm of any system of identification, it dissimulates its own play. Yet, irrespective of the inadequacy of any categorical distinction for Benjamin, I argue – and this is my final point – Schmitt continues to read the relationship between the two on the basis of a false dichotomy.

Schmitt's failure to understand Benjamin's commitment to closed form translates, on a broader scale, to a failure to understand Benjamin's interpretation of the relation between myth and the conventions of tragic drama.¹⁰² The point of conflict between the two arises in the form of Attic tragedy. Where for Benjamin, Attic tragedy is the 'tendentious re-shaping of the tradition' which is itself a model for the end of myth and history,¹⁰³ Schmitt delimits myth to a 'form of heroic legend' that is the product of a literary 'source' (*Quelle*) which binds the writer to his public, and in turn functions as 'a part of reality to which all participants are bound by their historical existence'.¹⁰⁴ Above all, tragedy, for Schmitt, re-establishes myth through *ambiguity*:

Attic tragedy is thus no simple play, because an element of reality flows into the performance from the spectators' actual knowledge of the myth. Tragic figures... are not imaginary but real forms of a living myth introduced into the tragedy from an external present.¹⁰⁵

The mechanics through which Schmitt creatively interpolates Benjamin's use of tragedy here require some exposition. My first aim is to calibrate Benjamin's own definition of tragedy through the paradox of death: 'In all the paradoxes of tragedy – in the sacrifice, which, in complying with ancient statutes, creates new ones, in death, which is an act of atonement but which sweeps away only the self, in the tragic ending, which grants the victory to man, but also to god – ambiguity, the stigma of the daimons, is in decline'.¹⁰⁶ The tendentious purpose of the tragic in Benjamin actually hinges upon the waning power of myth: 'the re-shaping of the legend is not motivated by the search for tragic situations', Benjamin writes, 'but it is undertaken with a tendentious purpose which would lose all of its significance if the tendency were not expressed in terms of the legend, the primordial history of the nation'.¹⁰⁷ Tragic drama is unquestionably an historical form for Benjamin, 'the standards of which cannot be applied to other genres', but – and this is where Benjamin's definition of the tragic resists consistency – historical reality is in no uncertain terms invented through acts of criticism.¹⁰⁸ The instability of Benjamin's own notion of the relationship shared between the tragic and the historical gives Schmitt every opportunity to argue a more dogmatic version of an historical reality that 'must be respected as given':

It enters into the tragedy in two ways, thus there are two sources of tragic action: one is the myth of classical tragedy, which mediates the tragic action; the other, as in Hamlet, is the given historical reality which encompasses the playwright, the actors and the audience. Whereas the tragedies of classical antiquity have the myth before them and create from it the tragic action, in the case of Hamlet we encounter the rare (but typically modern) case of a playwright who establishes a myth from the reality he directly confronts. But neither in antiquity nor in modern times could the playwright invent the tragic action. Tragic action and invention are irreconcilable and mutually exclusive.¹⁰⁹

If Benjamin's interpretation of tragedy and myth is so readily subordinated to Schmitt's notion of the historical, the question becomes one of why. It seems that the strength of Benjamin's idea of the tragic as the 'tendentious' re-shaping of tradition is also the point at which the tragic becomes susceptible to manipulation.

Schmitt's argument for the inescapability of historical facts according to Bredekamp, then, is largely reliant on this susceptibility to which Benjamin falls prey. Bredekamp's reading of the conjunction between the two is useful here because it outlines that Schmitt's statement of the impossibility of conceiving history as anything other than a power struggle emerges from this vulnerable point in Benjamin's critique of sovereignty. At the same time, however, Schmitt's historical vision comes to determine the idiom through which Benjamin articulates his respective reading of history. Part of the point of this chapter has been to demonstrate that Bredekamp's commentary on the conjunction between Benjamin and Schmitt is not exempt from this risk – a point on which Bredekamp appears to be conscious. Benjamin's appropriation of Schmitt's extreme case in order to conceive his very similar version of the unique-extreme only complicates the matter further. Where precisely, one might ask, does the difference between Benjamin and Schmitt lie? Meier and Žižek each identify, respectively, a vanishing point of sorts through which Schmitt characterises sovereignty with the authority of an objective source of the analysis of political conditions. Weber's reading of the *Origin* clarifies that although Schmitt informs Benjamin's conceptualisation of the unique-extreme, Benjamin actually deploys this concept in order to, at the very least, begin to assert a critique of sovereignty. Part of this critique of sovereignty depends on establishing the historical context from which sovereignty itself has arisen. This returns my argument to its point of inception, where Benjamin's critique of sovereignty was shown to be open to manipulation and appropriation by the logic of Schmitt's discourse. Having established the difficulty of ascertaining and maintaining a distinction between Benjamin and Schmitt by way of the historical, the task is established in this chapter, for an analysis of the 'Critique of Violence'. This analysis will respond, in part, to the question of whether it is possible to identify and sustain a distinction between Benjamin and Schmitt.

¹ See Chantal Mouffe's characterisation of the present stage of democratic politics, conceived on the terms of a radical and plural democracy, in her 'Introduction: Schmitt's Challenge', in *The Challenge of Carl Schmitt*, ed. by Chantal Mouffe, Phronesis (London and New York: Verso, 1999), pp. 1-6.

² Walter Benjamin, *The Origin of German Tragic Drama*, trans. by John Osborne (London: Verso, 1998), pp. 69; *Ursprung des deutschen Trauerspiels*, in *Gesammelte Schriften*, 8 vols, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp Verlag, 1972-), 1.1, pp. 202-430 (p. 248). Hereafter *Origin*.

³ Schmitt, *Political Theology*, pp. 56.

⁴ Slavoj Žižek, 'Carl Schmitt in the Age of Post-Politics', in *The Challenge of Carl Schmitt*, ed. by Chantal Mouffe (London and New York: Verso, 1999), p. 18-37.

⁵ Meier, pp. 11.

⁶ Meier, pp. 2, see Schmitt, *Concept of the Political*, pp. 26.

⁷ Žižek, p. 18.

⁸ Žižek, p. 18.

⁹ Žižek writes that this 'is the main feature of modern conservatism which sharply distinguishes it from every kind of traditionalism: modern conservatism, even more than liberalism, assumes the lesson of the dissolution of the traditional set of values and/or authorities – there is no longer any positive content which could be presupposed as the universally accepted frame of reference....', Žižek, p. 18-19.

¹⁰ Žižek, p. 19.

¹¹ Schmitt, *Political Theology*, pp. 55-56, quoting de Maistre.

¹² Meier, footnote 15, pp. 6, quoting Schmitt's *Political Theology*, pp. 45, 55-56.

¹³ Meier, footnotes 7 and 8, pp. 4, quoting Däublers.

¹⁴ See Meier, pp. 5-6; see Žižek, p. 19.

¹⁵ See Meier, pp. 5-6; see Žižek, p. 19.

¹⁶ See footnote 18, in Meier pp. 8.

¹⁷ Schmitt, *Political Theology*, pp. 45-46, also see Meier, pp. 6.

¹⁸ Meier, pp. 7-9. Meier writes:

For Schmitt, nothing is more important to the bourgeois than his security: security for life and limb, security from divine and human encroachment upon his private existence, security for undisturbed doings and dealings, security from any interference with the increase and enjoyment of his possessions. This explains both his attitude towards politics, which he wants to master through commerce and communication, and towards religion, which he declares to be a 'private matter'.

¹⁹ Schmitt, *Political Theology*, pp. 50.

²⁰ Schmitt, *Political Theology*, pp. 55, also see Meier, pp. 9-10.

²¹ Schmitt, *Political Theology*, pp. 46.

²² Žižek, p. 20.

²³ Žižek, p. 19.

²⁴ Žižek, p. 19.

²⁵ Samuel Weber, 'Taking Exception to Decision: Walter Benjamin and Carl Schmitt', *Diacritics* 22 (1992), 5-18.

²⁶ *Origin*, pp. 35; GS 1.1, 215, also in Weber, p. 7.

²⁷ Weber, p. 7; see also Horst Bredekamp, 'From Walter Benjamin to Carl Schmitt via Thomas Hobbes', *Critical Inquiry* 25 (1999), 247-266 (p. 259). See *Origin*, pp. 57; GS 1.1, 238. Benjamin opens the section on 'Trauerspiel and Tragedy' with the statement: 'The necessary tendency towards the extreme...'/ 'Die notwendige Richtung aufs Extreme...'

²⁸ Schmitt, *Political Theology*, pp. 15.

²⁹ Weber, p. 7.

³⁰ Bredekamp, p. 259.

³¹ *Origin*, pp. 34-35; GS 1.1, 214-215.

³² Schmitt, *Political Theology*, pp. 5.

³³ Weber, p. 7.

³⁴ *Origin*, pp. 47; GS 1.1, 227.

- ³⁵ *Origin*, pp. 35; GS 1.1, 215.
- ³⁶ Benjamin also draws this connection between Benjamin and Schmitt, see footnote 37, Bredekamp, p. 259.
- ³⁷ *Origin*, pp. 56; GS 1.1, 237.
- ³⁸ *Origin*, pp. 56; GS 1.1, 237.
- ³⁹ See *Origin*, pp. 35; GS 1.1, 215.
- ⁴⁰ *Origin*, pp. 47; GS 1.1, 227.
- ⁴¹ Weber, p. 7.
- ⁴² *Origin*, pp. 47-48; GS 1.1, 228.
- ⁴³ Schmitt, *Political Theology*, pp. 12; Weber, p. 10.
- ⁴⁴ Weber, p. 10.
- ⁴⁵ *Origin*, pp. 70-71; GS 1.1, 250, in Weber, p. 14.
- ⁴⁶ Weber, p. 14; also see *Origin*, pp. 47, pp. 88; GS 1.1, 227, 267.
- ⁴⁷ *Origin*, pp. 70; GS 1.1, 250.
- ⁴⁸ *Origin*, pp. 69; GS 1.1, 249.
- ⁴⁹ Schmitt, *Political Theology*, pp. 20.
- ⁵⁰ Schmitt, *Political Theology*, pp. 20.
- ⁵¹ Schmitt, *Political Theology*, pp. 20.
- ⁵² Weber, p. 14.
- ⁵³ *Origin*, pp. 85; GS 1.1, 263, in Weber p. 14.
- ⁵⁴ *Origin*, pp. 49; GS 1.1, 229-230, in Weber, p. 8.
- ⁵⁵ *Origin*, pp. 65; GS 1.1, 245, in Weber p. 12. I have chosen Weber's translation of 'den auszuschliessen' here, 'to exclude'; the Osborne translation reads 'to avert'. Note 14 at the end of Benjamin's passage, in the *Origin*, refers to Schmitt's *Political Theology*.
- ⁵⁶ Weber, p. 12.
- ⁵⁷ Bredekamp, p. 261.
- ⁵⁸ Bredekamp, p. 264 suggests that Benjamin has adopted the structure of Schmitt's state of exception in order to develop a political theology that turns back on Schmitt, but that Benjamin remains caught in the conceptual framework of the *Political Theology* – i.e., Benjamin is caught, for Bredekamp, in the Schmittian distinction between order and chaos.
- ⁵⁹ Bredekamp p. 264
- ⁶⁰ See Schmitt's famous reference to a letter of 7 July, 1932 written to him by Karl Korsch: 'From the fall of 1932, I also have letters from Franz Neumann; most of them – above all Otto Kirchheimer, who did his doctoral work with me in Bonn in 1928 – and the acquaintances shared with W. Benjamin are not documented because we were in daily contact'. In this instance, however, Schmitt's letter to Hansjörg Viesel, 11 May 1973, is at issue. See Viesel, *Jawohl der Schmitt: Zehn Briefe aus Plettenberg*, pp. 60-61. Also in Bredekamp, footnote 44, p. 261.
- ⁶¹ See Bredekamp, p. 262. According to Bredekamp, Schmitt attacks Benjamin's view of persistent instability by critiquing its polar opposite, Hobbes's concept of the eternal, intact body politic – largely in order to support his own theory of the state of exception. Hobbes' *Leviathan*, according to Bredekamp's reading of Schmitt, 'cannot be as stable as it pretends to be'.
- ⁶² Schmitt, *Zehn Briefe aus Plettenberg*, pp. 16; see Bredekamp, p. 261.
- ⁶³ Schmitt, *Zehn Briefe aus Plettenberg*, pp. 14; see Bredekamp, p. 261.
- ⁶⁴ *Origin*, pp. 71; GS 1.1, 250.
- ⁶⁵ Bredekamp, footnote 47, p. 262. Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines Politischen Symbols* (Cologne: Klett-Cotta, 1982), p. 86. Bredekamp also documents Schmitt's note of regret in 1973 – that the response to Benjamin implicit in his *Leviathan* book of 1938 went unnoticed, in Bredekamp, p. 262-263.
- ⁶⁶ *Origin*, pp. 71; GS 1.1, 250.
- ⁶⁷ Bredekamp, p. 262.
- ⁶⁸ Bredekamp, p. 262.
- ⁶⁹ Carl Schmitt, *Hamlet oder Hekuba: der Einbruch der Zeit in das Spiel* (Düsseldorf und Cologne: Eugen Diederichs Verlag, 1956), which contains a study on 'The Source of the Tragic', *Telos* 72 (1987), 133-146. Also see Schmitt's response to Benjamin as an Appendix to this study, 'On the Barbaric Character of Shakespearean Drama: A Response to Walter Benjamin on The Origin of German Tragic Drama', *Telos* 72 (1987), 146-151.
- ⁷⁰ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 146, also in Bredekamp, p. 263.

⁷¹ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 146. Schmitt defines Shakespeare's *Hamlet* as 'play' (*Spiel*), but as a play that reveals its opposite, the 'serious case' (*Ernstfall*). Bredekamp's explanation of Schmitt's reading of these terms is as follows: 'As play, the theatre is the negation of the *Ernstfall*; yet without knowledge of the latter, it remains empty' (Bredekamp, p. 263).

⁷² Bredekamp, p. 263.

⁷³ *Origin*, pp. 157-158; GS 1.1, 334-335.

⁷⁴ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 147.

⁷⁵ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 147.

⁷⁶ *Origin*, pp. 157-158; GS 1.1, 334-335.

⁷⁷ *Origin*, pp. 157-158; GS 1.1, 334-335.

⁷⁸ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 148.

⁷⁹ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 148.

⁸⁰ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 148.

⁸¹ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 149.

⁸² Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 150.

⁸³ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 151.

⁸⁴ Schmitt, 'On the Barbaric Character of Shakespearean Drama', p. 151.

⁸⁵ David Pan, 'Political Aesthetics: Carl Schmitt on Hamlet', *Telos* 72 (1987), 153-159 (p. 157).

⁸⁶ Pan, p. 157. Also see Paul Piccone and G.L. Ulmen, 'Introduction to Carl Schmitt', *Telos* 72 (1987), 3-15 (p. 13). Piccone and Ulmen note that Pan's reading of Schmitt's inaccuracy is not without contradictions in its own right, and criticise Pan for 'blurring too many distinctions between England and continental Europe, 20th century totalitarianism and 16th century authoritarianism' and ultimately, for 'reading Schmitt's efforts to understand art within a socio-political context as an argument for state control of the arts....'.

⁸⁷ *Origin*, pp. 81; GS 1.1, 260.

⁸⁸ *Origin*, pp. 81; GS 1.1, 260.

⁸⁹ *Origin*, pp. 98; GS 1.1, 276.

⁹⁰ This is Pan's interpretation of Benjamin, p. 157.

⁹¹ Mark Lilla, 'The Enemy of Liberalism', *New York Review of Books*, 15 May 1997, p. 43.

⁹² Schmitt, 'The Source of the Tragic', p. 136.

⁹³ Schmitt, 'The Source of the Tragic', p. 138.

⁹⁴ Schmitt, 'The Source of the Tragic', p. 139.

⁹⁵ Schmitt, 'The Source of the Tragic', p. 145.

⁹⁶ *Origin*, pp. 46; GS 1.1, 226-227.

⁹⁷ *Origin*, pp. 181-182; GS 1.1, 357.

⁹⁸ *Origin*, pp. 46; GS 1.1, 226-227. Also in Pan, p. 158.

⁹⁹ Schmitt, 'The Source of the Tragic', p. 139.

¹⁰⁰ *Origin*, pp. 75; GS 1.1, 255.

¹⁰¹ *Origin*, pp. 45; GS 1.1, 226.

¹⁰² See Pan, p. 159.

¹⁰³ *Origin*, pp. 106; GS 1.1, 185. Also in Pan, p. 159. Benjamin's quote continues:

This is where the philosophical definition of tragedy has to begin, and it will do so with the perception that tragedy cannot be understood simply as legend in dramatic form. For legend is, by its very nature, free of tendentiousness. Here the streams of tradition, which surge down violently, often from opposite directions, have finally come to rest beneath the epic surface which conceals a divided, many-armed river-bed. Tragic poetry is opposed to epic poetry as a tendentious re-shaping of tradition.

¹⁰⁴ Schmitt, 'The Source of the Tragic', p. 143.

¹⁰⁵ Schmitt, 'The Source of the Tragic', p. 144.

¹⁰⁶ *Origin*, pp. 109; GS 1.1, 288. See Banham, 'Mourning Satan', on a reading of the demonic.

¹⁰⁷ *Origin*, pp. 106; GS 1.1, 285. Also see Pan, p. 159.

¹⁰⁸ Pan, p. 159.

¹⁰⁹ Schmitt, 'The Source of the Tragic', p. 145.

PART TWO

The aim of this part of the thesis is to elaborate the terms, conditions, and goals of Benjamin's notion of pure violence. Its starting point is a conceptualisation of pure violence as something that exists within the legal order and refuses conscious willing. In order to substantiate this claim, however, an exposition of the legal order is required. The legal order is bound together by the forces that found, make, or *posit* the law and the forces that *preserve* that positing act. The legal order is, in this sense, inextricably linked to the concept of sovereignty. Just as it would be impossible to conceive of sovereignty without the support of the legal order, the legal order in turn assumes the appearance of sovereignty. The two concepts are to some extent interchangeable: each occupies a unique position above the law, but is able to reach into and modify the law; each depends, moreover, on a specific interpretation of the historical. Where Schmitt, for example, reads history in terms of a dialectical exchange between disintegrating order, and its restoration by sovereign authority, Benjamin places his critique of order within the very structure of history. History in the 'Critique of Violence' is defined as the endless prevarication between law-positing violence, which modifies or replaces one legal order with another, and law-preserving violence, which enforces a condition of protection for the legal order. As such, the historical for Benjamin also functions as the locus of his concept of pure violence.

Pure violence is not a purification of violence, and neither is it a specific type of violence. It is, I will argue, *essential to the structure of violence*. It is also, however, in some sense, a completely arbitrary term upon which Benjamin draws in order to conceptualise the essence of what feeds and destroys sovereignty. In this way pure violence can also be understood to constitute the fabric of sovereignty. Where the first part of the dissertation (chapters one and two) established the difficulty in separating Benjamin's thought from Schmitt's, this part of the dissertation (chapters three and four) will work against Derrida's radically alternative effort to *separate* pure violence from the legal order and from sovereignty. The interpretative direction set by Derrida in his essay on the 'Force of Law' is flawed insofar as it reads pure violence as open to a 'reversal' and appropriation by the anti-revolutionary cause. While this interpretative direction is not incorrect insofar as it aligns the spectral presence of pure violence with the mythical structure of the law

(Geyer-Ryan, Gustafsson, McCall, Wolcher, and Hanssen), it is based on a false separation between pure violence and legality, and it underestimates the strategic irony Benjamin deploys in his determination of the *conditions* of reading pure violence.

Given the theoretical trajectory that Derrida's study of violence espouses, a subsidiary aim of this dissertation will be to develop a connection between pure violence and its alleged opposite, sovereign violence. I state my case through the example of divine violence: divine violence shares a close affiliation with pure violence insofar as it holds the potential to bring an existing legal order into question. Insofar as it exists above the law, with the intent to modify the law, however, divine violence is also closely affiliated to sovereign violence. In contradistinction to Agamben's argument for a separation between divine and sovereign violence, I argue that each distributes guilt through punishment or retribution by fate, and that each participates in the reification of life. Consequentially, I argue that guilt can be neither determined exclusively by, nor understood to belong exclusively to, Schmitt's concept of the juridical. Two specifications of pure violence come into focus at this stage: 'pure language', and the proletarian general strike. Pure language is kinetic in structure: the conditions of its analysis are determined through its appearance in Benjamin's work both before and after its Edenic fall from grace. In the case of the former, pure language refers to the idea that there is a name for everything: there is in this preliminary phase of pure language an infinite number of singularities and of names, and little to no requirement for any mediation between these things and their names. Pure language after the Edenic fall is encapsulated by the process of naming as an act of violence, or stated differently, as an act of institutionalisation.

The 'Critique of Violence' brings into focus this second phase of pure language as a heightened paradox of extremes. The problem of which Benjamin is expressly aware with respect to this second phase of pure language is the extent to which commerce facilitates the conditions of its occurrence. Insofar as the sphere of commodity production governs the opening to the sphere of pure language, or of pure means, it also establishes an interface between pure violence and structures of power. Without this interface, pure violence becomes too rarefied to be able to respond to the uniqueness of the moment. Held accountable to this interface, however, pure violence only consummates the authority of commercial structures. Through the

examples of diplomacy, peace negotiations, and the conference, Benjamin brings to light the disparity between a concept of pure language that attests to the diversity of linguistic practice, but that in its attempts to supersede that diversity risks being reduced to a technique of effective communication – a concept that defeats its own purpose to the extent that it depends for expression on the banality of the cliché.

Pure language in this second phase of development should be understood, according to Benjamin's essay, to confirm another sphere of social relations that exists beyond the confines of economics and commodity production. In order to render explicit the contradictions inherent to this position, then, I construe pure language as *technical innovation*. The innovative potential of the pure language of the conference, and of diplomacy, has the potential to dissolve and reformulate existing social relations. At the same time, however, it is susceptible to techniques such as lying, fraud and corruption. Pure language is exposed, in this way, to a sliding scale of technical legitimacy whereby its effects are ascribed to the realm of the counter-revolutionary. As pure language succumbs to technical practice, to technical manipulations and to the practice of mediation, it reveals its underlying framework. Pure language is politically produced; it signifies the process of making a particular way of doing these legitimate, and it functions to elevate a certain doctrine, belief, or class of person above all others.

Given its propensity to conform to the dictates of the anti-revolutionary, the question arises as to how pure language finds its analogue in pure violence. An analysis of the process of *Habeas corpus* provides an important resource for a response to this question. The stages through which *Habeas corpus* as writ is consolidated into *Habeas corpus* as act not only clarifies how any given discursive practice comes to be formalised by institutional procedure, but also reveals the various dimensions of the sovereign decision. The sovereign imperative to have, or to produce the body constitutes a positing of power that depends on the rule of law for its reinforcement. Viewed from another perspective, sovereign discretionary interest is exposed to and consumed by the legal order: it is a testament to how the legal order monopolises authority, the discursive economy as a whole, and the legal control of the distribution of social power. This fraught relationship between discursive practice and its vulnerability to and monopolisation by the legal code asks

for a characterisation of Benjamin's second specification of pure violence in the 'Critique of Violence': the proletarian general strike.

Here, an analysis of Sorel's attempt to map the 'creative consciousness' of the general strike serves two purposes: it lends context to a shared refusal on the part of both Benjamin and Schmitt to articulate emotion as that which impels the general strike, and ultimately it marks the point at which Benjamin makes his departure from Schmitt. An effort to re-conceptualise the concept of the proletarian general strike consolidates Benjamin's position of incommensurability with respect to Schmitt. Yet the question of how pure violence can exist in the terms Benjamin prescribes in the 'Critique of Violence' *without blood*, but also *without violence* still remains. In an effort to respond to this question, I present the crowd as a sovereign entity. A crowd achieves its sovereign status in the act of striking, which is to say that at the same time it strikes, it also participates in forms of action that remove its collective body from the means-ends rationality. In this way, the crowd throws away any notion of there being a future: it becomes bereft of itself, naked, or pure. Exposed to the risk of appropriation by and subordination to the structures of power against which it turns, the concept of the crowd as sovereign raises a series of further questions. First among these is an inquiry into whether the concept of the crowd as sovereign presumes consensus among members of a homogeneous community, and as such, comes to rely on the sovereign decision. To use the strike as the forum that marks Benjamin's separation from Schmitt is to question, ultimately, if the refusal to conform to a paradigm from the historical canon of political or economic systems is efficacious if at all possible. To mark Benjamin's departure from Schmitt is also to question, by extension, if it is possible to aim at the recasting of these systems from beyond the confines of homogeneity.

Chapter Three: Toward a Critique of Violence

This chapter seeks to clarify how, for Benjamin, the problem of the destruction and liberation of any given form of representation, dramatic or otherwise, is a *political problem* – the political for Benjamin being, in the 'Critique of Violence', part of a project that is primarily concerned with the question of how to formalise, without reifying, the tools of historical evaluation evident in Schmitt's thought.¹ My argument begins with a reading of sovereignty, in the 'Critique of Violence', as a

concept that locates the relationship between *pure violence* and the violence of the legal order. As the point of connection between pure violence and legal violence, sovereignty also brings to expression the relationship between Benjamin and Schmitt. Counter to Derrida's claim that Benjamin separates pure violence from the legal order, I argue that Benjamin's account of pure means seeks to make evident a series of contradictions within critique as a method of legal analysis. That Benjamin situates his account of the deficiencies of the legal order within the source of the injunction – the sphere of legal ends – against which he seeks to deploy the revolutionary violence of a pure means; that Benjamin locates pure means within the sphere of legal violence, so that it is at once the force that binds the authority of the law and the singular entity that not only resists but unbinds that authority – these are the points through which I introduce Benjamin's potential for political radicalism.

Where Derrida and the commentaries that follow in Derrida's wake read a failed effort on Benjamin's part to separate pure violence from the legal order, I argue that this is precisely Benjamin's point: pure violence is most pernicious in potential when it assumes the appearance of the force by which it is repressed. Pure violence assumes the appearance of and even shares some analogy with the concept of sovereignty, and insofar as it corresponds to the critique of order, it also holds the potential for the radicalisation of the constitution of the political field – for the determination of what is and is not political. Before any effort to communicate the extent to which Derrida has come to eclipse readings of Benjamin's Critique, however, I must first reinforce here the subtlety of *Gewalt* – a term conventionally translated as violence, but that also connotes sovereignty, or force. Pure violence, with all that implicit in *Gewalt* in mind, then, is not a purification of violence, and neither is it a specific type of violence. Although it appears to be a completely arbitrary term upon which Benjamin draws in order to conceptualise the essence of what feeds and destroys sovereignty, its interpretation through the concept of *Gewalt* suggests otherwise. This is not to say that Schmitt's concept of sovereignty will determine the idiom through which Benjamin's concept of pure violence finds expression. The structure of sovereignty, however, will be shown to provide an important context through which pure violence experiences a coming-to-presence.

To understand pure violence as a variety of sovereignty that is also given to the critique of sovereignty – this is the paradox through which pure violence must be

understood. On the one hand, it refuses to be contained by sovereignty, and attests to an economy of difference from within the very fabric of sovereignty. In this sense, it resists power, but also refers to the self-differentiation, or auto-differentiation of power. On the other hand, sovereignty facilitates pure violence with the possibility of coming-to-presence – a process that involves less the materialisation of pure violence itself than the change it brings into effect socially or politically. Understood in these terms of sovereignty, pure violence signifies a dynamic interaction between social groups and structures of power, and it is thought in Benjamin's essay as an on-going event. Pure violence also, however, opens the field of sovereignty or power to debate. Its major purpose is to defer power from ever achieving itself, yet it can only be understood through structures of power.

The second section of this chapter puts consideration of Derrida aside, but only temporarily. This part of the analysis aims, primarily, to counter Schmitt's appeal to a normative state through the sovereign declaration of a state of exception, with Benjamin's view of the rise of the Rule of Law. In particular, this section brings into focus Benjamin's effort to delineate the dynamics of 'representation' at work in the occurrences of legal violence. Benjamin's critique of parliamentary democracy, set against the background of the suppression of the worker's strike in the Ruhr region, provides a context within which to read the endlessly recurring oscillation (*Schwankungsgesetz*) and substitution of law-positing for law-preserving forms of violence. As the principle through which legal institutions are transformed and replaced by other impositions, the law of historical change stabilizes legal order, and delimits the free play of human emotion. The effort on the part of legal structures to make latent through force the spontaneous emergence of pure violence, however, is subject to a process of internal reversal (*Umschlag*), or decay. Through the dissolution of these legal structures, pure violence emerges as the inaugural source of a new historical epoch.

The phenomenon of *police violence* clarifies my interpretation, here, of pure violence: the all-pervasive presence of the police is realised in the 'Critique of Violence' through techniques of surveillance. Those techniques may be used as part of repressive measures to protect the state; they may also, however, be used to subvert the interests of the state. The law functions as the measure of police behaviour; yet the spectral presence of the police, in the event that it usurps the

position of the state, may assume as its prerogative the right to modify or posit new laws. Spectral in this sense refers to the ghostly presence of the police: the police are everywhere; anyone can be the police; and in this way, the police are invisible. Just as pure violence leaves no trace, according to Benjamin, police violence refuses to make itself evident. Police violence, in this sense, is an example of where pure violence might unfold. It is also an example of how law-positing and law-preserving forms of violence are inhabited by pure violence. Derrida's concern with police violence is that it demonstrates the manner in which pure violence is subject to 'reversal' and appropriation by the anti-revolutionary cause. This is, however, a misreading of pure violence that can be criticised further through the concept of *divine violence* in the 'Critique of Violence'.

Divine violence occupies an idiosyncratic space above the law – it is not accountable to the law – and yet from that position determines the modification of, if not the creation of, new laws. It shares an analogy, in this sense, with the principle of sovereignty as conceived by Schmitt, and it comes to expression in Benjamin's essay in the example of the legend of Niobe and the story of Prometheus. At a basic level, divine violence articulates the ways in which the law is mythologised, and myth legalised. Divine violence also, however, shares the territory of sovereignty: each arbitrates retribution or punishment by fate, and divine violence refuses, especially, to allocate sole rights to the distribution of guilt to the sphere of the juridical. Together, police violence and divine violence demonstrate that the sovereign control of the legal order is spurious; that the legal order operates on the premises of forms of violence that are not determined by sovereignty. As preliminary considerations of pure violence, divine violence and police violence risk appropriation by the anti-revolutionary cause. In their refusal of conscious willing, and in the opening they provide to the aleatory, however, police violence and divine violence affirm their potential as instances of pure violence.

Thus Benjamin's understanding of police violence as at once the force that organises society into a hierarchy of contractual relations through the exercise of law-preserving violence, and as the force that has the potential to release individuals from those bonds. It is the police ability to suspend the law of historical change that is interesting to Benjamin: police violence may tend, further to any given revolutionary action, to substitute itself for a previous law-positing power and to reinforce,

ultimately, a normative state. Its reversion to a law-preserving function is peripheral to Benjamin, however, whose interest is in the police potential to open a space through which a certain degree of dissension from and difference to the legal order might emerge. The question of the substitutive tendencies of pure violence is important, then, insofar as it draws Benjamin – and this is the central focus of my chapter – to the further question of how to pre-empt the process of legal decay. The pre-emptive capacities of pure violence are revealed to share some parallel with the state of exception that structures Schmitt's model of sovereignty: each is contingent on the same aporetic structure of the law that receives the force of Benjamin's critique.

Here, however, I isolate Derrida's influence on a series of secondary commentaries on Benjamin's essay. The tendency in these commentaries to characterise pure violence as susceptible of acting as a positive driving force and of assuming the quality of a phantasm is revealed as incorrect. An exposition of Benjamin's critique of the structure of perpetual peace, and of the discourse of equal rights understands Benjamin's dissatisfaction with the false distinction between civility and violence that upholds the nation-state, but also understands pure violence to undermine the falsity of that distinction. Equally false, however, is the common reading of pure violence as that which is *opposite* to the mythologized structure of the law. Through an exposition of the legend of Niobe and the example of Prometheus, as each appears in the 'Critique of Violence', Benjamin establishes that mythic violence, like pure violence, occurs as anything but a manifestation of the will. Mythic violence demonstrates the way in which myth comes to be legalised and law mythologized, such that the positing of power and authority is obscured – so much has been said repeatedly in commentaries on Benjamin's 'Critique of Violence'. My point is that to strike at the authority of the mythical-legal structure of violence is to strike at the *trauma* that brings myth and legality together. The trauma, then, is the obscene underbelly of mythical-legal violence. It is the very lack of authority upon which mythical-legal violence is structured. Mythical-legal violence is given not in itself but in a differential relationship, where it can only identify itself and receive recognition in its response to being challenged.

It has by this stage already been established that Benjamin presents the mythical and legal statutes through an economy that also informs the language of

pure violence. Here I argue for a reading of pure violence as that which *inhabits* the structure of sovereignty.² In opposition to Derrida's influence on secondary interpretations of the Critique I argue that pure violence neither replicates the structure of sovereignty, nor constitutes a unified response to the legal order. Pure violence may occupy a position within the legal order, and divine violence above the legal order. Pure violence is, however, closely connected to divine violence – each holds the potential to modify the legal order, yet cannot be consciously willed – and as such it constitutes an unconditional possibility. Divine violence in this sense encapsulates an effort on Benjamin's part to radicalise the terms of the Categorical Imperative – to locate in pure violence some safeguard against the use of the other as a means. An exposition of divine violence at this point of my argument reveals that it, like the sovereign structure of myth, relies on the concept of guilt in order to discharge retribution or punishment by fate. The expiatory power of divine violence may be tangible only in its absence. Where blood, for example, is the instrument of mythical inscription, divine violence is bloodless and leaves no trace. While this is a conventional reading of the alleged opposition between myth and pure or divine violence in the 'Critique of Violence', I argue that it is flawed. I stake my claim on the argument that both mythical violence, in its declaration of a state of exception – such that it determines the terms and conditions through which its subjects will be exempt from punishment – and the untraceable law of divine violence, incur their own transgression. *Each* as written law in the case of the former, and unwritten law, in the case of the latter creates the fiction of a legal order and incurs the transgression of that legal order.

A brief exposition of Derrida's 'Post-Scriptum' to the 'Force of Law' essay reinforces this point.³ To extract the essential from Derrida's essay for the purposes of my own argument: both the spectral presence of a pure, divine violence, and the mythical structure of the law exercise an absolute imperative. The sovereign figure of mythical violence – which Derrida clarifies in no uncertain terms as the personification of the far *right* – in turn presents us with an intensification of the law-positing and law-preserving elements of spectral violence. Although I make no claim that Derrida has prioritised a political position based on the discernment of complicity between divine and sovereign violence, I do suggest that Derrida's polemic has underestimated the extent of Benjamin's project. Divine violence could

be seen – and Derrida would be correct here – to open itself to the risk of homogenisation by that sovereign structure. This, I argue, however, is the point of divine violence: its potential as a pure force depends on the fact that it risks this Derridean concept of the ‘reversal’ – where the force that is deployed for a revolutionary cause ultimately justifies the anti-revolutionary cause. As such, I argue, divine violence provides an opening to the *aleatory*. It cannot be summoned at will, and neither is it determinate. I conclude this part of the chapter by drawing an explicit comparison between Benjamin and Schmitt: where Schmitt appeals to a pre-existing norm, Benjamin’s notion of divine violence encapsulates the affirmation of chance.

The concluding section of this chapter leaves the criticisms of Derrida’s ‘Post-Scriptum’ intact and moves into an exposition and critique of Agamben’s reading of the relationship between Benjamin’s formulation of divine violence and Schmitt’s juridical concept of guilt. In considering three specific extracts from Agamben’s work on ‘The Logic of Sovereignty’, I object to a series of points in his argument. These errors on Agamben’s part begin with a misinterpretation of Benjamin as having made an undue transfer of guilt to the spectrum of divine violence. Divine violence, I argue, is as much the distributor of guilt through retribution or punishment by fate as its counterpart, the mythical structure of legal violence. To claim, as does Agamben implicitly, that guilt belongs exclusively to the sphere of the juridical is incorrect. His assertion fails to account for the extent to which divine violence inhabits and shares the same frame of reference as the legal sphere. The inadequacy of that assertion continues through an underestimation of divine violence as that which offers the possibility of political participation.⁴ The possibility of political participation, I argue, is evident in the connection Benjamin draws between the position of the legal subject and the sovereign structure of violence. The conjunction between Benjamin and Schmitt provides a forum, ultimately, not only to re-instate the notion of divine violence as an affirmation of chance and as an opening to the *aleatory*, but also to question the implications of that affirmation.

1. Derrida's language of critical separation and demarcation

It has already been established in chapter one that Schmitt's influence is felt most directly in Benjamin's *Origin*. The difficulty that arises in the attempt to separate Benjamin's thought from Schmitt's is only exacerbated, however, on consideration of the extent to which Derrida has come to eclipse readings of Benjamin's 'Critique of Violence'. Benjamin's imperative in the 'Critique of Violence' is to expose the representation of history as the product of violence administered through legal acts. I also argue, however, that Benjamin's imperative is to locate the relationship shared between *pure violence* and the violence of the legal order. Derrida opens the second part of his essay on the 'Force of Law' with an extended analysis of Benjamin's 'Critique of Violence' that would seem, at the outset, in keeping with my own. Derrida recognises that the distinctions between categories of violence in the 'Critique of Violence' are not easily maintained: 'Having begun by distinguishing between two sorts of violence, founding violence and preserving violence', he writes, 'Benjamin must concede at one moment that the one cannot be so radically heterogeneous to the other' – heterogeneity here referring to what with respect to a given field comes from outside, rather than that which is ruled by the common or ordinary.⁵ Most notably, Derrida remarks that violence 'threatens law from within law'.⁶ In the immediately following pages, however, Derrida's recognition of the extent to which positing and preserving forms of violence cannot be considered mutually exclusive in Benjamin's essay comes to an abrupt halt. '[A]t the end of a text that strives to deconstruct and disqualify all the oppositions it has put to work in a critical fashion' (Derrida notes in a paraphrase here 'the opposition between decidable and undecidable, between theoretical judgment and revolutionary action, between founding violence and preserving violence within mythological law which is itself opposed to just, divine violence, etc...') there is still no evidence on Benjamin's part of 'demonstration' or of 'certainty'.⁷ Derrida expresses as a short-coming on Benjamin's part and as a point of irritation for the purposes of his own analysis of the Critique Benjamin's preoccupation with and predilection for the 'aleatory'.⁸ Having established as much – that is, having established Benjamin's supposed failure to isolate, or extract, each form of violence from the other – Derrida begins to subordinate the dynamics of Benjamin's text to his own polemic. Derrida writes that

where there is critique, there is also a delimitation of the right to judge with regard to legitimate types of violence:

In the title 'Critique of Violence', critique does not simply mean negative evaluation, legitimate rejection or condemnation of violence, but judgment, evaluation, examination that provides itself with the means to judge violence. The concept of critique, insofar as it implies decision in the form of judgement and question with regard to the right to judge, thus has an essential relation, in itself, to the sphere of law.⁹

The implication in Derrida's essay is that the law is susceptible to critique because it is governed by procedures of critical analysis. To isolate pure violence from the law, Derrida states, would also align its force with the force of critique. It would follow, according to the precepts of Derrida's reading, that given their separation from the sphere of legal violence, both pure violence and critique would contain the revolutionary potential to transform the realm from which law or right actually evolves. The problem with Derrida's reading is in its emphasis on critique as a critical separation and demarcation. Derrida notes that the decisive and cutting force of *Kritik* derives etymologically from *krinein* (to cut, to separate), and is echoed in the essay's preoccupation with the language of decision (*Entscheidung*).¹⁰

This distinction between the language of decision, critical separation and demarcation and the discourse of a pure violence is the point, I argue, that has trickled into the framework of the secondary readings of Benjamin. The first example of where Derrida's framework for reading Benjamin is uncritically appropriated can be found in Helga Geyer-Ryan's commentary on Benjamin. Despite Helga Geyer-Ryan's claim that the very conceptualisation of pure violence is simply the effect of a difference that is inherent to every discourse, for instance – Geyer-Ryan writes 'to state that pure violence was entirely discontinuous with any discourse, or action, or difference, would incorrectly assume that old discourses were unable to dictate the direction in which any revolutionary violence aimed to advance' – she is nevertheless complicit with Derrida in her argument that this 'differential process' (as opposed to the Hegelian dialectic) that defines pure violence is constituted by a moment of suspension or undecidability, where every decision, and every judgment 'must undergo this suspension'.¹¹ It is from precisely this point, however, that Benjamin's critique seeks to determine the importance of the relationship between pure violence and the legal order, rather than to isolate pure violence from its counterpart.

Insofar as pure violence is concerned with the language of decision, it is also concerned with the legal order, and as such provides a common point of reference between Benjamin and Schmitt. That Benjamin begins his Critique with a statement on the purity of means is clear. That Benjamin claims this purity of means depends on their effective separation from the question of just ends, however, is virtually irrelevant. This is merely a trope, on Benjamin's part, through which to outline precisely what he means when he refers to just ends – itself a sphere of concern that Benjamin traces back to the precincts both of natural law, which in its efforts to preserve or mandate certain ways of life 'regards violence as natural datum', and of its diametrical opposite, positive law, which 'can judge all evolving law only in criticizing its means'.¹² In the case of natural law, a criteriology of ends – whether they are just or unjust – does not permit the problematisation of the use of just but violent means to achieve just ends. Although positive law, by contrast, is more efficient insofar as it thematises legal violence, or in other words, analyses legal violence without reference to the justness of its ends, it still does so from within the sphere of violent means. Natural law 'attempts, by the justness of the ends, to "justify" the means,' and 'positive law to "guarantee" the justness of the ends through the justification of the means'; but it is only a pure means, for Benjamin, that holds the potential to overcome the fundamental doctrine that means have ever justified, or could ever justify, ends.¹³

Benjamin does not outline the constituents of the legal order in order to prove their distinction from the tenets of pure violence. His imperative in outlining the constituents of the legal order rather aims to prove their conjunction with pure violence. It is with grim irony, then, that Benjamin questions, at the outset of the essay, 'whether violence, as a principle, could be a moral means even to just ends'.¹⁴ In continuing to insist on the exclusion of just ends from his study of pure means, Benjamin situates ends altogether beyond the sphere of mediacy, and therefore renders these means susceptible to ambiguity. Benjamin's point in doing so, however, is to underscore the extent to which these ends claim superiority in the face of means, but are actually constituent factors in an historical trajectory that has the power to arbitrarily 'sanction', or condemn, varying degrees of force.¹⁵ That these ends willingly and deliberately submit to larger historical forces suggests that they actively deploy some strategy in the effort to obscure their own mediacy.¹⁶ This is

precisely the point Benjamin wishes to make: it is the fallacy of just ends that lends momentum to the imperative to search for the 'exact criterion' by which to 'discriminate within the sphere of means themselves, without regard for the ends they serve'.¹⁷ Benjamin's critique of both natural law and positive law, in their respective pursuits of a utopia of an original source of violence, and in their respective attempts to locate a fixed point of origin from which the law attains its supposed validity, is really a device through which Benjamin becomes able to illustrate the place of pure violence in the spectrum of legal ends.

To state my argument more succinctly: Benjamin's account of the violence implied by and administered through legal acts is part of a deliberate attempt to establish the extent to which legal violence functions as part of the law's possible purification. His politics of pure means does not sit outside other politics of means and ends, but actually *inhabits* them. It follows that this politics of pure means is linked with the ends any violence serves, irrespective of whether those ends are natural or legal; in order to refer to an experience of *indetermination* that precedes and outlasts any particular mode of legal violence, a politics of pure means must necessarily be 'traced against a background of specific legal conditions'.¹⁸ The purest violence is virtually impossible to discriminate from existing modes of legal violence because it infiltrates those modes of violence. The more it assumes the appearance of legality the more pernicious its effects. Neither can it be achieved through a simple refusal of violence, nor through an appeal to counter the power of a hegemonic structure of violence with an alternative violence of commensurable power. Pure violence is an ongoing event that happens in the very articulation of legal violence.

The problem for Benjamin, however, is that the dynamic historical principle from which legal violence issues is only open to consideration through the terms and conditions of power. Benjamin cites, as an example characteristic of legal conditions, the 'tendency to deny the natural ends' of the individual legal subject 'in all those cases in which such ends could, in a given situation, be usefully pursued by violence'.¹⁹ This tendency to remove violence from the hands of individuals might intend to preserve legal ends, but its effect collides entirely with natural ends to consolidate the monopolisation of power by the law.²⁰ This is why, even in cases where the law has lent its authority to the exercise of violence – Benjamin cites

education as an example – the degree of violence practiced is measured and delimited by the law. Benjamin notes a similar collision between legal and natural ends in the ‘figure of the “great” criminal’, who in presenting a challenge to the authority of the law, captures the imagination of the public.²¹ Pure violence happens, in this example, in the experience of a legal violence that falls outside the bounds of legitimate violence, but at the same time it does not even offer itself to a conventional political programme. From the perspective of a conventional politics, the occurrence of pure violence in this example is questionable. Benjamin’s point, however, is that it occurs, and continues to occur, as an on-going process, because legal violence, ‘by its mere existence outside the law’,²² facilitates the experience of pure violence.

For Benjamin, legal violence does not actually reinforce the law. Legal violence is for Benjamin most especially threatening to and feared by the law in every instance ‘where its application, even in the present legal system, is still permissible’.²³ Under these circumstances, it is not the legal system, ends, or executive that is threatened, but the legal control of violence itself. As that which binds the law together – and this is the point in which Benjamin is most interested – legal violence also contains a play of pure violence that reveals itself only when the bonds of law slacken. A pure violence ‘capable of being universalised’ (*verallgemeinerungsfähig*) would organise and regulate the interests of individuals, and the relationships between individuals, to predetermine a given political response.²⁴ The singularity of pure violence undermines the idea that social relations can be subject to regulation by legal forms of order, and suggests that when they are they must always fail. Benjamin extracts the singularity of pure violence from, as he sees it, the false assumption that legal violence has ever belonged to formal institutions of the law: this is the pure means through which he offers his reader a glimpse of ‘the nature of justice’ (*Merkmal der Gerechtigkeit*).²⁵

2. The law of historical change

Let me return now to the relationship between Benjamin and Schmitt as it finds expression through the concept of sovereignty. For Schmitt, sovereignty uses the breakdown of historical order as the measure of its appeal to a normative state. The sovereign decides a state of exception in times of crisis and in response to the need to

recover the idyllic image of a society bound by order.²⁶ Benjamin, by contrast, views the production of forms of historical representation as analogous to the effort on the part of legal structures to suppress the spontaneous emergence of pure violence. Benjamin makes clear at the outset of the 'Critique of Violence' that pure violence exists within the very structures of legal violence it seeks to destabilise. The next step for Benjamin is to find some affirmation of pure violence – some guarantee, as it were, that pure violence occurs through the dissolution of legal structures.

All law, according to the 'Critique of Violence', depends on a positing (*Setzung*), and no such positing manages without violence that is fundamental to the act of positing, but that also 'compromises' that act of positing.²⁷ Law-positing violence, Benjamin stresses, actually draws its strength from this process of compromise. Benjamin's exposition of law-imposing, law-making, or law-positing violence as the human violence that establishes new law and a new legal order to take the place of the old is clear. It also provides a breakdown of the process by which, whatever is posited – or *founded* – by law-positing violence does not deserve the name law, and cannot be recognized as a form of legal order, until the moment it is founded. This is the way in which all law-positing violence finds itself represented in all law-preserving, or as Benjamin refers to it in one instance, 'administrative violence' (*verwaltete Gewalt*).²⁸ As two distinct forms of violence, however, law-positing violence and the administrative principles of law-preserving violence do not stand in simple opposition to one another. It is rather the dynamics of their reciprocal relationship that come to constitute the legal order. The moment of interchange between the two forms of violence is so subtle that it resists conceptual understanding: law-preserving violence protects and conserves the law that has been founded by law-positing violence, but it does not come into being until a form of legal order has been established.

The endlessly recurring oscillation (*Schwankungsgesetz*) and substitution of law-positing for law-preserving forms of violence – where the violence that posits only materialises at the point in which it also passes over into the violence that preserves that which has been founded – constitutes the 'rotten' state of the law for Benjamin (*etwas Morsches im Recht*).²⁹ The transition from positing to preserving, however, is not smooth. In order to preserve its own potency, law-positing violence necessarily turns against other competing, hostile forces of positing, and in so doing

indirectly turns against its own principle – the principle of positing itself. This is the quagmire into which law-imposing violence falls: in order to maintain its status, it must become law-preserving; as a law-preserving force however, it inevitably turns against and collides with its original act of positing and so ultimately ‘decays’.³⁰ The result is that every time law-positing violence seeks to preserve itself, it denies its own conditions of possibility. With it, law, which depends on positings, also disintegrates and falls to ruin. As soon as law-positing violence names law-preserving violence, the hypothetical distinction between the two collapses: in every positing, every stipulated positive legislation or law, the violence by which it has been employed must turn against itself – whether by ceasing to posit so as to preserve its position, or by opposing, for the same reason, other positing forces.

The representation of positing violence brings on the demise of what is represented – that is, positing violence weakens its own preservation precisely by the principle of its own positing – and so becomes a means for a stipulated end rather than a pure means. By placing violence into the service of something other than itself, positing turns violence into an instrument, and withers into its own means. Every positing and every law is thus subject to a more powerful law that demands that it expose itself to another positing, and another law. This more powerful law is the law of *historical change*, a law of *internal structural transformation*. The structural transformation that lends the law its potency is, for Benjamin, at the same time the weakness in the law that allows for the occurrence of pure violence. The ‘ambiguity’ of the law, Benjamin acknowledges, lends the law its strength, but at the same time is the principle to which Benjamin attaches the assurance of its ultimate demise:

And if the importance of these problems cannot be assessed with certainty at this stage of the investigation, law nevertheless appears, from what has been said, in so ambiguous a moral light that the question poses itself whether there are no other than violent means for regulating conflicting human interests.³¹

Benjamin acknowledges that the historical representation of legal structures takes place through the positing of violence, and through the indirect suppression of that positing violence by preserving violence. ‘In its duration’, writes Benjamin, law-preserving violence ‘weakens’ the positing violence it ‘represents’ through ‘the suppression of hostile counterviolence’.³² Violence is suppressed not by another violence but by its own positing – by confining, obstructing and isolating itself, ‘until

either new forces or those earlier suppressed triumph over the hitherto law-imposing violence and thus found a new law, destined in its turn to decay'.³³ As long as representation is at work in the legal occurrences of violence, it 'furnishes proof' that a pure, revolutionary violence is possible.³⁴

When Benjamin writes that the 'critique of violence is the philosophy of its history – the "philosophy" because only the idea of its development makes possible a critical, discriminating, and decisive approach to its temporal data', he is also saying that the appearance of pure violence is limited and framed by the discourse of law-positing and law-preserving violence.³⁵ Even when the positing of law takes the form of a peacefully concluded legal contract, it rests on an instrumentalising violence. Irrespective of 'however peaceably it may have been entered into' the legal contract invests each contracted party with 'the right to resort to violence' in the case of breach of contract by the other party.³⁶ Both the 'origin', but also the 'outcome' of the legal contract 'points toward violence'.³⁷ In other words, contractual relations are the preserve of a violence that forces the disintegration not of the principle of violence itself and of the power it institutes, but of its respective *forms*.³⁸ Contracted relationships between individuals are always and necessarily doomed to failure, for Benjamin, because at the moment those relationships are posited they split from the act of positing and abandon themselves to the preservation of their own status. Any given legal form, contractual or other, ultimately detaches itself from what it represents, and '[w]hen the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay'.³⁹

Parliamentary democracy and the case of the Ruhr Uprising

The case of the legal contract reinforces for Benjamin the fact that law-positing violence always and irrespective of its own principles becomes a law-preserving violence. Moreover, it establishes the point for Benjamin that as soon as law-positing violence brings into effect an institutional form of violence, it becomes alienated from itself. As one instance of positing, the legal contract provides a tangible example of how every instance of positing must manifest itself through categories of knowledge in order to be experienced. That the legal contract also articulates, as it were, its manifestation as a positing through the law of its own internal reversal (*Umschlag*) is also significant for Benjamin. For as long as a legal institution does

not rule out recourse to violence, as in the case of a social contract, the very positing and perpetuation of its structure depends on violence. Historical change governs the oscillation between law-imposing and law-preserving violence, but it also proceeds from the inner structure of a positing violence that must decay in the moment of its very positing. The case of internal reversal finds a more extreme example in the tendency of successful revolutions to ratify the violence that brought them success by retroactively declaring it justified, if not legal. More specifically, Benjamin refers to the early history of the Weimar Republic, and the parliamentary suppression of mass Communist uprisings in the Ruhr region during the spring of 1920:

Accordingly, in Germany in particular, the last manifestation of such forces (*Gewalten*) bore no fruit for parliaments. They lack the sense that they represent a law-positing violence; no wonder they cannot achieve decrees worthy of this violence, but cultivate in compromise a supposedly non-violent manner of dealing with political affairs.⁴⁰

Benjamin's insight into the notion of compromise does not necessarily involve an indictment of the institution of parliamentary democracy. Rather, parliaments of a certain period – here the Weimar Constitution's – provide an example of how compromise is, from any perspective, a “product situated within the mentality of violence, no matter how it may disdain all open violence”.⁴¹ It is the “compulsive character of compromise” that strikes Benjamin, and most especially the underlying feeling in every compromise that “it would be better otherwise”.⁴² Parliaments then, with particular reference to that of the Weimar constitution, exemplify to Benjamin the way in which political institutions deteriorate from the moment they first seek to exclude the ‘revolutionary forces’ (*Gewalten*) from which they originate. As soon as its preservation and duration are at issue, parliamentarianism must necessarily behave in a restrictive manner toward its constitutive forces⁴³ – thereby enacting their own entropy and decline. The parliamentary ‘ideal of a non-violent resolution of political conflict’ may have ‘alienated as many minds... as were attracted to it by the war’, but the ‘means of agreement that are in principle non-violent’ nevertheless constitute and reside within the parliamentary fabric.⁴⁴

To simplify the contradiction at hand, it could be said that parliamentary democracy establishes itself through an array of creative forces, only to disenable those forces. Benjamin's point, however, is that the experience of this creative array

of forces must be concealed if the production of a legal order is to take place. Equally, however, Benjamin stresses that this ongoing displacement of creative forces to which the legal order owes its existence is part of the articulation of that legal order; that the legal order *attests* to its own constitutive differentiation. This idea finds a more graphic example in the case of police violence. In principle, of course, the modern state denies the police the use of law-positing power and most certainly disallows the police the discretionary exercise of violence. It would follow that the state only ever endowed the police with law-preserving duties and powers, and that the police, insofar as they agreed to assume and exercise these powers, were complicit with the state legislation. The tacit agreement between a state and its police is not without problems, however. The state draws on the police for its law-preserving capacity to act, but only insofar as it assumes that the police *should* be complicit in their awareness of the terms of their agreement with the state. In that assumption, the state opens a spectrum of possibility for what the police *might*, or *might not*, see fit to support. Just as parliamentary democracies acknowledge and sanction the same law-positing power of violence that they simultaneously pretend to represent non-violently – to participate actively in their own demise – the police in turn manipulate the law-positing power of violence, or the executive power of law, in order to preserve and assert – and this is their primary task – the legislative power of the law. This is what Benjamin means when he writes that the police operate as a ‘spectral mixture’ of law-imposing and law-preserving violence.⁴⁵ The law may stand as the measure of police behaviour, but as an extension of the state, the police may use whatever means necessary in order to preserve the state monopoly of violence:

True, this is violence for legal ends (it includes the right of disposition), but with the simultaneous authority to decide these ends itself within wide limits (it includes the right of decree). The ignominy of such an authority- which is felt by few simply because its ordinances suffice only seldom, even for the crudest acts, but are therefore allowed to rampage all the more blindly in the most vulnerable areas and against thinkers, from whom the state is not protected by law – lies in the fact that in this authority the separation of lawmaking and law-preserving violence is suspended.⁴⁶

Police violence as deposing violence

Key here is the fact that in the authority of police violence, ‘the separation of lawmaking and law-preserving violence is suspended [*aufgehoben ist*]’.⁴⁷ While

parliamentary democracies are explicitly hypocritical before the question of the revolutionary nature of order, any attempt to clarify the terms of police violence only renders it increasingly obscure. Police violence, then, must be understood as a condition of the impossibility of the law. There are two points to draw from this statement. The first is that police violence indicates the prohibitive character of the law. The law may appear to be transcendental – to determine the conditions of possibility for the appearance of any singularity – but in reality it harbours the possibility of its own transgression. As an integral component of the order, police violence shows the limits of the law. Insofar as police violence wields a threat to an existing legal order – and this is my second point – it highlights the failure of the legal structure’s efforts to determine the occurrence of police violence. The law is susceptible to critique, then, because it is governed by procedures of critical analysis; it ‘acknowledges in the “decision” determined by place and time a metaphysical category that gives it a claim to critical evaluation’.⁴⁸ A ‘consideration of the police institution’, however, ‘encounters nothing essential at all’.⁴⁹ The police escape any critical delimitation altogether, which is why each example of discretionary police violence cited in the Critique also marks a suspension in the relationship between law-positing and law-preserving violence.

The argument for this general suspension is schematised as follows: the police share no relation to legal ends whatsoever, and police violence functions irrespective of any preconditions. Also true of police violence is the fact that whether through force or through duties carried out in a more straightforward and supervisory capacity, ‘in accompanying the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him’,⁵⁰ the police must appeal to an already posited law. In one sense, this appeal is made only to ground their authority, or to preserve a law that they themselves are in the process of violently founding. In this way, however, the police act interstitially, which is to say that although their authority lies between two or more already founded laws, their violence is in no way whatsoever authorised by a pre-existent or pre-founded law. In support of a legal violence, then, police violence articulates a pure violence, but with such discretion that an awareness of that articulation, for the purposes of Benjamin’s project, can only really be reached through tracing its effects in support of an ‘absolute Monarchy’.⁵¹ Where the ‘spirit’ of the police violence exposes the

mechanics of a sovereign power ‘in which legislative and executive supremacy are united’, it also reveals the mechanics of its own infrastructure.⁵² The effects of a police violence that supports sovereign power are, in this sense, ‘less devastating’ than when the ‘spirit’ of the police supports a parliamentary democracy – the implication being that its mechanics are in this case obscured.⁵³

Total policing enforces the elements of individual accountability, responsibility, and duty without which the structure of any given community would degenerate and collapse. Where law is usually the measure of police behaviour, Benjamin implies that police behaviour also incorporates a revolutionary potential in excess of all legal measures of accountability. The same police suspension of the distinction between law-positing and law-preserving violence that leads to revolution, however, also supports the general suspension of the distinction in all cases – even those that are terrorising. The more ignominious police power, the more facility it is given to rampage blindly ‘in the most vulnerable areas and against thinkers, from whom the state is not protected by law’.⁵⁴ Equally, the less visible the police makes its ‘ordinances’, the fewer people it affects, the greater its revolutionary potential.⁵⁵ Yet the countless exercises of discretionary police violence that assure Benjamin of the possibility of pure human violence also assure him that the change of perception necessary to the emergence of pure violence evades prediction or predetermination. In the case of 1989, where across Eastern Europe the police no longer saw a point in preserving the regime, revolution spread like wild fire. In the case of the former Soviet Republic, where the police infrastructure is acknowledged to have had a broad enough understanding of the most intimate details of state operations to have facilitated the assassination of Yeltsin, however, the police infrastructure simply continued to support, rather than undermine, the authority of Yeltsin. This example makes clear that the invidious power of the police – its power, Benjamin writes, ‘is formless, like its nowhere-tangible, all-pervasive, ghostly presence in the life of civilized states’ – is the precise point from which stems its *revolutionary potential*.⁵⁶ It also highlights, however, that the very ‘spectral’ presence of the police also undermines any possibility for predicting the revolutionary occurrences of police violence.⁵⁷

Police power, according to Benjamin’s Critique, rests in its law-positing right of disposition, as much as in its law-preserving right to decide its ends (the right of

decree) ‘within wide limits’.⁵⁸ All violence must, after all, Benjamin writes, lay claim to either the law-positing or the law-preserving predicates, in order not to forfeit all ‘validity’.⁵⁹ Yet police violence, in laying claim to both predicates, raises the question of what, actually, the police fundamentally defend. Articulated in terms of this resistance to the existing system of law-positing and law-preserving violence, police violence falls into the infinite series of contradictions linked to the concept of a deposing (*Entsetzung*) violence that Hamacher traverses in his account of the Critique:

Thus, deposing for Benjamin is a historical event; yet it is one that puts an end to the cyclical history of legal institutions and that is not thoroughly determined by this history. Deposing is a political event, but one that shatters all the canonical determinations of the political – and all canonical determinations of the event. *Deposing requires an agent, yet this agent can neither have the constitution of a collective or individual legal subject, nor be conceived of as an agent at all, that is, as a subject of positings.* Deposing must be an event, but not an event whose content or object could be positively determined. It is directed against something, but also against anything that has the character of a positing, an institution, a representation, or a programme. Deposing is thus not encompassed by any negation, is not directed toward anything determinate – and therefore is not directed. Deposing could not be the means to an end, yet it would be nothing but means. It would be violence, and pure violence, but therefore entirely non-violent.⁶⁰

Hamacher’s synopsis of the deposing aspect of pure violence functions within a broader project of identifying and establishing the co-ordinates of justice in the Critique. What appear to be statements of concrete evidence of justice in the Critique, however, are also renditions of the extent to which pure violence refuses to be captured by techniques of analysis and conceptualisation. Justice is not the object of my study, however. The question that takes priority for the purposes of my own argument – that of police violence and the purity of its means – nevertheless responds to the crisis of confusion and clarity in Benjamin’s Critique in a similar way. Police violence has the potential to take on a life of its own, to spread, like an amorphous rumour, and turn against the structure of power that it should technically support. Without its spectral presence, the police would not have the ability to exceed the logic of the law. The revolutionary potential of the police, Benjamin makes crystal clear, depends absolutely on the *indeterminacy* of its ordinances. Yet, inasmuch as Benjamin wishes to promote a theory that there is something about police violence

that resists any particular determination, its potential as an agent of pure violence is still contingent on the legal order. The police must capture the detail of the legal procedures, and be able to internalise the operative functions of the state, but it must, above all, resist being reduced to a technical apparatus of the state. In order to exercise terror in support of the state, the police infrastructure must also be able to facilitate revolution – each possibility of which is an index of more than mere technical competence, although police behaviour is, to some extent, accountable to and measured by the technical competence of the law. Much will be said in the next chapter about how pure violence may accommodate *Technik*, and how it might also exceed an understanding of *Technik*, to function as technical innovation. As the alternative to *Technik* – irrespective of the extent to which this hypothetical claim may or may not materialise – police violence as pure violence lacks any positive content, and as such it must here be addressed in terms of nothingness and indeterminability. The problem of how to articulate pure violence without linking it to any determinate source or agency is evident in the law of the police itself, which ‘really marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain’.⁶¹ The unavowability of police violence functions, then, to demonstrate that the possibilities of pure violence are many and far-reaching, but that for the most part these possibilities of pure violence exacerbate Benjamin’s imperative of establishing a precise point in which to ground his Critique.

3. Against Derrida’s reading of pure violence as specular doubling

Benjamin’s aim is not to work towards a pure happening of violence, an entire upheaval of all structures of violence, or an overthrowing of the oscillation between positing and preserving forms of violence, as if it were a programme of political reform like other programmes that would offer an achievable political end. The case of police violence may demonstrate how revolutionary violence risks usurping the place of the state – how, as the power that protects the state, it may subvert that state, and in doing so will almost inevitably substitute itself for it – but it also attests to a degree of difference at the heart of any given political order. In other words, one of

the clearest indicators of the fact that the state is not just opposed from without is the substitutive power of revolution. Pure violence may not share a direct relationship with the legal order in which it lives, but it threatens that legal order insofar as it poses the threat of occupying it. Furthermore, the indirect relationship pure violence shares with the legal order is a testament to its capacity to call for a new elaboration of the legal order: insofar as it is an integral part of the legal order, pure violence poses a constant future threat to the stability of that order, and at the same time always refuses any chance of being overcome by the declaration of a state of exception by that order.

From a certain vantage point, then, pure violence is totally inimitable, and holds the legal order subordinate to its singular status at all times. This is why pure violence, as an integral feature of the legal order, cannot be isolated, or extracted from forms of legal violence; neither should it be understood to actually confront those codes of violence. Pure violence shares the same ground as other taxonomies of violence within the Critique, like positing and preserving forms of violence, and in doing so, similarly constitutes something of an artificial construct. As a convention that must be justified through discourse, however, pure violence is also and absolutely subject to change and alteration. In other words, pure violence must continually challenge particular determinations of the political field in order to avoid becoming the object of a new political theory. In its protective and subversive roles, pure violence – and so much has already been established – opens the state to the possibility of corruption, but in order to constantly reinvent itself it must necessarily subject its own governance to corruption, entropy, decline and decay. As both passively corrupted and actively corrupting, pure violence opens itself to the conditions of specular doubling that Derrida terms ‘différentielle contamination’ in his reformulation of Benjamin’s contention that there is ‘something rotten’ in the law – at the same time making it clear that there is something rotten in revolution.⁶²

Thus far I have established that Benjamin’s text emphasises the pre-emptive aspect of pure violence. The more the array of creative forces of revolution to which any given parliamentary democracy owes its existence are suppressed, as in the case of the Ruhr Uprising, the more intensely those creative forces exacerbate the disintegration of the parliamentary order. But what of Derrida’s claim, in the ‘Force of Law’ – when Derrida steps beyond the bounds of commentary to stress the

correlate of Benjamin's propositions – to *conservation* as that which lies at the heart of revolution? In a moment that wavers noticeably between summary and hypothesis, Derrida writes that the violence of law-positing 'belongs to the structure of fundamental violence in that it calls for the repetition of itself and founds what ought to be preserved, preservable, promised to heritage and to tradition, to partaking [partage]'.⁶³ Derrida continues to read law-positing violence in its relation to pure violence:

the foundation of a new law nevertheless *plays* [*joue*], if one can say so, on something from an anterior law that it extends, radicalises, deforms, metaphorises or metonymises, this figure here taking the names of war or general strike. But this figure is also a contamination. It effaces or blurs the distinction, pure and simple, between foundation and conservation. It inscribes iterability in originarity...⁶⁴

Before I explain my objection to Derrida's reading of pure violence here, I will clarify its conditions: for Derrida, pure violence offers no resistance to being understood in terms other than the conservation of law-positing forms of violence. This principle of conservation, as previously discussed, opens the heterodox potential of pure violence to homogenisation by the mythical structure of the law – that is, pure violence ensures its own demise by rendering itself invisible. This is how pure violence makes itself known, or readable. And this is why I argue here that Derrida's reading of pure violence is somewhat *facile*: in reading pure violence as something heterodox in potential, Derrida also suggests that it can be measured in terms of what it lacks – that lack of something being measurable against the precepts of positive law that Benjamin seeks to overcome. Implicit in the notion in Derrida that pure violence serves the purposes of conservation is the suggestion that pure violence also constitutes the logic of positivity.

Here begins an example of where Derrida's framework for reading the 'Critique of Violence' has been appropriated uncritically in the secondary commentaries. Håkan Gustafsson, in particular, writes of the legal order's tendency to stabilise its authority through a process of normative self-referentiality, where it is open to normative understanding but closed to cognitive processes of thought. 'In its claims to an imaginary origin or *grundnorm* (or behaviour, rationality, and so on)', writes Gustafsson, 'is the *arche* that is supposed to be immediately present and hence,

supply the norms with validity'.⁶⁵ The problem is that this *arche* can only be present through its absence. Gustafsson continues:

‘valid’ law must refer back to a fiction and to historical amnesia, gather its grounding, keep its ‘origin’ alive, and continuously inseminate that ‘origin’ into ‘valid’ law so that it becomes a transparent reflection of its own utopian preservation. Such is the way in which the law mimics its fictitious origin, and manipulates mimetic nostalgia to function as its *modus vivendi*.⁶⁶

As a positive driving force, pure violence would strangely replicate the law-positing and law-preserving violence represented here by Gustafsson, and against which, initially, it had been directed by Benjamin. Strangely so, because as that positive driving force pure violence would be directed against something – or actually, anything that had the character of a positing, an institution, a representation, or a programme. In this contradictory sense, pure violence would have to be understood firstly as a reactive force that adapts in order to survive to its external circumstances, and by extension as a force that obfuscates its own mechanics. To suggest that pure violence functioned as an imaginary construct would also present it as, quite simply, the means through which to avoid any confrontation with, if not actually to replicate, the legal order. As a positive driving force, then, pure violence would assume the quality of a phantasm and of a hyper-reality that is evident in the conventions of historical representation, and especially evident in the relationship shared between law-preserving and law-positing violence that constitutes the stability of that representation. In short, pure violence would assume the qualities that receive the searing force of Benjamin’s Critique.

We could say that both the authoritative capacities of sovereignty, and pure violence as it is woven into the structure of sovereignty, are contingent on the aporetic structure of the law. According to Derrida’s reading of the Critique, any law founded by revolution reveals the aporetic structure on which the law is based; the very point of pure violence as a medium, a vacuum, as it were, lends it the capacity to suspend the oscillation between law-positing and preserving violence.⁶⁷ Because the law of the revolution is necessarily structured on the notion of the aporetic, however, it follows that the law of the revolution cannot be considered justifiable until it is recognized as a norm. This is precisely the degenerative effect of pure violence from Derrida’s perspective. Hence the two points Derrida draws from the surveillance technology of the police:

1. Democracy would be a degeneration of law, of the violence, the authority and the power of law.
2. There is not yet any democracy worthy of this name. Democracy remains to come: to engender or to regenerate.⁶⁸

Derrida's point is that as soon as the revolutionary law forces recognition of its structure it also consummates its own anti-revolutionary position – or, to state the case more obliquely, pure violence formally acknowledges its having adopted the terms and conditions of the structure of power that would destroy it. Legal violence is similarly structured on the aporetic insofar as it perpetuates the action of pure, revolutionary violence, without any justification other than its being a violence to which others must submit. Benjamin himself seems to be conscious of the fact that part of the problem with the various taxonomies of violence within the Critique is that they name the same thing: the violence that brings forth a law that can be preserved must be a positing, or founding violence that is precisely not a positing, or founding of law until it exercises a violence to preserve that law which has already been founded. A reconfiguration of this definition would state that the distinction between positing and preserving had even collapsed. Under such circumstances, each form of violence would be deemed merely a substitution (*Ersetzung*) for the other – after all, ‘law-positing is powermaking, assumption of power, and to that extent an immediate manifestation of violence’:

For the function of violence in law-positing is twofold, in the sense that law-positing pursues as its end, with violence as the means, what is to be established as law, but at the moment of instatement [*der Einsetzung*] does not dismiss violence; rather, at this very moment of law-positing, it specifically establishes as law not an end unalloyed by violence but one necessarily and intimately bound to it, under the title of power.⁶⁹

The most important point to note here is that Benjamin introduces ‘mythical violence’ as, above all, a function of law-positing violence and as such, that which guarantees the ‘principle’ of power.⁷⁰ Moreover, Benjamin writes that ‘the mythic manifestation of immediate violence shows itself fundamentally identical with all legal violence’.⁷¹ Benjamin is also clear from the inception of his essay, and much is made of the fact, that the critique of violence takes place from within the sphere of its ‘contamination’ – the legal order (*Rechtsgewalt*). Given that Benjamin's account of pure means is the instrument of his critique, and given that mythic violence is sourced from the same legal order as pure violence, all this implies that pure violence

is a phenomenon that neither confronts the mythical-legal composite, nor lends itself to being isolated or extracted from that composite but in fact shares some parasitic relationship with it.

In order to clarify the notion of pure violence in the Critique, then, it is necessary to engage in some exposition of Benjamin's account of mythic violence, and the patterns through which Benjamin traces it back to the structure of the law. The framework of mythic violence, as conceived by Benjamin, functions, firstly, as a framework through which he considers the possibility of, and the implications for, a violence that occurs 'outside the law'.⁷² Now, Beatrice Hanssen reads pure violence in Benjamin as inadvertently succumbing to the principles of positive law: she writes that although Benjamin's essay 'reacted to the crisis that afflicted the value-free discipline of positive law', he had, in an 'initial, heuristic stage' of analysis, actually adopted the historical vantage point of positive law.⁷³ The implication is that pure violence makes an appeal to violence from beyond its own constituents, in much the same way as the sovereign appeals to the state of exception. Each, in this sense, would embody the acknowledgement of the crisis of an increasingly value-free discipline of a positive law no longer able to ensure the legitimacy of the legal order. My reading of Benjamin however, understands positive law as only able to attest to the discrepancy between legality and legitimacy. Mythic violence, however, goes step further in that it allows for the 'consequences' of that positive law, or 'constitutional law', to be measured.⁷⁴ Hanssen is correct insofar as Benjamin's effort to quantify the 'consequences' of positive or constitutional law sees both the sovereign declaration of the state of exception, and mythic violence, as relying heavily on the concept of peace in order to obscure the mechanics of their own violence. From 'all the wars of the mythic age' to the present, Benjamin writes, peace exists within a continuum that seeks to establish new conditions of experience, and new laws, which themselves issue forth from conditions of violence.⁷⁵ But Benjamin's account of the evolution of peace does not just expose the co-ordinates of a system that is remiss insofar as it reinforces structures of violence in the name of good conscience. Benjamin's account of peace as the very expression of violence serves a more profound purpose, I will argue, insofar as it figures mythical violence, like pure violence, as refusing to be incurred *simply as a result of will*.

Perpetual peace

On the one hand, then, pure violence is the only ‘function of violence’ that secures the foundation of the critique of violence.⁷⁶ Although pure violence may be theoretically unmediated and ‘pure’, however, it is also open to appropriation by predatory forces, and as such can be used to fulfil the ends of any given polemic. The notion of pure violence never escapes the paradox of the equivocal in Benjamin: insofar as its survival depends upon reactive measures and upon its substitutive capacities, pure violence also allows Benjamin to consolidate its potential as ‘the basis for, or... modification to, relatively stable conditions’.⁷⁷ Benjamin is all too aware that ‘legal subjects sanction violence whose ends remain for the sanctioners natural ends, and can therefore in a crisis come into conflict with their own legal or natural ends’.⁷⁸ ‘Yet’, Benjamin continues,

it is very striking that even – or, rather, precisely – in primitive conditions that scarcely know the beginnings of constitutional relations, and even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary.⁷⁹

When Benjamin renders instances of pure violence as neither ‘fortuitous’ nor ‘isolated’ but the ‘primordial and paradigmatic’ example of ‘all violence used for natural ends’, he is stating its connection to the legal order.⁸⁰ In delineating how the state divests the individual ‘legal subject’ of all violence, ‘even that directed only to natural ends’ in order to safeguard itself against the pure violence that holds the potential to destabilise its authority, Benjamin also highlights the ‘objective contradiction’ upon which the possibility of pure violence rests, but also upon which the possibility of the legal order rests.⁸¹ The example of military law sees the state forced, by ‘external powers’ such as the legal subject, ‘to concede the public the right to conduct warfare’; in the process of granting that concession, however, the state appropriates the agency of pure violence to render it predatory rather than revolutionary.⁸²

To posit war as the correlate of peace, from Benjamin’s perspective, is to locate the site of an already difficult relationship shared between ‘victor and vanquished’.⁸³ ‘Where frontiers are decided’, Benjamin writes, ‘the adversary is not simply annihilated; indeed, he is accorded rights even when the victor’s superiority in power is complete’.⁸⁴ Under such conditions the concept of peace can only be understood to stoop to the level of the strategic: it draws a line that may not be

crossed by either party in any given treaty, in order to contextualize that line in terms of ‘equal rights’.⁸⁵ When Benjamin writes that the ‘act of establishing frontiers, however, is also significant for the understanding of law in another respect’ he refers to peaceful coexistence as an example of where thinking abandons all general emancipatory projects as exhausted, vain, and suspect.⁸⁶ Where the conceptualisation of peace abandons rational thinking, it is also accompanied by a denial of the possibility of reflection on the historical conditions of continuation, or radical transformation of, established social relations of exploitation and alienation.⁸⁷ Peace, equal rights, or any condition under which – Benjamin is quoting Anatole France’s satiric reference to equal rights here – “poor and rich are equally forbidden from spending the night under bridges” exists within a double relationship where it not only reinforces the demonically mythic ambiguity of laws, but is also supported by a source, by a discourse that determines how its structure is experienced.⁸⁸

If peace and equal rights were open to us as fields of significance and meaning, and if we could pick out their respective structures using a particular discourse, or system of laws, then the implication would be that pacific conditions could be achieved directly. Benjamin gives priority to the fact, however, that peace does not arise from a state of ‘equality’, but only from its formalizing condition, which is ‘at the most equally great violence’.⁸⁹ Peace, for Benjamin, articulates a concentration of violence: as the ‘a priori, necessary sanctioning, regardless of all other legal conditions, of every victory’, it counters the ‘unmetaphorical and political’ meaning ascribed to the notion of ‘perpetual peace’ by Kant.⁹⁰ Without entering into an exposition of the dynamics of Kant’s essay on ‘Perpetual Peace: A Philosophical Sketch’ (1795-1796), I would like to point to the general implications of its situation within the framework of Benjamin’s Critique. To draw the essential from Kant’s work on ‘Perpetual Peace’, I shall confine myself to the following points: explicit in Kant is the idea that the republican nation-state should supply the necessary conditions for cosmopolitan right and the achievement of perpetual peace. By Kant’s account, the institutional expression of perpetual peace would be the free, global federation of sovereign, republican nation-states.⁹¹ Howard Caygill notes, however, that since Kant the European nation-state has defined the modern discourse of right within the limits of the opposition between violence and civility.⁹² The inability of modern political thought to pursue the complicity of violence and civility

is understood by Caygill as constitutive of the modern concept of freedom, which in failing 'to achieve an internal recognition of the violence of civility' is limited to 'a civil freedom of possession, action, and exchange'.⁹³ Caygill continues:

As a result this philosophy is ill-suited for reflecting on the theme of violence, for the very context of civility is established by the exclusion of violence. Violence is in every respect the exception, whether as a sign of the breakdown of civility, or else as the potential force which protects the borders of civility. The notion of civil freedom requires that violence be concentrated in the state, and preferably in the hands of professionals such as police and military. Modern civility has as a result many contradictory features: characterised by the massing of an extreme potential for violence at its borders, it nevertheless pathologises any violence which takes place within those borders. The overall effect is to remove responsibility for violence from civil society, and obscure its complicity with civil freedom.⁹⁴

The scission between violence and civility is a means by which the state secures its rights to violence in order to monopolise it. Having construed violence as something exceptional, whether temporally, as the temporary suspension of civility, or spatially, in the potential for military violence amassed at its borders, the realm of private, interpersonal exchanges in civil society is given the appearance of a false harmony that in turn obscures the coercive dynamics underlying the concept of civil freedom.⁹⁵ It follows that because civility cannot recognize or remember its violence, it cannot take responsibility for it. To summarise this brief excursion through *Perpetual Peace* on the terms of pure violence: Benjamin's 'Critique of Violence' engages in a diatribe against the expression of an 'equal rights' that sustains itself on the separation of civility, peace, and freedom from violence or war. Above all, however, I argue that everything in Benjamin's polemic of pure violence is directed *against* the idea that pacific conditions could, or should continue to be arranged around the *telos* of an ultimate eradication of violence from civil expression.

A re-interpretation of the legend of Niobe

Thus far I have established Benjamin's exposition of the concept of perpetual peace as that which obscures the violence institutionalised through the formalisation of social relations. Again, I take issue with secondary criticisms of the 'Critique of Violence' that appropriate too readily Derrida's framework of interpretation. While Tom McCall argues that Benjamin's 'Critique of Violence' signals the 'hope of a convergence upon something like a simplex of violence, even in the midst of what

discursively and logically can lead only to complications of violence', I argue otherwise.⁹⁶ For Benjamin, the concept of perpetual peace is all too similar to the sovereign declaration of the state of exception as it is evident in Schmitt: each relies on the false exteriorisation of violence. The imperative of the 'Critique of Violence' is to prove this exteriorisation of violence a mythical illusion and to articulate pure violence as a complex – not at all a simplex, and certainly not the hope for a simplex, as McCall claims. Benjamin's double imperative of proving and articulating pure violence as a complex, then, brings me to the myth of Niobe, an aspect of the 'Critique of Violence' that has been misinterpreted as indicating a false separation between pure violence and the mythical structure of the law. At the outset, then, it would be correct to state, as McCall does, that Benjamin's excursion through the legend of Niobe provides an example of how mythic violence *phenomenalises* the existence of authority. The reference to the phenomenalisation of violence is drawn here from Robert Cover's article on 'Nomos and Narrative', and is a recurring feature in literature on both Derrida's 'Force of Law' and Benjamin's 'Critique of Violence'.⁹⁷ Its implication is that mythic violence stages the existence of authority through the perceptible signs of a more immediate violence; and that all positings of power are inevitably mythic, because myth itself is a *Machtsetzung* – a cultural and linguistic device for positing power through its show of force, force in turn being power figured more immediately as a sudden, unforeseen event. '[A]rchetypal' in form, Benjamin writes, the myth of Niobe clarifies structures of power and the authority of the gods as the underlying mechanisms of mythic violence.⁹⁸ At the very least, Benjamin goes on to say – and this is the point at which I take issue with McCall's reading – an illuminative critique of the legend of Niobe establishes that mythic violence is anything *but* a 'manifestation' of the 'will' of these authorities.⁹⁹

The ironic strategy of Benjamin's essay aims to show that every time a distinction between the legal order – here attributed to the appearance of myth – and pure violence appears to be within reach, it is quickly undermined by internal inconsistency and conflict. McCall's interpretation of Benjamin's essay is too ready in its acceptance of mythic violence as that which appropriates the codes and conventions of its counterpart, pure immediate violence. To state that the mythic manifestations of violence are, as a result, 'fraudulent', as does McCall, is to *overestimate* the extent to which the mythic staging of violence simply reinstates

degrees of power that have already been incorporated into the mere mediacy of mythological, representational, and political systems.¹⁰⁰ In that overestimation, I argue, there is an *underestimation* of the active role played by the immediacy of pure violence: pure violence is not given to representation and it refuses mediation, but it actually thrives on its simulation by mythical violence. ‘True’, Benjamin writes, ‘it might appear that the action of Apollo and Artemis is only a punishment’ – Apollo slays Niobe’s children, but not Niobe, with arrows in response to her boast that she had borne more children than the goddess Leto, mother of Apollo and Artemis.¹⁰¹ ‘But’ the passage continues, ‘their violence establishes a law far more than it punishes the infringement of a law that already exists’.¹⁰² In its positing of the law, mythical violence does not damage the potential for the emergence of pure violence. Neither does Niobe’s punishment by arrows correspond to the crime committed. Niobe’s punishment is a response to the challenge she poses to fate, which has been destabilised by her boast. Insofar as fate is forced to burst upon her from its ‘uncertain and ambiguous sphere’ in an effort to reconsolidate its authority, however, I will propose that it is sourced by pure violence.¹⁰³

Before the extent to which pure violence both reinforces and undermines the occurrence of fate can be effectively articulated, Benjamin’s treatment of fate requires more attention. McCall adopts and criticises the concept of fate as it appears in the ‘Critique of Violence’ as unstable: if fate were stable, McCall claims, its choice of response would pose no problems – there would be no ambiguity surrounding its encounter with Niobe’s challenge, and in response to her crime it would simply exercise judgment within the parameters of the ‘legal economy’, and in accordance with legal precedence.¹⁰⁴ McCall’s very literal reading of Benjamin suggests that as legend stands, however, ‘Niobe’s arrogance [*Hochmut*] calls down fate upon her not because her arrogance offends against the law but because it challenges fate – to a fight in which fate must triumph [*siegen muß*] and can bring to light a law only in its triumph’.¹⁰⁵ McCall’s reading of fate continues along a similar vein: the violence of the act of shooting Niobe’s children only exacerbates the ambiguity of fate’s authority, and as a result fate is forced to re-establish the distinction between its authoritative capacity and its mortal subjects. It follows, for McCall, that mythical violence has only had to manifest itself through ‘bloody power’,¹⁰⁶ which occurs here in the form of Artemis’s arrows – precisely because of

its *Zweideutigkeit*, or ambiguity. The conclusion that McCall reaches is one that inevitably reads fate, in the legend of Niobe, as demanding clarification and recognition; it has never been incorporated into or represented within the structure of sovereignty that was the object of its defence.

The implication is that a sovereign structure with integrity would acknowledge the violence present in its own structural framework. As the legend stands at least according to McCall's rendition of its dynamics, the power that mythic violence invokes is everywhere – in myth, legal code, and various socio-political systems – *but* accessible from within; it is based on a false exteriorization of violence.¹⁰⁷ McCall's interpretation of the legend of Niobe as it features in the 'Critique of Violence' continues through the reading of Niobe's boast to Prometheus' gift of fire in its challenge to fate (*herausfordert... das Schicksal*): if fate were to fail the challenge, there would be no mythic context for the fight – and no law to follow in its wake. Fate must therefore be at least momentarily faced with its own impotence in order to be spurred into action – or into inscribing its potency. And it is this hiatus, this moment of hesitation where any given authority must consciously pose to itself the problem of not knowing what to do, and of deciding how to respond to the challenge at hand, that is constitutive of fate. For McCall, this is why it is the mythic hero 'and the legal violence of the myth native to him' that captures the imagination of the public.¹⁰⁸ McCall's reading, of course, is a simulation of Derrida's own reading of fate:

That which exists, which has consistency (*das Bestehende*) and that which at the same time threatens what exists (*das Drohende*) belong inviolably (*unverbrüchlich*) to the same order, and this order is inviolable because it is unique. It can only be violated from within itself. The notion of threat appears here indispensable. But it also remains difficult to delimit for the threat does not come from outside. The law [*le droit*] is both threatening and threatened by itself. This threat is neither intimidation nor dissuasion, as pacifist, anarchists or activists believe. The law shows itself to be threatening in the same way fate is threatening.¹⁰⁹

In the wake of both Derrida's and McCall's reading of fate, it could be said that Prometheus may be condemned to suffer – for having transgressed authority, he is bound to a rock and eaten alive by vultures – but without the myth of his challenge to fate, legal force would not have the opportunity to emerge. Conversely, 'divine violence may manifest itself in a true war exactly as it does in the crowd's divine

judgment on a criminal'.¹¹⁰ In other words, this interpretative direction set by Derrida criticises myth and legality for having been falsely separated, in much the same way that civility and violence are in Howard Caygill's example. Benjamin also recognizes that myth and legality are largely co-extensive. It follows, by his analysis, that the false distinction between myth and legality has been upheld by the metaphysical dimensions of guilt, which in turn

is not actually destructive. Although it brings a cruel death to Niobe's children, it stops short of claiming the life of their mother, whom it leaves behind, more guilty than before through the death of the children, both as an eternally mute bearer of guilt and as a boundary stone on the frontier between men and gods.¹¹¹

More will be said regarding guilt in the final section of this chapter. For now, guilt serves the purpose of clarifying Benjamin's point that any given challenge to authority brings the mythical and the legal constituents of violence together. This much is recognised in the wake of Derrida's reading of Benjamin's essay. That this challenge is received with uncertainty, and incorporated into a process of much rumination, speculation, and prevarication before power is exercised in response to its being challenged; that this challenge reinforces the fact of the ultimate demonstration of force, violence, and power as belonging exclusively to the sovereign – so much has been acknowledged in the Derridean vein of reading Benjamin's 'Critique of Violence'.

In keeping with this idea, however, I would like to extend and then move beyond this Derridean vein of reasoning. My point, firstly, is that to strike at the authority of the mythical legal composite, one also strikes at the *trauma* – and that it is this trauma *that brings myth and legality together*. The trauma, as I understand it, is the obscene underbelly of mythical-legal violence. It is the very lack of authority upon which mythical-legal violence is structured. Mythical-legal violence is given not in itself but in a differential relationship, where it can only identify itself and receive recognition in response to its being challenged. Because mythical-legal violence has no identity of or within itself, it has to affirm itself in conquering any challenge to its authority. Mythical-legal violence has to claim the lack of authority in the figure by which it is challenged, precisely as a result of the fact that it has no authority itself. This is why any *attack* on or *criticism* of capital punishment is interesting to Benjamin – particularly insofar as it 'assails not legal measure, not

laws, but law itself in origin'.¹¹² The death penalty is a very literal example of where the display of legal violence obscures its mythical underpinning, but also of where the mythical-legal structure is based on that which it literally excommunicates, or just excludes. The death penalty is rooted in the same principle as Apollo's response to Niobe and fate's response to Prometheus – which is to say that it belongs as much to the sphere of myth as to that of law. As myth, it stages and demonstrates its power as though it is mandated from fate, yet it conceals this mythic determination through an appeal to legal precedent that supplies the response – death.¹¹³

The question I ask, however, that is not evident in this line of interpretation set by Derrida, is how to make an attack on the authority of the law without merely re-establishing the connection of the law to myth. Herein lies the point of my argument: the effects of any display of mythic violence could be understood to fragment and diffuse, rather than to augment, the power from which they issue, given, of course, that we can acquire the language of pure violence. How, Benjamin seems to ask, does one pose an attack, or a critique of violence, that does not merely trigger a behavioural pattern that ultimately makes up for, or overcompensates for, an authority that was simply never present? This is among the most important of questions implied in the 'Critique of Violence' – yet the interpretative direction set by Derrida is so keen to establish, re-establish, and establish again the mythical structure of the law that it neglects to consider the query set out by the 'Critique of Violence' itself. Benjamin continues:

For if violence, violence crowned by fate, is the origin of law, then it may be readily supposed that where the highest violence, that over life and death, occurs in the legal system, the origins of law jut manifestly and fearsomely into existence. In agreement with this is the fact that the death penalty in primitive legal systems is imposed even for such crimes as offenses against property, to which it seems quite out of 'proportion.' Its purpose is not to punish the infringement of law but to establish new law. For in the exercise of violence over life and death, more than in any other legal act, the law reaffirms itself.¹¹⁴

4. Divine violence as an unconditional possibility

Having established pure violence as the point from which the mythical-legal structure of violence both consolidates its authority and exposes its lack of authority, the next step of my argument seeks to undermine the idea that pure violence could ever be

static or unified. I stake my claims to the movement of pure violence, then, on a general response in the literature surrounding Benjamin's essay that treats the notion of pure violence as a unified entity. My first point of entry to this argument is Beatrice Hanssen's claim that too much attention has been paid to 'the antimodern gesture' with which Benjamin's essay locates sovereignty in divine violence: 'if modernity is the product of a radical secularisation', Hanssen continues, it is a 'de-secularisation of sorts' that takes place in Benjamin's essay and in turn plays an important part in discussion of his 'political theology' and its 'decisionism'.¹¹⁵ Secondly, I would like to address Gillian Rose's interpretation of pure violence as '[t]he only complete response to the violence of law-making and law-preserving, the violence in law'.¹¹⁶ In arguing against the former claim that Benjamin locates sovereignty in divine violence, and in arguing against the latter claim that Benjamin construes pure violence as a unified response to the legal order, I will argue that the appearance of pure violence is only ever a possibility.

My argument begins with a clear definition of divine violence: its occurrence cannot be predicted, and neither can it be summoned by sheer will. Neither, like its correlate pure violence, does divine violence offer a determinate political programme. Divine violence stands entirely in the *aleatory* – and this is its point. To understand the Critique as having set out an abstract opposition between total, divine violence and the partial violence of recognition that marks human laws, as Derrida has, is incorrect. Of course, Benjamin appears to treat the ontological status of these two categories of violence separately. For Benjamin, the destruction of the mythical-legal composite is inevitable upon consideration of the fact that the divine constitutes the 'antithesis' of the mythic 'in all respects':

If mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood.¹¹⁷

Insofar as in the Critique Benjamin sets up a distinction between the ontological status of these two categories of violence, however, he also attempts to undermine their distinction. To render mythic violence and divine violence synonymous would be as erroneous as the inverse claim to their total distinctness. After all, Benjamin is most especially wary of the circumstances under which the mythical structure of the

law facilitates and reinforces the use of the other as a means, or rather fails to provide some degree of surety against the use of other as means.

Benjamin's Critique is informed openly by Kant's fundamental distinction between morality and legality: both the notion of divine violence as it occurs in the Critique, and Kant's Categorical Imperative, seek to define the morality of an action by disengaging it from the legal system. To relegate the Critique to a realm where it was 'informed by any lesser programme' would be intolerably naïve: this naivety, moreover, has already been surpassed by the massive scrutiny of the historical use of the law of general conscription to the ends of the state.¹¹⁸ Conscription, Benjamin writes, marks the need for a politics of pure means and a critique of legal violence:

This compulsory use of violence has recently been scrutinized as closely as, or still more closely than, the use of violence itself. In it violence shows itself in a function quite different from its simple application for natural ends. It consists in the use of violence as a mean toward legal ends. For the subordination of citizens to laws – in the present case, to the law of general conscription – is a legal end. If that first function of violence is called the lawmaking function, this second will be called the law-preserving function. Since conscription is a case of law-preserving violence that is not in principle distinguished from others, a really effective critique of it is far less easy than the declamations of pacifists and activists suggest.¹¹⁹

Pure violence cannot simply be aligned with anarchy in order to undermine the violence evident in the case of conscription: a proclamation of the anarchism that 'is achieved by refusing to acknowledge any constraint toward persons' is wholly unsatisfactory to Benjamin insofar as it stakes its claim on the maxim: "What pleases is permitted".¹²⁰ Benjamin's essay continues:

Such a maxim merely excludes reflection on the moral and historical spheres, and thereby on any meaning in action, and beyond this on any meaning in reality itself, which cannot be constituted if 'action' is removed from its sphere.¹²¹

Benjamin uses the second formulation of Kant's *Groundwork of the Metaphysics of Morals* to demonstrate the ways in which divine violence and mythic violence coincide. By his own admission, however, not even the formulation of the Categorical Imperative definitively excludes the potential for using the other as a means. The injunction formulated in the *Groundwork*: "Act in such a way that at all times you use humanity both in your person and in the person of all others as an end and never merely as a means" fails to raise the question, Benjamin writes, of

‘whether this famous demand does not contain too little, that is, whether it is permissible to use, or allow to be used, oneself or another in any respect as a means’.¹²² In this sense, the non-instrumental, pure means of unalloyed, divine violence answers, in part, Benjamin’s call for a radicalisation of the Categorical Imperative. Divine violence must be disconnected from any reference to anarchy and properly aligned with the juridical system in order to engage in its critique. This is why Benjamin acknowledges the correlation between justified means and ends that still upheld Kant’s moral philosophy, and which might have provided a ‘criterion’ for the case of the use of violence, but then reaches further to attempt to account for violence itself as a principle.¹²³

Equally important to note is the paradox of the structure of divine violence, however: insofar as divine violence insures a flight from the rational precepts of Kant’s theory of perpetual peace it begs a re-consideration of the sovereign of Schmitt’s *Political Theology*. Like the sovereign decision, divine violence has the quality of being something like a religious miracle: it makes no reference to anything other than the fact that it *is*. Similarly, there is no ‘Sovereign’ *per se*, but rather sovereign acts which have the quality of referring only to themselves, as moments of ‘existential intervention’.¹²⁴ Along a similar vein of logic, the presence of divine violence is only tangible through the absence of its trace. Yet it would not be correct, as Hanssen has claimed, to state that Benjamin simply locates sovereignty in divine violence.¹²⁵ A pure violence that is scintillating in its effect provides some safeguard against the use of the other as means. In order to do so it must refuse unity, and at the same time resist the terms of Kant’s second formulation of the *Groundwork of the Metaphysics of Morals*, which seeks to recognize the interests of humanity in every individual citizen, and in its assertion of positive right merely preserve an ‘order imposed by fate’.¹²⁶ In other words, pure violence is structured around the possible relationships between the legal subject and the legal order, refusing a complicit relationship with either. As something that is ever variable and changing, it refuses to identify with an original source, and in this way it retains its status of unconditional possibility.

Retribution: Derrida's 'Post-Scriptum'

Starting with a discussion of the Categorical Imperative, which established divine violence and the sovereign model of violence evident in Schmitt as causally connected, Benjamin goes on to prove that divine violence does not engage in a simple confrontation with the mythical-legal order. In the same way that Benjamin problematises the legal appeal to myth, he also problematises – and this is where I take issue more explicitly with Gillian Rose's claim – the notion that divine violence is the only pure means with which to guarantee a critique of violence. Benjamin does not offer divine violence as the only complete response to the legal order. He states very clearly, I argue, that divine violence is absolutely part of the legal order. Once again, at the outset, it does appear as though Benjamin wishes to disengage divine violence from the mythical-legal structure of violence. Once again, McCall works in the trajectory of Derrida to insist that Benjamin has demonstrated the expiatory power of divine violence through its 'non-phenomenality'.¹²⁷ It is true that Benjamin refers to expiatory, divine, bloodless violence as an example of where God strikes and leaves no mark:

God's judgment strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a profound connection between the lack of bloodshed and the expiatory character of this violence is unmistakable.¹²⁸

Unlike the expiatory power of divine violence, mythic violence determines the terms and conditions on which its subjects will be exempt from punishment. Quite literally, mythic violence deploys the sovereign declaration of the state of exception, which is clearly traceable through blood. Using the bloodshed of its subjects as the instrument of mythical inscription, mythical violence represents the story of mythical transformation; it is indicative of how a singular act of violence, a singular bloody mark on the body, magically transubstantiates its own evanescent act into an indelible mark.¹²⁹ Hence the calamitous expiation or retribution that befell those who, in primitive times, infringed upon unwritten laws. Irrespective of the transparency of any given law, or of ignorance of any given law, and irrespective of whether its 'circumscribed frontiers' are written or unwritten, any attempted 'rebellion' against its 'statutes' will incur the wrath of the 'spirit of law'.¹³⁰ The law, Benjamin continues, will always and inevitably mark its own transgression:

Laws and circumscribed frontiers remain, at least in primeval times, unwritten laws. A man can unwittingly infringe upon them and thus incur retribution. For each intervention of law that is provoked by an offense against the unwritten and unknown law is called 'retribution' (in contradistinction to 'punishment'). But however unluckily it may befall its unsuspecting victim, its occurrence is, in the understanding of the law, not chance, but fate showing itself once again in its deliberate ambiguity.¹³¹

Benjamin's characterization of divine violence does not accept this distinction between the phenomenal and the non-phenomenal. There is no effort in the Critique, furthermore, to disengage divine violence from the mythical-legal structure of violence. And in demonstrating that retribution is their common denominator, Benjamin reinforces the extent to which divine violence is a part of the structure of mythical-legal violence. In opposition, then, to Louis Wolcher's Derridean interpretation of the relationship between mythical-legal violence and pure violence – Wolcher claims that it is 'the possibility of this radical new opposition which reveals to Benjamin the possibility of a critique of legal violence as such – a critique which does not entrap itself in the dialectical loop of a criteriology...', and seeks thereby to establish the inescapability of the mythical-legal structure of the law as a failing on Benjamin's part – I argue that this is actually Benjamin's point.¹³² Divine violence may be pervasive in presence – so much has already been established; but to suggest that there is a failing on Benjamin's part to extricate pure violence from the structure of the law; to suggest that divine violence is somehow exempt from the mythical and legal context of retribution – these misinterpretations of the 'Critique of Violence' only lend pure violence a transcendental position and the authority of a discipline of right.

In order to demonstrate the falsity of the separation of mythical-legal violence from divine violence Benjamin locates a common point of reference for both. Especially significant to Benjamin's argument is the extent to which both written *and* unwritten laws invoke retribution. Already established in the previous section is the extent to which, once a constitutional order has been created, mythic violence affects the coming of peace by forcing equality upon whatever is unequal through the conventions of the legal contract. Insofar as mythic violence literally inscribes fate – the determining factor of primeval society – into an unwritten constitutional law, it follows that the written, for Benjamin, also defines the contract as the origin of the social, and as a result is inextricably linked to fate. Mythic violence manifests itself

through inscription to glorify the process of judgement and condemnation according to a pre-ordained fate. In so doing, mythic violence conforms to the experience of law as positing and preserving the boundaries between places of persons in society. In aspiring to the absolute power of the mythical model 'fate', the mythical context of fate constitutes the origin of the law, and the law also mythologizes its own violence.¹³³

What, however, of the fact that the unwritten nature of the law can also be traced back through retribution to fate? It has been established already that divine violence is never clearly evident: the possibility of divine violence is always discernible, but its actual existence lacks the demonstrative characteristics – such as writing – that mythic violence exhibits. If divine violence is only ever tangible in its absence it can only share some analogy with the unwritten law, which in turn incurs fate, which in turn comes into being through the law. The paradox of a divine violence that is brought into being by the law and that Benjamin deploys in his campaign against the law requires some clarification. Derrida's 'Post-Scriptum' to the 'Force of Law' here allows some insight into Benjamin's polemic: Derrida lists a number of ways in which Benjamin could have formalised a response to the Final Solution on the basis of the premises of the 'Critique of Violence'. Furthermore, Derrida presents the Nazi regime as having assumed the pattern of Benjamin's spectral account of police violence – as a heightened example, in other words, of the law-positing and law-preserving extremes of police power. The police, in Derrida's account, provide an example of how pure and revolutionary violence is in its spectral presence, an effect of writing's ambiguity which transcends fate. In other words, it is precisely the ambiguity of written and unwritten law, and the fact that each incurs retribution or punishment by fate, that enables the spectral presence of police violence to transcend the mythical-legal context of fate altogether.

This reference to the law-positing and preserving tendencies of police violence is only part of Derrida's programme to establish a pattern of response to Nazism. For Derrida, that response is critical only insofar as it overturns the formula of pure, divine violence of Benjamin's 'Critique of Violence'. In other words, the application of Benjamin's analysis to the question of the Final Solution indicates its limits. Derrida writes:

what Nazism, as the final achievement of the logic of mythological violence, would have attempted to do is to exclude the other witness, to destroy the

witness of the other order, of a divine violence whose justice is irreducible to law, of a violence heterogeneous to the order both of right (be it that of human rights) or of the order of representation and of myth.¹³⁴

Derrida's position vis-à-vis divine violence is not entirely incorrect: the difference between the total logic of destruction invoked by mythic violence, and the bureaucracy of a police order that exceeds the measure of the distinction between myth and divinity is dubious. Both mythic and divine violence, from this perspective, exercise an absolute imperative. It follows that divine violence could only, given the spectral presence of the police, for example, lead beyond the horizon of even the most remotely evident humanism. Derrida's conclusion to his reading of Benjamin's essay on violence makes this point more clearly:

What I find, in conclusion, the most redoubtable, indeed perhaps almost unbearable in this text, even beyond the affinities it maintains with the worst (the critique of Aufklärung, the theory of the Fall and of originary authenticity, the polarity between originary language and fallen language, the critique of representation and of parliamentary democracy, etc.), is a temptation that it would leave open, and leave open notably to the survivors or the victims of the 'final solution', to its past, present or potential victims. Which temptation? The temptation to think the holocaust as an interpretable manifestation of divine violence insofar as this divine violence would be at the same time annihilating, expiatory, and bloodless, says Benjamin, a divine violence that would destroy current law, here I recite Benjamin, 'through a bloodless process that strikes and causes to expiate'.¹³⁵

The point Derrida makes here is that Benjamin's 'Critique of Violence' is open to a 'reversal' whereby, having used it to analyse the Final Solution, it could actually even provide a justification for the Final Solution.¹³⁶ According to the logic of the 'Post-Scriptum', the provision of a politics of pure means demands that pure violence refrain from sharing any point of reference with the written; if it were to engage in writing it would be complicit with an originary form of violence that contaminated whatever it touched in order to affirm the necessity of impurity. If, however, my journey through the conventions of divine and mythical-legal violence has shown anything, it has shown that divine violence constitutes a potential for the politics of a pure means precisely as a result of the fact that it is an integral component of the sovereign structure it seeks to undercut.

At a glance, some distinction between divine violence and mythical violence is possible – especially insofar as the former manifests itself through unwritten law, and the latter through the conventions of the written law. Neither, however, exempts

the subject who transgresses its law from retribution. Each, in this sense, passes through fate, the crowning principle of law. Insofar as divine violence shares the same fatalistic frame of reference as mythical violence, however, it only reinforces its ability to transcend that violence. Of course, insofar as divine violence transcends the limits of mythical violence, it refuses any contextualisation, and in so doing opens itself to the possibility of ‘reversal’ – in this assertion Derrida is correct.¹³⁷ My point, however, is that for Benjamin the possibility of the failure or reversal of divine violence is irrelevant. It is the risk of failure, in fact, that lends divine violence its potency. Insofar as divine violence *provides an opening to the aleatory* – an opening to risk, or chance – it confirms its potential as a pure means. For Derrida, a shared frame of reference between pure violence and the mythical structure of the law could only lead to the contamination of pure means. I, however, argue the opposite. Derrida’s political position is not one that has become concerned above all with the discernment of complicity between divine violence and sovereign violence. His position does, however, underestimate the extent to which Benjamin reads divine violence into originary forms of violence. One could even go so far as to suggest that divine violence assumes the appearance of originary forms of violence. In its rejection of Schmitt’s appeal to a pre-existing order, Benjamin characterises divine violence as the opening to the indeterminate, and as an affirmation of chance.

5. Reading Schmitt’s juridical concept of guilt

Having established that both divine violence and the mythical structure of the law are mediators of guilt, and having established their respective tendencies to distribute retribution or punishment through the co-ordinates of fate, I aim to continue to undermine the idea that pure violence could ever be a static or unified entity. Divine violence, I will argue again, must not be understood, as has been argued in the secondary literature, to stand in ‘radical’ opposition to mythic violence.¹³⁸ Neither does it figure an attempt to lift power ‘out of its power structure’ and catch it ‘unawares outside of its legitimating narratives’.¹³⁹ Divine violence, I maintain, inhabits the mythical-legal structure of power, in order to diffuse that power. A comparison of Schmitt’s thesis on the juridical concept of guilt to Benjamin’s formulation of divine violence considers this relationship between divine violence

and the legal order more closely.¹⁴⁰ My first step in this comparison, however, argues against Agamben's reading, in *Homo Sacer*, of Schmitt's juridical concept of guilt. Schmitt's definition, according to Agamben, 'refutes every techno-formal definition of the concept of guilt in favor of terms that seem more moral than juridical'.¹⁴¹ Agamben stakes his claim on Schmitt's assertion, in his first work *Über Schuld*, that guilt is a priori a "process of inner life," and that its "intrasubjective" quality translates to an "ill will" that consists in "knowingly positing ends contrary to those of the juridical order".¹⁴² Agamben's interpretation of Schmitt's use of guilt as a medium through which to assert an authoritarian moral position is, I believe, coherent and in keeping with the context of Schmitt's early work on the *Political Theology* – outlined in the first chapter of my thesis.

The point at which I take issue with Agamben's use of Schmitt in comparison to Benjamin, however, is as follows. Agamben states:

It is not possible to say whether Benjamin was familiar with this text [*Über Schuld*] while he was writing... 'Critique of Violence'. But it remains the case that his definition of guilt as an ordinary juridical concept unduly transferred to the ethico-religious sphere is in perfect agreement with Schmitt's thesis – even if Benjamin's definition goes in a decisively opposed direction.¹⁴³

Taking the 'ethico-religious sphere', for the purposes of my own argument, as the correlate of divine violence, it becomes possible to unfold the problems with Agamben's claim.¹⁴⁴ Benjamin's point vis-à-vis divine violence, as I have argued it, is that its mediation of guilt is a characteristic of its revolutionary potential. Insofar as divine violence relies on guilt in order to discharge retribution by fate, it does not, as Agamben would have it, reinforce Schmitt's authoritative moral decision. This is largely because for Benjamin there is simply no undue transfer of guilt to the spectrum of the divine.

Divine violence, for Benjamin, draws the force of its revolutionary potential from the fact that it shares guilt as a common frame of reference with the mythical structure of the law. Without wishing to over-emphasise Benjamin's treatment of fate, I propose a re-reading of the passage already cited in which, Benjamin writes, fate

is not actually destructive. Although it brings a cruel death to Niobe's children, it stops short of claiming the life of their mother, whom it leaves behind, more guilty than before through the death of the children, both as an

eternally mute bearer of guilt and as a boundary stone on the frontier between men and gods.¹⁴⁵

Guilt here, again, arises as the motif through which a false separation between mythical violence and the law has taken place. Mythical law is realised through law-positing violence, which founds and changes boundaries even as it claims to be policing established ones, but it also manifests itself through investing individuals with guilt – so as to justify its access to the exercise of punitive judgement and conviction. Legality, from Benjamin's perspective, did not instate just punishment but condemned its subjects to guilt and in the final analysis to expiation or atonement. Guilt, in turn, could be atoned only through mythical sacrifice, to show that the law was a relic of a pre-history. Most importantly, however, guilt is also the means by which Benjamin exposes a false separation between mythical-legal violence and divine violence. According to this reading of the passage, guilt can be understood here as the motif through which Benjamin exposes the tendency of the mythical structure of the law to define the boundaries of the individual. It follows that in the 'Critique of Violence' guilt is a mythical concept and as such is unfit to be the grounding principle of the political. The vestiges of mythical guilt are present in the law of the constitution, and in the constitution's representative institutions. In the chapter on the *Origin*, these representative institutions were shown to take the form of Attic Ionic tragedies, or of Christian originary forms such as Calderón's drama of fate.

To go one step further in my refutation of Agamben's claim, however, I should point out that Benjamin defines guilt as an originary juridical concept only insofar as he aims to demonstrate, in so doing, *that guilt does not belong, and never has belonged, at all exclusively to the juridical*. Agamben continues:

For Benjamin, the state of demonic existence of which law is a residue is to be overcome and man is to be liberated from guilt (which is nothing other than the inscription of natural life in the order of law and destiny). At the heart of the Schmittian assertion of the juridical character and centrality of the notion of guilt is, however, not the freedom of the ethical man but only the controlling force of a sovereign power (*katechon*), which can, in the best of cases, merely slow the dominion of the Antichrist.¹⁴⁶

My argument diverges from Agamben's on a series of points: firstly, the formulation of a divine violence in the 'Critique of Violence' does not function to

'overcome' the mythical structure of the law, as Agamben claims. This flaw in Agamben's argument begins with his assertion that guilt is 'nothing other than the inscription of natural life in the order of law and destiny'.¹⁴⁷ While there is no question that guilt provides the justification for retribution by punishment of fate, retribution belongs as much to the unwritten manifestation of divine violence as to the mythical structure of the law that inscribes its presence through the conventions of contract, equal rights, and the notion of the imminent arrival of perpetual peace. Neither is Agamben correct in his assertion that Benjamin aims to liberate its subject from guilt. Benjamin manipulates the notion of divine violence in the 'Critique of Violence' to expose the law's tendency to define the subject through guilt.

Still problematic is Agamben's claim that Schmitt locates sovereign control at the centre of the concept of guilt. While I do not object to Agamben's interpretation of Schmitt on its own terms, I do object to his reading of the relationship between Schmitt and Benjamin. This double error on Agamben's part begins with the misinterpretation of Benjamin as having presented a 'principle capable of releasing man from guilt, and of affirming natural innocence'.¹⁴⁸ Although Benjamin's assertion of a divine violence aims to destabilise the fixed subject position, it does not pursue this destabilisation to the end of rendering political participation no longer an option. In other words, Benjamin's 'Critique of Violence' is absolutely concerned with the possibility of political participation. We know this because an increase in subjective freedom would diminish the capacity for any relationship between the legal subject and the sovereign structure of violence, whereas Benjamin's notion of divine violence depends entirely on the legal subject's sharing some interface with sovereign violence, or the legal order.

Sacred life: understanding the state of exception

Agamben is clear that the state of exception is the defining feature of sovereignty, and that as a result sovereignty cannot be understood as an 'exclusively political concept', an 'exclusively juridical category', a 'power external to law', or as 'the supreme rule of the juridical order'.¹⁴⁹ Sovereignty, according to Agamben, is the 'originary structure in which law refers to life and includes it in itself by suspending it'.¹⁵⁰ Agamben traces this notion of sovereignty as a suspension of relations through the historical trajectory of the concept and etymology of *Abandonment*. He continues

Taking up Jean-Luc Nancy's suggestion, we shall give the name *ban* (from the old Germanic term that designates both exclusion from the community and the command and insignia of the sovereign) to this potentiality (in the proper sense of the Aristotelian *dynamis*, which is always also *dynamis me energein*, the potentiality not to pass into actuality) of the law to maintain itself in its own privation, to apply in no longer applying. The relation of exception is a relation of ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable. It is literally not possible to say whether the one who has been banned is outside or inside the juridical order.¹⁵¹

In his consideration of the structure of the ban Agamben raises several relevant points about the structure of sovereignty. The law does not establish its originary status in relationship to life, neither does it draw its originary status from the application of its procedures to life: according to Agamben, the law establishes its originary status in its *abandonment* of life.¹⁵² If the ban is not entirely exempt from formal relations, Agamben asks – in a rhetorical question that borders on the facetious – then ‘precisely what kind of relation is at issue here, when the ban has no positive content and the terms of the relation seem to exclude (and, at the same time, to include) each other?’¹⁵³ In other words, Agamben is advancing the idea of the ban as anything *but* an expression of the law; to claim the ban is an expression of the law would ignore the fact of the ban as the ‘pure form of reference to something in general, which is to say, the simple positing of relation with the nonrelational’.¹⁵⁴ Put this way, the ban can only be deemed identical with what Agamben refers to as ‘the limit form of relation’, and as such it articulates an invocation to its own critique.¹⁵⁵ Altogether, then, an exposition of the ban and an engagement in its critique is part of a strategy on Agamben's part to bring forms of relation into question, and more specifically, with regard to Schmitt, ‘to ask if the political fact is not perhaps thinkable beyond relation and, thus, no longer in the form of connection’.¹⁵⁶ Here Agamben is correct: understood in terms of inscription and the emergence of constitutional law, Schmitt's state of exception is insistent on not being conflated with an originary violence, or to state the case differently, with the mythical structure of the law and its appeal to an originary violence.

Mythic representation wrenches what it represents (singular acts) violently from its ‘immediate’ (non)context of (non)relation, and re-presents it as something that occurs in a context of abiding relations – that is, as something that remains the same (as regards its duration, direction, origin, force)

throughout many contexts, which together are to comprise a continuum: a repeating context.¹⁵⁷

The conventional interpretation of a state of exception that reinforces and exists in relation to a continuum of repetition is as much as a fallacy as the idea of a divine violence that functions as a unified and static entity to counter the force of that continuum – so much is established by Agamben, and is reinforced by what has now become a classic reading of the mythical structure of the law. Agamben's claim that the sovereign state of exception occludes any formal connection to a system of relations is effective insofar as it takes to task the false assumption of a mythic violence that existed in relation to a continuum of repetition. The success of Agamben's use of ban as an abstract of the state of exception is predicated on the fact that it encapsulates a refusal on his part to stabilise or purify the state of exception, and with that the principle of sovereignty. In this transvaluation of a principle of sovereignty that is conventionally understood to reinforce the authority of a moral claim, the precarious status of law as an originary force begins to become clear. This is where my own claim to the importance of understanding divine violence as an integral feature of the structure of sovereignty intensifies. Both the sovereign declaration of the state of exception and divine violence are predicated on a precarious distinction between life and the living. This is what Benjamin means when he writes that '[m]ythical violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it'.¹⁵⁸

Now it is correct to state, as does Beatrice Hanssen, that Benjamin calls into account the predominance of 'mere life' – that Benjamin's writing privileges a 'just existence' over mere life – a differentiation of mythical, judicial, and divine manifestations of violence, and a critique of 'legitimate powers', that is, of institutional forms of authority including the legal system, and the reign (*walten*) of divine violence.¹⁵⁹ Understood on an historical register, Darwin's biologism characterises violence as a natural product, and receives the force of Benjamin's Critique: 'If, according to the natural-law theory of the state,' Benjamin writes

people give up all their violence for the sake of the state, this is done on the assumption (which Spinoza, for example, poses explicitly in his *Tractatus Theologico-Politicus*) that the individual, before the conclusion of this rational contract, has *de jure* the right to use at will the violence that is *de facto* at his disposal. Perhaps these views have been recently rekindled by

Darwin's biology, which, in a thoroughly dogmatic manner, regards violence as the only original means, besides natural selection, appropriate to all the vital ends of nature.¹⁶⁰

The Darwinian notion of history as a process of selection, is, after all, something analogous to the representation of the continuity of history – a dramatic representation of sorts – that Benjamin seeks to destabilise. For Darwin violence is very much a part of the law's ways of coming into being and being real,¹⁶¹ and Benjamin himself observes how Darwinistic philosophy 'has often shown how short a step it is from this dogma of natural history to the still cruder one of legal philosophy', and how the 'violence that is, almost alone, appropriate to natural ends is thereby also legal'.¹⁶² Hanssen recognizes that in the passage just cited Benjamin's attempt to distinguish the life of man from the life of animals and plants did not find its source in a 'metaphysical' moment of rupture; that, moreover, the distinction between humans and the life of animals or plants could not be ascribed to reflection, consciousness, representation, or any other human faculties.¹⁶³ Furthermore, Hanssen acknowledges that it would be redundant to state that Benjamin's attempt to distinguish the life of man from plants and animals, in the above cited passage, could not be gauged from the perspective of a theory of law, and the at first 'discouraging discovery of the ultimate insolubility of all legal problems'.¹⁶⁴

The passage is important to my argument, however, insofar as it identifies the point in which difference lies. Divine violence occurs through the 'dissolution of legal violence'.¹⁶⁵ More importantly, that process of dissolution provides an opening to *catharsis*:

The dissolution of legal violence stems (as cannot be shown in detail here) from the guilt of mere natural life, which consigns the living, innocent and unhappy, to a retribution that 'expiates' the guilt of mere life – and doubtless also purifies the guilty, not of guilt, however, but of law.¹⁶⁶

As a catharsis of sorts, this dissolution of legal violence also seems to announce a certain humanism, or at least to grant humanism some degree of validity.¹⁶⁷ This is not to say that Benjamin has in any way become trapped in a 'double bind',¹⁶⁸ however, and neither does it suggest that Benjamin has been forced to indicate a 'double gesture'.¹⁶⁹ It is clear that Benjamin is anti-humanist: for Benjamin humanism is based on the vulgar assertion that humans stand at the locus of all creativity. In this sense, the tracelessness of divine violence exceeds humanism. But

it is also clear that Benjamin wishes to establish divine violence as the distributor of guilt: in this way, then, divine violence partakes in the reification of life; it renders life sacred. This is why Benjamin juggles with the concepts of the 'living being' and 'life' in the Critique:¹⁷⁰ 'life' Benjamin writes, signifies the bloodless body, and therefore a pure and expiatory force; it is uncontaminated; the 'living body' can only bear the marks and traces of the legal order; it makes legible the force of the legal order. This is also why, in an inversion of his own claim that divine violence necessarily exceeds humanism, Benjamin states that the premises of humanism are unacceptable on the terms of 'mere life':

Man cannot, at any price, be said to coincide with the mere life in him, any more than it can be said to coincide with any other of his conditions and qualities, including even the uniqueness of his bodily person. However sacred man is (or however sacred that life in him which is identically present in earthly life, death, and afterlife), there is no sacredness in his condition, in his bodily life vulnerable to injury by his fellow men. What, then, distinguishes it essentially from the life of animals and plants? And even if these were sacred, they could not be so by virtue only of being alive, of being in life. It might be well worthwhile to track down the origin of the dogma of the sacredness of life. Perhaps indeed probably, it is relatively recent, the last mistaken attempt of the weakened Western tradition to seek the saint it has lost in cosmological impenetrability.¹⁷¹

Hanssen's claim that the 'Critique of Violence' should not be conflated with humanism, then, is not entirely wrong.¹⁷² It would, in some sense, even be straightforward to concede the benefit of the doubt to Hanssen's position.

Benjamin's vision of divine violence does after all, on an initial reading of the essay, appear to maintain a degree of separation from the mythical structure of the law, and from that structure's claim to an originary status through the precepts of natural law. Divine violence, furthermore, is found present only in manifestations of the absence of law-positing that are rarely ever 'sanctioned' except in the case of 'religious tradition', and when they are sanctioned, stand, as in the example of 'educative power', in a perfected form outside the law.¹⁷³ What however, of the fact that divine violence does not even make possible the use of lethal power? This is where Hanssen's claim comes undone: divine violence *supports* an idea of sacred life that, despite all Benjamin's claims to the contrary, constitutes a verification of humanism; divine violence participates in the reification of life. The divine commandment "Thou shalt not kill" meets the request to be able to kill, but just as Judaism is taken

by Benjamin always to include the notion of self defence and thus to be squarely opposed to an abstract belief in the sanctity of life, the doctrine of divine violence renders sacred that which, ‘according to ancient mythical thought [was] the marked bearer of guilt: life itself’.¹⁷⁴

Of course, this is precisely Benjamin’s point: divine violence shares a sovereign frame of reference. The motifs of perpetual peace, guilt, retribution through fate, humanism and the debates surrounding mere life, the relationship shared between the subject and the legal order – all share a common ground with sovereignty as well as with Benjamin’s vision of divine violence. As a result of this shared territory, divine violence *could* be conflated with, or deemed complicit with, the sovereign structure of the state of exception. It *could* furthermore be subject to reversal by the declaration of a state of exception. Agamben’s reading of the *ban*, however, destabilizes the authority of the state of exception, and in so doing highlights its indebtedness to Benjamin’s vision of divine violence. Given the interface between divine and sovereign violence, the opinion that runs through the secondary literature surrounding the ‘Critique of Violence’ *could* only be incorrect: it attributes Benjamin’s vision of a ‘disruptive, destructive, divine violence, which came to dissolve all legal and mythical violence, no more than the “guilt of mere natural life” to an attempt to reinstate a natural order [primordial justice]’.¹⁷⁵ My point is that Benjamin’s vision of a divine violence *could indeed* re-instate a natural order – and insofar as it has proven, thus far, an integral part of that natural order, to some extent it already does. In that possibility, however, lies the crucial element of divine violence: it constitutes the affirmation of chance. I will, in the next chapter, question its horizon of expectancy.

¹ Walter Benjamin, 'Critique of Violence', in *Selected Writings, Volume 1: 1913-1926*, ed. by Marcus Bullock and Michael W. Jennings, trans. by Edmund Jephcott (Cambridge, Mass. and London: Harvard University Press, 1996), pp. 236-252; 'Zur Kritik der Gewalt', *Gesammelte Schriften*, 8 vols, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp Verlag, 1977), vol. 2.1, pp. 179-203.

² This argument for pure violence as that which inhabits the structure of sovereignty is indebted, conceptually, to the argument of worklessness in Lars Iyer, *Blanchot's Communism: Art, Philosophy and the Political* (Basingstoke: Palgrave MacMillan, 2003), pp. 1-18.

³ Jaques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', in *Acts of Religion*, ed. by Gil Anidjar, trans. by Mary Quaintance (New York and London: Routledge, 2002), pp. 228-299.

⁴ Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*, ed. by Werner Hamacher and Daniel E. Welbery, trans. by Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), pp. 25-29 (p. 28).

⁵ Derrida, 'Force of Law', pp. 260.

⁶ Derrida, 'Force of Law', pp. 268.

⁷ Derrida, 'Force of Law', pp. 262.

⁸ Derrida, 'Force of Law', pp. 262.

⁹ Derrida, 'Force of Law', pp. 265.

¹⁰ See Derrida, 'Force of Law', pp. 285, 291.

¹¹ Also see Helga Geyer-Ryan, 'Justice, Literature, Deconstruction: Homer to Kafka', *New Comparison* 18 (1994), 152-164, (p. 156-157), also see note 6.

¹² SW1, 237; GS 2.1, 180.

¹³ SW1, 237; GS 2.1, 180.

¹⁴ SW1, 236; GS 2.1, 179.

¹⁵ SW1, 237; GS 2.1, 181.

¹⁶ SW1, 238; GS 2.1, 182.

¹⁷ SW1, 236; GS 2.1, 179.

¹⁸ SW1, 238; GS 2.1, 182.

¹⁹ SW1, 238; GS 2.1, 182-183.

²⁰ SW1, 238-239; GS 2.1, 183.

²¹ SW1, 239; GS 2.1, 183.

²² SW1, 239; GS 2.1, 183.

²³ SW1, 239; GS 2.1, 183.

²⁴ SW1, 247; GS 2.1, 196. The German text reads 'verallgemeinerungsfähig'. Where Jephcott translates this as 'capable of generalization', I have chosen 'capable of being universalized'.

²⁵ SW1, 247; GS 2.1, 196. The German 'Merkmal der Gerechtigkeit' is conventionally rendered 'the standard of justice'; I have chosen 'the nature of justice'.

²⁶ See Schmitt's invocation of a Roman Republic as an expression of shared moral discourse, of group solidarity and cohesion, and of the ground rules of hard work and co-operation. The statutes of classical governance provide Schmitt with a resource from which to call for the politics of a return to individual, familial, and civic responsibility in *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Berlin: Dunker & Humblot, 1989).

²⁷ See Werner Hamacher, 'Affirmative, Strike: Benjamin's "Critique of Violence"', in *Destruction and Experience*, ed. by Andrew Benjamin and Peter Osborne, 2nd edn, trans. by Dana Hollander (Manchester: Clinamen Press, 2000), pp. 108-136 (p. 108). The Hollander translation of 'Entsetzung' is deposing, deposition. The Jephcott translation is less critical of a distinction between a violence that is deposing, or 'Entsetzung', and a violence that is suspended, or 'aufgehoben ist'. I am following the more accurate example set by Hollander, to distinguish between the pure violence of suspension, as opposed to the separate, but not unrelated characterisation of the pure violence of deposition. See especially SW1, 251; GS 2.1, 189.

²⁸ SW1, 252; GS 2.1, 203.

²⁹ SW1, 242; GS 2.1, 188.

³⁰ SW1, 252; GS 2.1, 203.

³¹ SW1, 243; GS 2.1, 190.

³² SW1, 251; GS 2.1, 202.

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- 33 SW1, 251; GS 2.1, 202.
- 34 SW1, 252; GS 2.1, 202.
- 35 SW1, 251; GS 2.1, 202.
- 36 SW1, 243; GS 2.1, 190.
- 37 SW1, 243; GS 2.1, 190.
- 38 SW1, 243; GS 2.1, 190.
- 39 SW1, 244; GS 2.1, 190.
- 40 SW1, 244; GS 2.1, 190.
- 41 SW1, 244; GS 2.1, 190. Benjamin quoting Erich Unger.
- 42 *Ibid.*
- 43 Hamacher makes this point, p. 112. Also, however, see Derrida's discourse on Levinas and violence in *Writing and Difference* (London and New York: Routledge, 1983), where Derrida shows how certain kinds of violence are constitutive, i.e., inescapable.
- 44 SW1, 244; GS 2.1, 190.
- 45 SW1, 242; GS 2.1, 189.
- 46 SW1, 242-243; GS 2.1, 189.
- 47 SW1, 243; GS 2.1, 189.
- 48 SW1, 243; GS 2.1, 189.
- 49 SW1, 243; GS 2.1, 189.
- 50 SW1, 243; GS 2.1, 189.
- 51 SW1, 243; GS 2.1, 190.
- 52 SW1, 243; GS 2.1, 190.
- 53 SW1, 243; GS 2.1, 190.
- 54 SW1, 243; GS 2.1, 189.
- 55 SW1, 242; GS 2.1, 189.
- 56 SW1, 243; GS 2.1, 189.
- 57 SW1, 242; GS 2.1, 189.
- 58 SW1, 242; GS 2.1, 189.
- 59 SW1, 243; GS 2.1, 189.
- 60 Hamacher, p. 113, my emphasis.
- 61 SW1, 243; GS 2.1, 189.
- 62 Derrida, 'Force of Law', pp. 272.
- 63 Derrida, 'Force of Law', pp. 272.
- 64 Derrida, 'Force of Law', pp. 275.
- 65 See Håkan Gustafsson, "'As if': Behind Before the Law', *Law and Critique* 7 (1996), 99-114 (p. 108-109).
- 66 Gustafsson, p. 108-109.
- 67 See Derrida's structure of the aporetic in the 'Force of Law', pp. 251-258.
- 68 Derrida, 'Force of Law', pp. 281.
- 69 SW1, 248; GS 2.1, 197-198.
- 70 SW1, 248; GS 2.1, 198.
- 71 SW1, 249; GS 2.1, 199.
- 72 SW1, 238; GS 2.1, 181.
- 73 Among those critics in secondary literature who draw an analogy between Benjamin's pure violence, and the very statutes of positive law against which Benjamin launches its polemic, stands Beatrice Hanssen, 'On the Politics of Pure Means', pp. 236-252 (p. 240-241). Beatrice Hanssen writes that although Benjamin's essay 'reacted to the crisis that afflicted the value-free discipline of positivistic law', that 'in an initial, heuristic stage' of analysis, Benjamin had actually 'adopted the historical vantage point of positive law'.
- 74 SW1, 248; GS 2.1, 198.
- 75 SW1, 249; GS 2.1, 198.
- 76 SW1, 240; GS 2.1, 185.
- 77 SW1, 240; GS 2.1, 185.
- 78 SW1, 240; GS 2.1, 185.
- 79 SW1, 240; GS 2.1, 185.
- 80 SW1, 240; GS 2.1, 185.
- 81 SW1, 240-241; GS 2.1, 185-186.
- 82 SW1, 240-241; GS 2.1, 185-186.

⁸³ SW1, 245; GS 2.1, 193.

⁸⁴ SW1, 249; GS 2.1, 198.

⁸⁵ SW1, 249; GS 2.1, 198.

⁸⁶ SW1, 249; GS 2.1, 198.

⁸⁷ See Costas M. Stamatidis, 'Justice Without Law: A Postmodernist Paradox', *Law and Critique* 5 (1994), 265-284 (p. 271).

⁸⁸ SW1, 249; GS 2.1, 198.

⁸⁹ SW1, 249; GS 2.1, 198.

⁹⁰ SW1, 240; GS 2.1, 185-185. The Harvard translation of Benjamin's text reads 'Eternal Peace'; I have chosen 'Perpetual Peace'. The reference is to Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch,' in *Kant: Political Writings*, 2nd edn, ed. by H. Reiss (Cambridge University Press, 1970).

⁹¹ See Graham MacPhee, 'Europe and Violence: Some Contemporary Reflections on Walter Benjamin's "Theories of German Fascism"', in *Translating Nations*, ed. by Prem Poddar (Denmark: Aarhus University Press, 2000), pp. 23-46 (p. 31-37). MacPhee engages in an extended exposition of Kant's conception of the nation-state through the Kant secures his conception of the nation-state through the providential role of nature. Central to MacPhee's reading of perpetual peace as plagued by the problem of violence is the fact of Kant's assumption of a separation of human reason from the heteronomy of the phenomenal world, a separation which underlies the political distinction between the republican nation-state – as the condition of rational freedom – and the state of nature – as the realm of natural necessity.

⁹² Howard Caygill, *Hegel and the Speculative Community*, UEA Papers in Philosophy, New Ser. 3 (Norwich: University of East Anglia, 1994).

⁹³ Howard Caygill, *Hegel and the Speculative Community*, p. 22.

⁹⁴ Howard Caygill, *Hegel and the Speculative Community*, p. 22-23. Also see Howard Caygill's 'Violence, civility and the predicaments of philosophy', in *The Political Subject of Violence*, ed. by D. Campbell and M. Dillon (Manchester and New York: Manchester University Press, 1993), p. 48-72.

⁹⁵ See MacPhee, p. 31-37.

⁹⁶ Tom McCall discriminates between violence as complex, and violence as simplex, in 'Momentary Violence', in *Walter Benjamin: Theoretical Questions*, ed. by David S. Ferris (Stanford, CA: Stanford University Press, 1996), pp.185-106 (p. 190).

⁹⁷ See Robert Cover, 'Nomos and Narrative', in *Narrative, Violence, Voice, and the Law. The Essays of R. Cover*, ed. by M. Minov, M. Ryan, and A. Sarat (Ann Arbor: The University of Michigan Press, 1992). For citations of Cover see for example Alexander Camera Ljungstrom, 'The Silent Voice of Law: Legal Philosophy as Legal Thinking', *Law and Critique* 8 (1997), 71-95 (p. 73); Anselm Haverkamp and Cornelia Vismann 'Habeas Corpus: The Law's Desire to Have the Body', in *Violence, Identity and Self-Determination*, ed. by Hent de Vries and Sam Weber (Stanford, California: Stanford University Press, 1997), p. 223-235; and Tom McCall, p. 195.

⁹⁸ SW1, 248; GS 2.1, 197.

⁹⁹ SW1, 248; GS 2.1, 197.

¹⁰⁰ McCall, p. 196. See SW1, 248; GS 2.1, 197.

¹⁰¹ SW1, 248; GS 2.1, 197.

¹⁰² SW1, 248; GS 2.1, 197.

¹⁰³ SW1, 248; GS 2.1, 197.

¹⁰⁴ McCall, p. 197.

¹⁰⁵ SW1, 248; GS 2.1, 197.

¹⁰⁶ SW1, 249; GS 2.1, 199.

¹⁰⁷ McCall, p. 198.

¹⁰⁸ SW1, 248; GS 2.1, 197.

¹⁰⁹ Derrida, 'Force of Law', pp. 275.

¹¹⁰ SW1, 252; GS 2.1, 203.

¹¹¹ SW1, 248; GS 2.1, 197.

¹¹² SW1, 242; GS 2.1, 188.

¹¹³ McCall, p. 202.

¹¹⁴ SW1, 242; GS 2.1, 188.

¹¹⁵ Beatrice Hanssen, 'On the Politics of Pure Means', p. 242.

- ¹¹⁶ Gillian Rose, 'Walter Benjamin - Out of the Sources of Modern Judaism', in *Judaism and Modernity: Philosophical Essays* (Oxford, U.K. and Cambridge, U.S.A.: Blackwell, 1993), pp. 174-210, (p. 187).
- ¹¹⁷ SW1, 249-250; GS 2.1, 199.
- ¹¹⁸ SW1, 241; GS 2.1, 186.
- ¹¹⁹ SW1, 241; GS 2.1, 186.
- ¹²⁰ SW1, 241; GS 2.1, 187.
- ¹²¹ SW1, 241; GS 2.1, 187.
- ¹²² SW1, 241; GS 2.1, 187.
- ¹²³ SW1, 236; GS 2.1, 179.
- ¹²⁴ Ellen Kennedy, 'Carl Schmitt and the Frankfurt School: A Rejoinder,' *Telos*, 73 (Fall 1987), 37-66 (p. 105, 107).
- ¹²⁵ Beatrice Hanssen, 'On the Politics of Pure Means', p. 242.
- ¹²⁶ SW1, 241; GS 2.1.187.
- ¹²⁷ McCall, p. 188.
- ¹²⁸ SW1, 250; GS 2.1, 199.
- ¹²⁹ See McCall, p. 194-197.
- ¹³⁰ SW1, 248; GS 2.1, 199.
- ¹³¹ SW1, 249; GS 2.1, 198-199.
- ¹³² Louis Wolcher, 'The Man in a Dark Room': Remarks on Derrida's Force of Law', *Law and Critique* 7 (1996), 35-64, (p. 53).
- ¹³³ SW1, 252; GS 2.1, 202-203.
- ¹³⁴ Derrida, 'Post-Scriptum', pp. 295-296.
- ¹³⁵ Derrida, 'Post-Scriptum', pp. 298, in reference to Benjamin, SW1, 229-150; GS 2.1, 200.
- ¹³⁶ Derrida, 'Force of Law', pp. 274.
- ¹³⁷ Derrida, 'Force of Law', pp. 274.
- ¹³⁸ Louis Wolcher, p. 53.
- ¹³⁹ McCall, p. 188.
- ¹⁴⁰ Schmitt's treatment of guilt can be more fully understood through a consideration of his adverse relationship to Kelsen's legal positivism. See Dennis Lloyd's introduction of Kelsen in his chapter on 'Law, Sovereignty and the State', in *The Idea of Law* (London, 1966), pp. 193-198; see chapter six on Kelsen, in J.W. Harris, *Legal Philosophies*, 2nd edn (London, Butterworths, 1997); see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. by William Rehg (Cambridge: Polity Press, 1996) on Schmitt's fight with Kelsen over norms and decisions, pp. 242-243; see chapter 5 of M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence*, 7th edn (London: Sweet & Maxwell, 2001). Also see David Dyzenhaus' *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (Oxford: Clarendon Press, 1999).
- ¹⁴¹ Agamben, *Homo Sacer*, pp. 28
- ¹⁴² Carl Schmitt, *Über Schuld und Schuldartigen: eine Terminologische Untersuchung. Strassburger Inaugural-Dissertation* (Breslau, 1910), pp. 18-24 (pp. 92); cited by Agamben, pp. 27.
- ¹⁴³ Agamben, pp. 28.
- ¹⁴⁴ See Nikolas Lambrianou, "'A Philosophy and Theology of Hyperinflation": Walter Benjamin, Weimar and the New Thinking', *Journal of Cultural and Religious Theory* 5.2 (2004), 1-21 (p. 4), where the ethical and religious Messianic implications of the 'Critique of Violence' are considered briefly in reference to Hermann Cohen and Franz Rosenzweig.
- ¹⁴⁵ SW1, 248; GS 2.1, 197.
- ¹⁴⁶ Agamben, pp. 28.
- ¹⁴⁷ Agamben, pp. 28.
- ¹⁴⁸ Agamben, pp. 28.
- ¹⁴⁹ Agamben, pp. 28.
- ¹⁵⁰ Agamben, pp. 28.
- ¹⁵¹ Agamben, pp. 28-29, in reference to Jean-Luc Nancy, *L'impératif catégorique* (Paris: Flammarion, 1983); 'Abandoned Being', in *The Birth to Presence*, trans. by Brian Holmes (Stanford, CA: Stanford University Press, 1993), pp. 36-47.
- ¹⁵² Agamben, pp. 29.
- ¹⁵³ Agamben, pp. 29.
- ¹⁵⁴ Agamben, pp. 29.

¹⁵⁵ Agamben, pp. 29.

¹⁵⁶ Agamben, pp. 29.

¹⁵⁷ McCall, p. 193. The passage refers to a broader characterization of mythic violence as that which lends itself structure through mortality; consolidates its power, and guarantees its coherence through cycles of life and death.

¹⁵⁸ SW1, 250; GS 2.1, 200.

¹⁵⁹ The reference is to SW1, 251; GS 2.1, 201. See Beatrice Hanssen, 'The Mythical Origins of the Law', in *Walter Benjamin's Other History: Of Stones, Animals, Human Beings and Angels*, Weimar and Now: German Cultural Criticism, 15 (University of California Press, 1998), pp. 126-136 (p. 127). Hanssen's larger project invites a rethinking of the relation between nature and Judaic forms of law and ethics. Hanssen especially prioritises the negative evaluation of Judaism's alleged relation to nature in the course of German Idealism, claiming that the complexities of these critical perspectives (Torah, cosmos, nature) must be taken into account in order to fully gauge Benjamin's thoughts on law, justice, and the natural order, (p. 129). Hanssen traces Benjamin's critique of the 'doctrine of the sanctity of life', or 'mere life' and the issue of ethical action as part of a sustained interrogation, on Benjamin's part, of 19th and 20th century forms of vitalism, and especially of Kurt Hiller's *activism*, (p. 133).

¹⁶⁰ SW1, 237; GS 2.1, 180.

¹⁶¹ See Haverkamp and Vismann, 'Habeas Corpus: The Law's Desire to Have the Body', in *Violence, Identity, and Self-Determination*, ed. by Hent de Vries and Samuel Weber (Stanford, CA: Stanford University Press, 1997), pp. 223-235 (p. 223-224).

¹⁶² SW1, 237; GS 2.1, 180.

¹⁶³ Beatrice Hanssen, 'The Mythical Origins of the Law', p. 135. Hanssen uses the example of Rilke's interpretation of man's privative relation to the Open (das Offene) in the *Duino Elegies* to demonstrate the guiding principles of these faculties.

¹⁶⁴ SW1, 247; GS 2.1.196. See Beatrice Hanssen, 'The Mythical Origins of the Law', p. 135.

¹⁶⁵ SW1, 250; GS 2.1, 199.

¹⁶⁶ SW1, 250; GS 2.1, 199-200.

¹⁶⁷ Beatrice Hanssen's reading of Darwinism and vitalism in Benjamin, 'The Mythical Origins of the Law', p. 134. 'In a passage that at first sight seemed to announce a form of Judaic humanism, Benjamin granted Hiller's statements a certain validity...'

¹⁶⁸ Derrida, 'Force of Law', pp. 274.

¹⁶⁹ Derrida, 'Force of Law', pp. 279.

¹⁷⁰ Beatrice Hanssen, 'The Mythical Origins of the Law', pp. 134.

¹⁷¹ Benjamin SW1, 251; GS 2.1.201.

¹⁷² Beatrice Hanssen, 'The Mythical Origins of the Law', p. 134-137, and Helga Geyer-Ryan, p. 152-164.

¹⁷³ SW1, 250; GS 2.1, 200.

¹⁷⁴ SW1, 251; GS 2.1.202.

¹⁷⁵ Beatrice Hanssen, 'The Mythical Origins of the Law', p. 134.

Chapter Four: Specifications of Pure Violence

The purpose of this chapter is to clarify the contradictions and character of pure violence. On the one hand, pure violence inhabits the structure of sovereignty, and in so doing operates as a condition of possibility for the outbreak of chance. As an opening to the aleatory, however, it also depends on catharsis, and on an unpredictable emotional drive that is impossible to quantify or qualify. The question here might arise as to how pure violence can inhabit the structure of sovereignty, and yet at the same time thrive on the more indeterminate qualities relating to emotion. Several steps must be taken in order to negotiate this paradox of pure violence. There is an extended effort throughout the chapter, therefore, to elaborate the terms of pure violence through its two specifications in the 'Critique of Violence': 'pure language' and the proletarian general strike. A preliminary outline of the constituents of these two models of pure violence will provide a more tangible point of departure for my argument.

Pure language as a construct in the 'Critique of Violence' does not conform to simple classification, however, and asks to be understood through a series of contradictions. As has already been implied, pure language constitutes a heightened paradox of extremes: pure language is, in the most immediate sense, the concept through which Benjamin develops a theory of linguistic diversity. It attests to the fact that there is a name for everything, and as an all-knowing entity it exceeds even its own frame of reference. The example Benjamin gives is one in which not even the 'Tree of Knowledge' can account for the scope of a paradisiacal language in which everything has its proper name. If for every singularity there is a name, there is, therefore, an infinite number of singularities and of names. There is, moreover, no mediation between things and their names. Benjamin makes this point in his essay 'On Language as Such'.

In that same essay, however, Benjamin also refers to the process of naming as an act of violence. The process in which language conditions a response to the uniqueness of the moment is interrupted by the act of institutionalisation, whereby language becomes accessible to people as a way of speaking. The metaphor used by Benjamin is the Edenic fall from grace. This act of institutionalisation gives an entirely new world to a people and in this sense is both inceptive and projective: it

opens a space in which a people can dwell by way of a particular vocabulary. Pure language as it appears in Benjamin's work is a fluid concept and refers to two different phases of development. The first constitutes pure language before the fall in a preliminary, Edenic sense; the second constitutes pure language after the fall. This second phase of the development of pure language refers to the way in which things and words come together in a process of co-appropriation, and by extension, to the way in which a people comes into its own; it testifies to the fact that there never has been a non-mediated world. It is this second phase of the development of pure language to which Benjamin refers in the 'Critique of Violence'.

Benjamin highlights the diversity of linguistic practice in the preliminary, and Edenic sense in order to facilitate a return to the contradictions of conflict resolution within the 'Critique of Violence'. The contradictions of conflict resolution are firmly connected to the effects of commerce, and the effects of commerce, to the reduction of language to a technique of effective communication. Pure language in its second, projective sense, then, opens up in the commercial spectrum. Stated differently, *commerce* facilitates the opening of pure language. Benjamin explores this problem in the 'Critique of Violence' through the example of diplomacy. On the one hand, diplomatic procedures of peace negotiation serve the dictates of commercial interest. Benjamin presents the case as one where commodity production governs the opening to the sphere of pure means, or to the sphere of pure language. Implicit to this governance, however, is the importance of there being some interface between pure violence and structures of power. Without this interface, pure violence becomes too rarefied to be able to respond to the uniqueness of the moment. Some interface between pure violence and structures of power is equally important insofar as it ensures that these institutionalised forms of violence might undergo transformation and modification.

There are a series of problems that unfold with this concept of an interface between pure violence and structures of power. On establishing a point of contact between the two, Benjamin also points to the way that pure violence is susceptible to manipulation by techniques such as lying, fraud, and corruption. As becomes evident in Benjamin's exposition of 'cultures of the heart' and of the language of diplomacy, the system of commodity production governs the opening to the sphere of pure means. The institutionalised forms of violence from which pure language aims to

differentiate itself in the examples of the conference, and of diplomacy, are equally problematic insofar as they draw from this point of contact the force by which to consummate their positions of authority and to exempt themselves from transformation and modification. It could be said that in its movement to overcome the spectrum through which language has been reduced to a technique of effective communication – an ironic classification of language for Benjamin, to whom the banality of the cliché upon which effective communication depends actually suppresses communication – pure language aims to confirm another sphere of social relations that exist beyond the confines of economics and commodity production.

It has been established thus far that pure language risks subversion by commercial interests and by techniques of effective communication. The question arises as to how pure language, once it has undergone transformation into a technique of effective communication, does not simply designate the indestructible character of the system of commodity production. This raises the further question of what exactly is at stake in the process of the subversion of pure language. With this question in mind, the concept of *technical innovation* will be considered. In this way, it will be possible to consider more fully the emotional components of pure violence and ultimately its specification in pure language. Fear surfaces as a particularly influential determinant of pure violence insofar as it exposes the innovative force of pure language to techniques of effective communication. To the extent pure language is exposed to techniques of effective communication, or to what I will characterise as a sliding scale of technical legitimacy, it evades its own innovative potential. It reveals the fact of its being politically produced, and it signifies the process through which a particular way of doing things is rendered legitimate. Similarly, it functions to elevate a certain doctrine, belief, or class of person above all others. In an effort to prove that pure language as it appears in Benjamin's essay holds the potential either to abrogate or to modify a system of social relations that has come to be determined by commodity production, Benjamin's essay 'The Work of Art in the Age of Mechanical Reproduction' is considered.

The Art Work Essay addresses the question of whether Benjamin is successful in locating a sphere of social relations beyond the confine of economics. I seek to establish an account of the already implied interaction between pure and impure means, or technical innovation and technique, in order to explain how that dynamic

of exchange might become formalised. Considered through Benjamin's art-theoretical reflections, technological innovation is conventionally revealed as that which accelerates the automatising of perception. Insofar as the technical brilliance of film facilitates the appearance of the beautiful illusion, it reinforces the political totality of legal institutions and the illusion of reconciliation produced by their compromises. In much the same way that Benjamin's Art Work Essay expresses an optimistic view of the film's potential to enhance the critical perception of a mass audience, pure language as it appears in the 'Critique of Violence' holds the potential to radicalise modes of communication; to bring into effect through the conference and diplomacy social and political change. I aim to draw the connection between film and pure language, then, in order to demonstrate how pure language as it features in the 'Critique of Violence' similarly risks becoming, through a repetition compulsion of sorts, a technique of effective communication. Benjamin is clear that pure language should in effect break or deflect any cycle of reproduction; he is also, however, clear that as a technical apparatus of sorts, pure language cannot undo the determination of even the most intimate and delicate of social relations by commodity production.

Pure language in the final sense through which it is considered in this chapter, I will argue, must be understood to locate the fraught territory between discursive practice and the monopolisation of discourse by the legal code. A more concrete example is found in the process through which *Habeas corpus* as writ comes to be recognised more formally as Act. Among the more salient features of the process of *Habeas corpus* is its demonstration of how the indeterminate quality of any given 'discourse practice' – which here constitutes the sovereign imperative to 'have or to produce the body' – comes to be inscribed into institutional practice. Also important to this analysis, however is the extent to which the process of *Habeas corpus* attests to the manner in which a legal structure can exist at the same time that it is accompanied by a secondary and legally non-formalised structure. This legally non-formalised structure cannot exist alongside the first without the support of either a general state of exception or pure violence. Insofar as it appropriates and codifies the writ, or the sovereign positing of power, the *Habeas Corpus Act* depends for reinforcement on the rule of law.¹

Insofar as the legal order consumes sovereign discretionary interests, it becomes a question of the very same sovereign favour it seeks to undercut. The process of *Habeas corpus* from writ to act, then, lays bare the process through which the legal order monopolises authority, the discursive economy as a whole, and the legal control of the distribution of social power. That process also conveys pure language as the site of a fraught relationship between the subjective ‘discursive practice’, and the monopolisation of discourse – both written and spoken – by the legal code. In seeking to displace this opposition between discursive practice as absolute subjectivity and discursive practice as that which is appropriated by the legal code, Benjamin proposes another model of pure violence. Here begins an introductory characterisation of the second specification of pure violence, in the ‘Critique of Violence’, also known as the proletarian general strike.

The process of establishing the relationship between pure violence and the structure of sovereignty draws my argument to the question, now, of how pure violence will emerge, when, and under what circumstances. The proletarian general strike as it appears in the Critique offers several responses to the problem at hand. First among these is its potential to prove the fallacy of the distinction between order and chaos upon which Schmitt structures his concept of sovereignty. The proletarian general strike as it appears in both Benjamin and Schmitt finds its roots in Sorel’s *Reflections on Violence*. Sorel’s *Reflections* provides a context, initially, from which to read the formation of a new agent – the proletariat – as being capable of initiating social transformation. Consequently, its presumption of consensus among members of a homogeneous community is based on a metaphysical concept of the proletarian general strike that merits concern. The most important aspect of Sorel’s study for the purposes of my argument, however, is that he thinks the proletarian general strike through a shift in paradigm from an orthodox to a less orthodox Marxism. In response to the inadequacy of Sorel’s model of the strike, the question arises as to whether a strike could be efficacious if it refused to conform to a paradigm from the historical canon of political or economic systems. Would it be possible, for example, to aim at the recasting of these systems from beyond the confines of homogeneity?

Benjamin and Schmitt articulate two very different responses to Sorel’s thought. Both Benjamin and Sorel recognize that it is not the objective laws of historical evolution but the theory of the formation of a new agent – the proletariat –

that is capable of initiating social transformation. Benjamin, I argue, refuses to engage in any attempt to qualify or quantify the unpredictable and emotive force of the general strike: in so doing, he emphasises the transformative potential of the general strike and opens the concept of pure violence to a meaning that exceeds the conceptual limitations of its reading by Schmitt. The major difference between Benjamin and Sorel is that for Benjamin the proletarian general strike, unlike its political counterpart, is efficacious only insofar as it neither conforms to a paradigm from the historical canon of political and economic systems nor aims at their simple recasting. For Benjamin, the proletarian general strike emerges only in the suspension of any action or force of production, and develops along the lines of *inaction*. Where Sorel's theory of the proletarian general strike is open to manipulation by – and actually has been historically appropriated by – nationalist and fascist political movements, I argue, Benjamin's reading of the proletarian general strike offers alternative possibilities. Counter to Laclau and Mouffe's statement that there is nothing that '*theoretically*' underpins this historical fact of Sorel's theory, I propose that a further and final inquiry into Benjamin's relationship with Schmitt will prove otherwise.

The general strike emerges, in Sorel's reading, through an understanding of Marxist thought that is criticised by Schmitt on several counts, not least of which refers to Sorel's mistaken attempt to map the emotive impulse of the strike. The flaws in Schmitt's thinking of the proletarian general strike, however, are also vital to developing an understanding of the concept. To map the 'creative consciousness' of the strike, for Schmitt, is equivalent to an attempt to collapse legal order. It is in an effort to maintain the distinction between chaos and order, then, that Schmitt maintains the agglutinative character of the proletariat to which Sorel's theory is indebted. Of particular importance is Schmitt's incisive criticism, in his 1923 text on the *Crisis of Parliamentary Democracy*, of Sorel's attempt to quantify and qualify the emotive impulse of the strike. Insofar as Sorel aims to map the creative force of consciousness he reinforces, according to Schmitt, the violence of a hierarchy, rather than undercuts it as befits the agenda of an anarchist. On account of a shared refusal to articulate the emotive force of the strike, both Benjamin and Schmitt make a departure from Sorel. That Schmitt's refusal is articulated in terms of Benjamin's own work, and that Schmitt, in his 1923 study, uses the same language deployed by

Benjamin in his 1921 'Critique of Violence', suggests that both Benjamin and Schmitt draw the force of their arguments from a similar source. That Schmitt uses this language in order to occupy the territory of pure violence as it has come to be understood over the course of my argument in Benjamin's terms, however, indicates a general struggle for control of the interpretation of pure violence. For Schmitt, to articulate the violence that inhabits the legal order would be to collapse the legal order itself. Benjamin, however, maintains the indeterminacy of pure violence. This is the point at which Benjamin makes his final departure from Schmitt: in refusing to account for the emotive force of pure violence, for how, or for why, or for when the proletarian general strike comes into being, Benjamin locates the force that unbinds the legal order.

1. Pure violence as technical innovation²

It could be said that pure violence, 'in the broadest sense',³ constitutes a mode of production, and as such, belongs to a structure of functional relations in which there exists a hierarchy of the various manifestations of violence. On the one hand, pure violence ultimately determines the structure of sovereignty – that is, the state of exception. As the state of exception affects the position of sovereignty within the hierarchy of manifestations of violence, however, the status of pure violence is also subject to alteration and change. Benjamin's particular concern is, firstly, with the extent to which this process of alteration and change in pure violence has undergone a 'restructuring of unparalleled rapidity'⁴ – but only insofar as he is concerned with the problem of how to locate and account for pure violence from within this process. Benjamin is clear in the Critique that the dynamics of pure violence correspond directly to the emergence of new technical and administrative modes of political strategies: in addition to the conference, the sanctioning of lies, and the penalisation of fraud the list would include state concession of the right to strike, which according to Benjamin actually 'contradicts the interests of the state'.⁵ There may well have been a time when workers resorted 'at once to sabotage and set fire to factories',⁶ but Benjamin's point in the case of pure violence is that it is now possible to locate a common motive that will 'induce men to reconcile their interests peacefully without involving the legal system'.⁷ Insofar as that common motive can be ascribed to fear – that is, the 'fear of mutual disadvantages that threaten to arise from violent

confrontation, whatever the outcome might be' – *it radically alters the relationship between modes of violence.*⁸

The relationship between fear and pure violence however, is not one-way. As a common motive, fear certainly affects the expansion of pure violence within the hierarchy of legitimate modes of violence. Fear also accumulates provisionally as a result of pure violence, however. Equally important to note is the fact that while fear is 'clearly visible in countless cases of conflict between private persons' the technique through which it is incorporated into pure violence is less simply traced.⁹ Benjamin cites the expansion of the number of modes of conflict between classes and nations against the background of 'the higher orders that threaten to overwhelm equally victor and vanquished' and which 'are hidden from the feelings of most, and from the intelligence of almost all' as one of the moments in which motives such as fear are virtually indiscernible.¹⁰ In this case there is a certain lack of clarity with respect to the emergence of pure violence, whose effects are far-reaching: above all, they suggest that fear is part of a hierarchy of 'orders' based on 'the most enduring motive for a policy of pure means'.¹¹ As fear loses its potency and is squeezed out of the hierarchy, new motives force their way in from below. In this sense, the emotional content of pure violence is its most stable value, and yet the value most subject to flux; it is at once the determining factor of relations between pure violence and the legal order, and what lends pure violence the ability to resist any determination itself. Of interest here is the fact that although fear is the common motive that guides and yet obscures the expansion of pure means as technical innovation, Benjamin stresses that he cannot attend to its dynamics – 'space' in the essay does not permit him 'to trace... the common interests' that correspond to relations of legitimacy between modes of violence.¹²

Not entirely unrelated, yet perhaps more amenable to use in delineating the contours of pure violence, is the double standard of legitimacy that accompanies the rise of modes of conflict between classes and nations. That double standard reads violence as either pure or impure. To be more precise: on an initial encounter with the Critique, pure violence can be taken to describe a world of pure mediations, a world in which pure violence precedes and give rise to pure language as a model of divine and revolutionary violence.¹³ The impure belongs to the sphere that Benjamin refers to in terms of law-positing and law-preserving, mythical, and sovereign forms

of violence.¹⁴ The problem is that this double standard of legitimacy suggests a systematic crisis of the exercise of ‘pure means in politics’.¹⁵ The effects of this crisis stem largely from a problem of qualification and quantification: in order to address the problem of how to qualify pure violence, which itself resists quantification, its correlate in pure language comes into focus. In this sense pure language stands as the tool with which Benjamin refines the framework for his analysis of violence as either pure or impure. As something linked to and preceded by pure violence, pure language is a specification of pure violence. From this perspective, it could be said that Benjamin depends on pure language to guarantee the authenticity of pure violence, and to correspond to an idealisation of pure violence. Pure language, then, constitutes an effort on Benjamin’s part to reconcile the double standard of legitimacy that reads violence as pure or impure.

An analysis of violence that draws its momentum from the notion of pure language is interesting, however, insofar as pure language itself is informed by irreconcilable imperatives. Pure language appears to be predicated on the imperative to lend structure to the human experience of the everyday, to reinforce, ultimately, the notion that there was and is in fact a world awaiting representation. Benjamin investigates the spectrum of pure language through ‘cultures of the heart’:¹⁶ ‘Legal and illegal means of every kind that are all the same violent may be confronted with non-violent ones as unalloyed means. Courtesy, sympathy, peaceableness, trust, and whatever else might here be mentioned are their subjective preconditions’.¹⁷ Both the problem and the redeeming factor of this culture of unalloyed discourse, however, is that it never actually reveals itself directly through interpersonal dialogue and resolution, but only indirectly in response to commercial demand. The objective manifestation of pure means, then,

is determined by the law (whose enormous scope cannot be discussed here) that says unalloyed means are never those of direct solutions but always those of indirect solutions. They therefore never apply directly to the resolution of conflict between man and man, but apply only to matters concerning objects. The sphere of non-violent means opens up in the realm of conflicts relating to goods. For this reason, technique in the broadest sense of the word is their most particular area. Its profoundest example is perhaps the conference, considered as a technique of civil agreement.¹⁸

The point of which Benjamin is expressly aware in his example of the conference is that the sphere of commodity production governs access to, in an effort to delimit, the

spectrum of pure means. It predetermines the terms on which the opening to the ‘sphere of non-violent means’ occurs,¹⁹ and its effects are such that the sphere of human agreement that is ‘wholly inaccessible to violence’ – the ‘proper sphere of “understanding” between “private persons”’ – becomes highly abstract, and controlled largely by ‘technique’.²⁰ In other words, uncontaminated speech opens only through the forum of the conference (*Unterredung*) and, in increasingly rare instances in the public realm, among diplomats, who through peaceful agreement aim to fulfil the delicate task of trying to overcome conflicts peacefully.²¹ Herein lies the paradox of pure language: the moments intervening between person and person occur beyond all legal systems and therefore beyond violence. Insofar as those modes of disclosure between private persons occur within the commercial spectrum, however, they are governed by technique. In the face of this phenomenon, the distinction between pure violence and legal violence becomes untenable. The fact that ‘there is no sanction for lying’ in techniques of civil agreement could, from another perspective, suggest a refusal to engage with the terms or conditions of violence – a refusal to enter into even a minimal dialogue with possible symptoms of violence. The history of changing relations of dominance between techniques of civil agreement, however, suggests that impure means consume the possibility of pure means completely. Through law-positing and law-preserving violence, the legal system responds to and quells any challenge to its sovereign role. In failing to recognise deception, which leaves no physical trace, the legal system leaves itself the option of deploying the dynamics of deception to its own end:

For whereas the legal system at its origin, trusting to its victorious power, is content to defeat lawbreaking wherever it happens to appear, and deception, having itself no trace of power about it, was, on the principle *ius civile vigilantibus scriptum est*, exempt from punishment in Roman and ancient Germanic law...²²

With every genre of legality comes a violent formation with which the mode of non-violence is interrelated. Until recently and to a similar effect as the non-sanctioning of lying there was no penalty placed on fraud, for example. But with the diminishing vitality of the legal system comes a ‘peculiar process of decay’ where the law

begins to set itself ends, with the intention of sparing law-preserving violence more taxing manifestations. It turns to fraud, therefore, not out of moral considerations but for fear of the violence that it might unleash in the defrauded party. Since such fear conflicts with the violent nature of law derived from its origins, such ends are inappropriate to the justified means of

law. They reflect not only the decay of its own sphere but also a diminution of pure means.²³

The legal prohibition of fraud makes it possible to consider the influence of technique on unalloyed violence, just as the historical development of civil agreement, as a singular specification of violence that occurs within the legal sphere, makes it possible to displace the legal structure of power. It could be said that the conditions of civil agreement are modified by the structures of power, but the point that Benjamin emphasises at this stage of the Critique is that these conditions are also and very clearly active in modifying those structures of power. The terms of civil agreement and legality are more interdependent now than ever before, and this has radically altered both the hierarchy of various modes of violence and the internal structure of unalloyed violence. For example, in the prohibition of fraud 'law restructures the use of wholly non-violent means because they could produce reactive violence'.²⁴ Conversely, the legal concession of the right to strike 'forestalls violent actions that the state is afraid to oppose' and in so doing contradicts its own interests.²⁵ Pure means, as a technical innovation, then, shares many of the features of the kind of violence that stages the existence of the authorities through the perceptible signs of conference and civil agreement. A model of pure means that is determined by conditions of commercial interest altogether, however, is one that Benjamin seeks to avoid. Insofar as such a model of pure means adheres to the form, or at least formalising conditions of commerce, it approaches the goal of a universal condition. The resultant temptation would be to determine pure means as only arising among conditions that had been seized or overpowered (*bemächtigt*) by the spirit of commerce,²⁶ and ultimately, to reduce the possibility for critical insight into conditions of violence. For Benjamin, then, a pure means with critical integrity must exist within the historical framework of the commercial interests of the state. Benjamin remains discrete on the precise form those commercial interests might take – we know only that they relate 'to goods'. The implication, however, is that pure means must maintain an antagonistic relationship with respect to those interests, or impure means.

2. Pure language as commercial interest²⁷

This chapter opened with an exposition of the ways in which pure violence, and its analogue, pure language, could be construed as technical innovation. Emotional currents were shown to belie pure violence, and to determine the behaviour of pure violence within the hierarchy of modes of violence, but were also revealed to accumulate provisionally as a result of pure violence. Through the task of diplomacy and the exercise of conflict resolution the commercial interests of the state – the specific forms of these commercial interests never receive any exposition in the ‘Critique of Violence’ – similarly functioned to register the degree of tension spanning the relationship between pure and impure means. Having established a dynamic of interaction between pure means and the governing hierarchies of power, then, the next part of the chapter stages Benjamin’s concerns with the extent to which economic forces facilitate, in order to potentially delimit, the occurrence of pure violence. The exercise seeks to establish an account of the already implied interaction between pure and impure means, or technical innovation and technique, in order to explain how that dynamic of exchange might become formalised. Pure violence as technical innovation is considered in conjunction with the work of art as it appears in Benjamin’s essay on ‘The Work of Art in the Age of Mechanical Reproduction’. Against the background of the process of reproduction that comes to constitute film, in turn, the possibility of language as other than ‘sheer, pre-instrumental technique’ is considered. An exposition of Benjamin’s earlier essay ‘On Language as Such and on the Language of Man’ explores the paradox of a pure language that constitutes – to refer back to the ‘Critique of Violence’ – the ‘proper sphere of understanding’ that is ‘wholly inaccessible by violence’, but that has yet to declare itself as anything other than a future possibility.²⁸

My exposition of the Art Work Essay begins with the motif of the aura, through which Benjamin attempts to make a distinction between autonomy, and the discourse of technical reproducibility itself. The concept of an original work of art, Benjamin states, creates the illusion of autonomy: the aura for Benjamin may take the form of ‘the unique phenomenon of a distance, however close it may be’.²⁹ Alternatively, however, it may constitute the one element that Benjamin deems ‘even the most perfect reproduction of a work of art’ to be lacking – ‘its presence in time and space, its unique existence at the place where it happens to be’.³⁰ The quality of

the aura that receives more emphasis than any other, however, is its capacity to return the gaze. The ontology of the aura then is twofold: as that which belongs to an object within the world of the perceiving subject, and as that which looks back from that world at the perceiving subject, it transcends the immanent sphere of that subject's consciousness. To have the capacity to respond to anything at all, and most especially to have the capacity to identify with the perceiving subject, also constitutes the capacity to perceive difference. The value of the auratic in Benjamin's later essay 'On Some Motifs in Baudelaire' lies very much in its ability to open the world to remarkable and distinct changes in perception:

Experience of the aura thus rests on the transposition of a response common in human relationships to the relationship between the inanimate or natural object and man. The person we look at, or who feels he is being looked at, looks at us in turn. To perceive the aura of an object we look at means to invest it with the ability to look at us in turn.³¹

Inasmuch as the aura facilitates the possibility for changes in perception, however, it does not efficiently address the dynamic interaction between technical innovation and the technological forces of reproducibility. It is in an effort to resolve this problem that Benjamin considers the auratic in a state of *decline*: as such, the auratic provides Benjamin with, paradoxically, a more tangible means by which to allegorise the relationship between the process of critical production and technical innovation. The temptation in doing so, however, is to equate technical innovation with the context within which it is situated: to pry 'an object from its shell' and consequently to destroy 'its aura', Benjamin writes, is the 'mark of a perception whose "sense of the universal equality of things" has increased to such a degree that it extracts it even from a unique object by means of reproduction'.³² Furthermore, if it is correct to state that everything released from the ruptured shell of the aura was 'already contained in the experience of the aura',³³ the question is one as to whether Benjamin's model of pure violence withstands a process of auratic decay that metamorphoses the object into a counterpart, or rather the process by which technical reproduction has brought about unprecedented social transformations in modernity, such that even things encounter us in the frail structures of intersubjectivity.

If any distinction between technical innovation and the forces of reproduction could be made, it would be through the democratisation of film. As a manifestation of technical innovation, however, film is necessarily situated within the spectrum of

commodity production. Benjamin writes in a long footnote to the Art Work Essay that filmic procedure virtually ‘enforces [mass] distribution’: ‘the production of a film is so expensive’, Benjamin reasons, ‘that an individual who, for instance, might afford to buy a painting no longer can afford to buy a film’.³⁴ On the one hand, film, unlike orchestral music, abolishes authenticity and the aura, and enjoins the participation of its audience – in an entirely revolutionary manner. As technical innovation, it engages with the technique of the ‘close up’ which, ‘extends our comprehension of the necessities which rule our lives’,³⁵ but which also facilitates an unparalleled acceleration and expansion of the process of automatisisation that gives rise to a dramatic ‘deepening of apperception’.³⁶ The problem of course is that film’s innovative potential lies in what Benjamin understands to be its virtual guarantee of changes in perception. Although Benjamin rejects the aestheticisation of politics as the instance in which technical brilliance and beauty mask the representation of a pernicious political programme, his theory appears to forego adequate recognition of film’s susceptibility to manipulation as a tool of the propertied and powerful.³⁷ This theoretical short-falling comes to expression through Benjamin’s interest in film’s mimetic interplay between reality and its modes of representation:

that is to say, in the studio the mechanical equipment has penetrated so deeply into reality that its pure aspect freed from the foreign substance of equipment is the result of a special procedure, namely the shooting by the specially adjusted camera and the mounting of the shot together with other similar ones.³⁸

The equipment-free aspect of reality is central to Benjamin’s faith in the innovative potential of film to the extent that it opens a ‘different nature’ to the naked eye – if only because an unconsciously penetrated space is substituted for one that demands conscious exploration.³⁹ Insofar as that innovative potential is tied exclusively to the processes of mechanical reproduction, it enables Benjamin to demonstrate how ‘the whole sphere of authenticity is outside technical – and of course, not only technical – reproducibility’.⁴⁰ Through film, then, Benjamin sets up a hypothetical distinction between the authentic and the reproduced to provide an example of how, once the process of reproduction has begun (and it has always already begun), authority itself is on the outside; it does not really exist. The production of a notion of the ‘cultural constructedness’ of authenticity at a moment when the concept of authenticity has

already, Benjamin implies, superseded itself, is merely symptomatic of the disintegration of authenticity.⁴¹

The authenticity of a thing is the essence of all that is transmissible from its beginning, ranging from its substantive duration to its testimony to the history which it has experienced. Since the historical testimony rests on the authenticity, the former too, is jeopardized by reproduction when substantive duration ceases to matter. And what is really jeopardized when the historical testimony is affected is the authority of the object.⁴²

The elimination of the aura of the work of art in the age of mechanical reproduction does not translate directly to a diminishing authenticity. The intensification of auratic decay does, however, endorse a sliding scale of relative standards that translates elegantly into the concept of time: it locates a precise moment from which Benjamin is able to exercise a prognosis of the historical transformation of the relationship between technical innovation and technique. As an abstraction of technical innovation, film should participate in the inauguration of a new historical era to which Benjamin refers towards the end of the 'Critique of Violence': 'On the breaking [*Entsetzung*] of this cycle maintained by mythic forms of law, on the suspension of law with all the forces on which it depends as they depend on it, finally therefore on the abolition of state power, a new historical epoch is founded'.⁴³ As a force of economic production, however, film assembles fragments of the modern industrial experience under a new law. That law in turn is built on a principle of auratic, or rather metaphysical, decay that renders any distinction between innovative forces of production and the endless process of reproduction virtually untenable.⁴⁴ Film should, in effect, break or deflect any cycle of reproduction. In its acceleration and automatising of perception, however, it risks becoming mere technical apparatus. Insofar as it facilitates the appearance of the beautiful illusion that receives the force of Benjamin's criticism in the *Origin*, it is no different to the political totality of legal institutions and the illusion of reconciliations produced by their compromises.

Like pure language, then, the innovative potential of film is obscured by its reproducibility, to the point where it endlessly replicates, rather than undermines, the fixity of historical representation. Important to note here, however, are the two points Hamacher draws in response to the question of pure language in the 'Critique of Violence'. Firstly, Hamacher makes no concession to the flaw in Benjamin's analysis of pure language, which is, undeniably, a means rather than a pure means:

‘Wherever something is said about something, wherever an action is performed through language – that is, wherever something is performatively posited – language must itself already be there as a form of mediacy and thus as sheer, pre-instrumental technique [*Technik*]’.⁴⁵ While the performativity of language is not a subject that will receive attention over the course of my argument, the implications of the conclusion Hamacher extracts from performativity are crucial to understanding the relationship between pure means and the system of functional relations in which it is situated. For Hamacher, in a second point that wavers between summary and hypothesis, one understands language as *necessarily* the means of mediacy ‘before it can and for as long as it might be the means to ends that could appear to lead us out of mediacy, allow us to transcend it, or claim to redeem us from it’.⁴⁶ It has been clear, up to this stage of the exposition of the Critique, that Benjamin authorises various occurrences of pure violence over all others. Here, however, Hamacher makes clear the fact of Benjamin’s effort in the Critique to separate pure language, as a variation of pure violence, from the banal aspect of language as a tool of effective communication. The problem is that, although there may be a proper sphere of understanding in language that is ‘wholly inaccessible to violence’, to reiterate a moment from the Critique, it has yet to declare itself in terms of anything other than a future possibility.⁴⁷

Pure language as administrative nihilism, or as shared dialogue

This ‘deep and incomprehensible’ paradox of pure language threads through much of Benjamin’s work – but most especially the 1916 essay ‘On Language as Such’,⁴⁸ where Benjamin problematises the ‘view that the mental essence [*geistige Wesen*] of a thing consists precisely in its language’.⁴⁹ This ‘view, taken as a hypothesis’, Benjamin continues, ‘is the great abyss into which all linguistic theory threatens to fall, and to survive suspended precisely over this abyss is its task’.⁵⁰ ‘Mental being’ communicates itself ‘in’ language: to render it ‘through’ language, would be to render it identical with linguistic being.⁵¹ To lift that ‘mental being’ out of its concreteness – and this is the point with which Benjamin takes issue – would refer beyond it, classify it as an object of discourse, and above all, *mediate* it.⁵² Pure language for Benjamin must communicate an unmediated ‘mental entity’ in itself –

or more specifically for Benjamin, an unmediated ‘mountain’ or ‘fox’ or ‘lamp’ in itself:

The language of this lamp, for example, communicates not the lamp (for the mental being of the lamp, insofar as it is communicable, is by no means the lamp itself) but the language-lamp, the lamp in communication, the lamp in expression. For in language the situation is this: the linguistic being of all things is their language.⁵³

Insofar as language in the purest sense is the ‘medium’ of its own communication, it is also the ‘immediacy of all mental communication’ and therefore ‘magic’.⁵⁴ The definitive feature of pure language, however, is a microcosm of the problem of all linguistic theory:

nothing is communicated *through* language, what is communicated *in* language cannot be externally limited or measured, and therefore all language contains its own commensurable, uniquely constituted infinity. Its linguistic being, not its verbal contents, defines its frontier.⁵⁵

The magic of language, Benjamin writes, points to its ‘infiniteness’ – to a conception of language that ‘knows no means, no object, and no addressee of communication. It means: *in the name, the mental being of man communicates itself to God*’.⁵⁶ Where mental being equates to language itself, however, there unfolds a process by which through man, ‘pure language speaks’.⁵⁷ In making man the speaker, man is given the task of ‘communicating (naming)’ and of deploying the true vocation of language, which is the ‘communicable (name)’.⁵⁸

Benjamin is as insistent on the distinction between these two aspects of language as he is on the exposition of their inter-relation. At the outset, then, the equation of linguistic and mental being presupposes the possibility of ‘revelation’.⁵⁹ Although this equation ‘takes the inviolability of the word as the only and sufficient condition and characteristic of the divinity of the mental being that is expressed in it’, the processes through which this equation unfolds bring to recognition ‘the highest mental region of religion’ which ‘is (in the concept of revelation) at the same time the only one that does not know the inexpressible. For it is addressed in the name and expresses itself as revelation’.⁶⁰ For Benjamin, the Biblical moment where God breathes his breath into man symbolises ‘the incomparable feature of human language’ and its ‘immaterial’, ‘purely mental’, and ‘magical’ community with things.⁶¹ There is the idea in Benjamin’s essay ‘On Language as Such’ that there are two acts of creation – the first being God’s and the second man’s. The process is

realised in the ways in which parents name and therefore dedicate their children to God: 'the names they give do not correspond – in a metaphysical rather than etymological sense – to any knowledge, for they name newborn children'.⁶² For Benjamin language never 'gives *mere* signs', and neither can any word be taken as in the case of 'mystical theory' as 'simply the essence of the thing':⁶³

Rather, the name that man gives to language depends on how language is communicated to him. In name, the word of God has not remained creative; it has become in one part receptive, even if receptive to language. Thus fertilized, it aims to give birth to the language of things themselves, from which in turn, soundlessly, in the mute magic of nature, the word of God shines forth.⁶⁴

Just as there are two acts of creation, there are also two instants that belong to the process of naming, one that refers to the violence of mediation, and another that is evocative of pure language. The dynamic interaction between them both finds its analogue in Benjamin's theory of translation, which sees the 'removal from one language into another through a continuum of transformations' rather than through 'abstract areas of identity and similarity'.⁶⁵ In Adamite or Edenic language, everything has its proper name – not even the 'Tree of Knowledge' with its apples that were supposed to impart knowledge of good and evil, Benjamin writes, could undermine the fact that this paradisiacal language was 'fully cognizant'.⁶⁶ After the Fall, however, language is rendered impure through its fragmentation and pluralisation: in the moment that 'name steps outside itself' to mark the birth of the human word, there is no longer a meta-name, or a name which goes beyond the name.⁶⁷ The true 'Fall of the spirit of language' is marked by the emergence of the judging word, whereby it becomes possible to discriminate between categories of, for example, good and evil, and where the 'word as something externally communicating, as it were a parody, by the expressly mediate word – of the expressly immediate, creative word of God, and the decay of the blissful Adamite spirit of language that stands between them' is realized.⁶⁸ Once Adam has eaten the fruit of the Tree of Knowledge, all future access to the pure word is denied. Thus Friedrich Müller's poetic appeal to the Edenic act of pure naming,⁶⁹ and the idea that poetry can achieve a re-naming of the world which would be non-violent, and which would not grasp the world as a series of particulars beneath the universals,⁷⁰ but would grasp the world in singularities. After the Fall, the only surviving element of this pure language, in which there is a name for everything, and which precludes mediation

and universalisation, is in mourning. It could thus be said that nature laments language itself. ‘Speechlessness’, Benjamin writes, ‘is the great sorrow of nature (and for the sake of her redemption the life and language of man – not only, as is supposed of the poet – are in nature)’.⁷¹ It could also be said, however, that nature actually just laments:

Lament... is the most undifferentiated, impotent expression of language. It contains scarcely more than the sensuous breath; and even where there is only a rustling of plants, there is always a lament. Because she is mute, nature mourns. Yet the inversion of this proposition leads even further into the essence of nature; the sadness of nature makes her mute. In all mourning there is the deepest inclination to speechlessness, which is infinitely more than the inability or disinclination to communicate.⁷²

There is something of a communion with pure language in the case of mourning which is implied at least to some small degree in the act of naming – but only insofar as the act of naming also invokes a further, heightened sense of mourning. This is the tragedy of naming that Benjamin encapsulates in terms of the Fall, and which he claims can be more ‘approximately’ explained as ‘overnaming’.⁷³ ‘Overnaming’, he writes, ‘as the linguistic being of melancholy points to another curious relation of language: the overprecision that obtains in the tragic relationship between the languages of human speakers’.⁷⁴ The process of naming is destructive, and yet its violence is an inevitable consequence of language.

Although the evidence of pure language in the Critique is less explicit and more tenuous than in Benjamin’s work ‘On Language as Such’, an understanding of its use of the concept of pure language can be reached through a return to the notion of conference (*Unterredung*). A concept which is also open to interpretation as direct talk, the concept of *Unterredung*⁷⁵ is replete with contradictions. The more obvious of these contradictions surfaces in Benjamin’s assertion that language could actually lend its practitioners a ‘non-violent’ sphere of human agreement – and that no such sphere had previously existed prior to its articulation through legislation.⁷⁶ Language discloses a sphere of non-violence to its practitioners, and it is in fact only through the occurrence of language that an opening is made to non-violence.⁷⁷ Equally, however, language chooses in order to determine the structure of that sphere of non-violence. The fundamental imperative underlying diplomacy is to provide a neutral space from within which to establish good will between warring factions: diplomats ‘must,’ Benjamin writes, ‘entirely on the analogy of agreement between private

persons, resolve conflicts case by case, in the name of their states, peacefully and without contracts'.⁷⁸ 'Only occasionally', however – Benjamin concedes – does 'the task of diplomats in their transactions consist in modifying legal systems'.⁷⁹ Conflict resolution, then, locates something of a virtual world, where there is little allowance for any gap between pure violence, and the legal order:

A delicate task that is more robustly performed by referees, but a method of solution that in principle is above that of the referee because it is beyond all legal systems and therefore beyond violence. Accordingly, like the intercourse of private persons, that of diplomats has engendered its own forms and virtues, which were not always mere formalities, even though they have become so.⁸⁰

Where conflict resolution may have been effective once, here it only simulates an attempt to open a space from within which some dialogue between the legal system and the language of diplomacy might occur. As with the case of film as technical innovation, the dynamics of conflict resolution are so subtle, that it has obscured its own mechanics to become mere technique. Thus it could be said that a pure means that fails to withstand contact from the various manifestations of violence as they occur within a hierarchy of power has never existed. The interpretative direction set by Derrida's 'Force of Law' has aimed for as much again and again, only to place pure violence on an unreachable horizon of possibility. The idea that pure means should withstand contact from legal manifestations of violence reinforces – or even posits – pure violence as an administrative nihilism. In doing so, it presumes the authority of an impure means, and creates an illusion of consensus among members of an allegedly homogeneous community. From the preceding exposition of Benjamin's art-theoretical considerations, and dialogue shared between the processes of naming and over-naming, my interpretation of pure means could be stretched further. The following exposition of the concept of *Habeas Corpus*, as it is implied by the 'Critique of Violence', argues that an immediate and pure violence is feasible, but obscured by positing and preserving acts of violence that are increasingly powerful and visible.

3. Habeas corpus and the rule of law⁸¹

The following exposition of the concept of *Habeas corpus* argues that a pure means, as it is characterised in the ‘Critique of Violence’, is feasible, but obscured by positing and preserving acts of violence. Of specific interest is the transition made from *Habeas corpus* as writ, or positing of sovereign power, to its incorporation into legal codification, or more precisely the *Habeas Corpus Act* of 1679.⁸² The evolution of the concept of *Habeas corpus* is important to my argument insofar as it demonstrates very literally the transition from law as sovereign favour and mercy to law as a zoning of the body by the rule of law: it also facilitates an understanding of the extent to which the dialectic of discipline and control shapes the legal subject’s ‘subjectivity’.⁸³ Most importantly, however, the evolution of the concept reveals the process through which the fiction of a legal order comes into being. As an appropriation of the writ, or the sovereign positing of power, the *Habeas Corpus Act* depends for its reinforcement on the rule of law.⁸⁴ That dependence articulates a tension between the positing and codification of the law that ultimately reinforces my argument for pure violence in Benjamin’s ‘Critique of Violence’.

To begin with, then, *Habeas corpus* as writ provides an account of the indeterminacy and inconclusiveness of the sovereign imperative to have or produce the body at the scene of trial. In their article on ‘Habeas Corpus: The Law’s Desire to Have the Body’, Haverkamp and Vismann convey the extent to which the writ, which begins with the sovereign command addressed to a sheriff to ‘[h]ave, [or produce], the body of the defendant on a given day before the court’, guarantees the later act.⁸⁵ As the institutionalisation of the warrant, ‘the writ’ – the written request for the body – brings the body before the law, produces it, or seizes it for the law. Insofar as the writ demands and remands bodies according to the *voluntas regis*, it demonstrates the king’s power over the law.⁸⁶ The scene invoked at court is one where both jurors and defendant are equally summoned by single writ, and until the rule of law comes into effect by means of the *Habeas Corpus Act* to contest the king’s jurisdictional power and to limit his involvement, the court is the theatre of the king’s sovereignty and of his power over his subjects.

The motif of clemency adds to the intricacies of the transition from writ to act, especially insofar as it made manifest the king’s position above *and* with respect to the law.⁸⁷ Haverkamp and Vismann stress the contradictory position to which the

sovereign relation to the law is staked here: the king is bound to a law never to be used against his will, but that law cannot be dissolved by the logic of due execution. This is the legal crux with which the sovereign is faced: the rise of the importance of the trial, which opened a space for the ceremony of clemency in order to expose the king's power over life and death, also provided a forum through which mercy could be exhibited as the king's prerogative.⁸⁸ Haverkamp and Vismann stress in no uncertain terms that the sovereign bestowal of grace upon the legal subject took place in spite of and beyond the legal monopoly of justice, but that the king nevertheless needed the convicted body in order to perform, above the law, the inner mechanics of the law.⁸⁹ To summarise Haverkamp and Vismann's argument here for the purposes of my own: as distinct from the system that was *de gratia* – or due to the king's sovereignty, and dependent entirely on the king's grace – pardon *de cursu* was granted in the majority of cases recorded from the thirteenth century onward. The latter, being jurisdictional and concerned with questions of excuse, did not attest to the same 'economics', Haverkamp and Vismann claim, as did the royal prerogative, in its function of balancing rather than executing.⁹⁰

Haverkamp and Vismann's historicisation of the process of *Habeas corpus* is crucial to my own here insofar as it describes the system of pardon *de cursu* as a merely procedural economy, able to absorb the *gratia* part and to neutralise the instrument or writ that was to produce the body with respect to the law. It follows, according to this reading of the process from writ to act, that the later perception of pardon as weakness emerged in response to the fragmented state of the pardoning system, but also actively contributed to the decline of the king's superior exercise of mercy to the status of mere favour. The decline of clemency and the decline of rule of mercy to the status of mere favour provided a background, then, to the inauguration of the *Habeas Corpus Act* of 1679. In turn, the 1679 act gradually 'individuated the body wanted into a bearer of rights', which is to say that insofar as the act of 1679 produced and invested a bearer of human rights, a body no longer subject to the king's grace, the king's clemency, or arbitrary execution of mercy became superfluous.⁹¹ So from one perspective *Habeas corpus* is 'a prerogative writ, which concerns the king's justice to be administered to his subjects; for the king ought to have an account why any of his subjects are imprisoned'.⁹² What Haverkamp and Vismann articulate so clearly, though, is the extent to which the

king's position above the law is staked on a responsibility for his subjects, and as a result of this position actually facilitates the functional change of *Habeas corpus* from an apparatus of pardon into a crucial device for determining the lawfulness of detention.⁹³

As Haverkamp and Vismann understand the evolution of the system of pardon the legal code becomes so invidious that it extends the sovereign system of pardon *de gratia* beyond the parameters of the trial to the outermost reaches of the space inhabited by the legal subject. Insofar as there is a tense relationship between the system of sovereign grace and the system of legal pardon, its effects are threefold: it demonstrates how *habeas corpus* as writ, as an institutional desire, a desire produced by an institution and manifest in writing, ultimately looks to the rule of law for re-enforcement; it provides an account of how any given discursive practice, spoken or written, becomes inscribed into institutional practice, legal code, or authoritative structure; and it locates the numinous point at which the positing of the law translates to a codification of the law, when the law pretends to enforce its codification through positing. That the relationship shared between the indeterminacy of language and the rigidity of the legal code comes to expression through the concept of sovereignty; that *Habeas Corpus* conflates sovereign discretion with the legal code, such that the legal order is gradually able to undermine sovereign power – these are the series of contradictions with which an account of the violence administered by the legal order is faced.

From sovereign mercy to social control

The end of the last chapter showed both divine violence and sovereign violence as distributors of guilt through punishment or retribution; that guilt is neither determined exclusively by, nor belongs exclusively to, the mythical-legal structure of violence. Here, the process of *Habeas corpus* demonstrates how the indeterminacy and inconclusiveness of sovereign discretion comes to be monopolised by the legal order. In order to reinforce that monopoly of power, the rule of law translates guilt into a permanent, virtually ubiquitous debt – or in Haverkamp and Vismann's words, indebtedness through 'surety, tender, or bail'.⁹⁴ Each mode of indebtedness prescribes a bond between the body and law, and redefines the law's desire to have the body and to keep it within reach. In its transference of the topology of the law

onto money, bail determines that it is no longer the physical presence of the body, not the body subject to torture or detention, that is at issue, but rather the body's freedom of movement. More importantly, and I am still following the lines of Haverkamp and Vismann's argument here, the connection between body and law through this system of indebtedness continues the scriptural process: the deposit is 'endorsed on the writ' – so that the writing perpetuates and decorporealises the body at once; in its appropriation of writ, the legal code has full control of the body; and at the same time, the potential for control is undermined by the economic order in which the body is dissolved.

To a similar end, depositions become independent of witnesses' actual performance in court. These depositions function, on the one hand, like bail deposits, to conserve the body wanted by written or pecuniary surrogates. Equally, they suspend the law's desire to have the body.⁹⁵ Haverkamp and Vismann summarise the effects of this problem succinctly:

The alternative of 'jail or bail' opens up a zone of discretion functionally analogous to the clemency of the king. It is an administrative zone, to be sure, which lends itself to police-like actions without proper legal grounds; like the king's favour, it borders on terror. Social control, it turns out, contains a 'zoning' like the king's, a violence that is structural rather than intentional, and the question is how to read its representational ratio.⁹⁶

On these two points, I shall finish my exposition of Haverkamp and Vismann's reading of *Habeas corpus*. This passage brings to surface the extent to which the legal code *suspends* the law's desire to have the body through the implementation of discretion. More importantly, however, it outlines the suspension of the law's desire to have the body as something that *discredits* discretion, which was at first the sovereign prerogative, in favour of public control. On the one hand, in the transition from the king's order to 'produce' the body to the liberty of 'having the body' *Habeas Corpus* comes to act as a major counter to the king's rule, where it had previously, as writ, been a prerogative of the king. *Habeas corpus*, from writ to act, however, demonstrates how what ought to have been a question of law becomes a question of favour – which is to say that it seems to have escaped and transcended what would otherwise have constituted the formal existence of the rule of law.⁹⁷

It may be, as has already been established, that the legal code, as *Habeas Corpus* act, is enforced through the rule of law. That the legal code proceeds,

however, from the fact of the original positing of the law as having arisen, in turn, from an act of force or of violence, or even, depending on the translation, of sovereignty (*Gewalt*), remains open to clarification. My point here is that sovereignty acts as the point through which the connection between body and language comes to expression. Geyer-Ryan makes a similar point in her Derridean reading of the 'Critique of Violence'. The crisis manifested by sovereignty, or of law, or of force, for Geyer-Ryan, is one where

by a metaphorical process language is imposed on the body, just as the body in turn makes language flesh. If it is in law that the impure, intermediate realm of the body and of language, of the body and the symbolic order, emerges most clearly through their enforced combination, then this relation is also present, in a more or less concealed manner, in every discursive practice. One no longer perceives the original act of force because of its transition from the pure act, and thus from its presence, into the condition of representation: its transition from a body which does not know itself *in actu* into a sign which is no longer perceptible.⁹⁸

The body shares some dialogue, as it were, with language. It both accepts and internalises language, but language does not materialise until it has come into contact with the body; the body brings that language into being, and renders it tangible. The 'discursive practice' to which Geyer-Ryan refers above not only governs the conditions of representation of the legal code but also governs the production of the legal subject. There is some tension, then, between each 'discursive practice', as the producer of meaning and as the inscription of that meaning into the process of *Habeas corpus*.⁹⁹

In my digression through Haverkamp and Vismann's efforts to historicise *Habeas corpus* as process from writ to act, I have established the problem that is central to Benjamin's 'Critique of Violence': the problem of how best to account for the homogenisation of the original, imperceptible act of force into the legal order, in order to render that act of force available to critique. The transition from writ to act, I argue, exposes discursive practice as the symptom of an effect whereby it is no longer possible to access things in themselves, or even ourselves as ourselves. The evolution of *Habeas corpus* raises, furthermore, the question of whether the complex of being can be ascribed to an individual subject, or whether the complex of being is fixed and determined by forces external to the subject. It brings into question the locus of the disclosure of being. The history of *Habeas corpus* clarifies precisely

what is unclear: that the relationship between self and language cannot be considered transparent in any way because the question of what one is actually resists understanding. To draw this account of *Habeas corpus* back to Benjamin: through the discretionary interests of the sovereign, through the system of pardon *de gratia* and the exercise of clemency, the sovereign reinforces his position above and with respect to the law. In the sovereign bestowal of grace upon the legal subject, execution is suspended. It is this moment in which execution is suspended by the discretion of the sovereign, but before which that discretionary interest is appropriated by the legal code, that is crucial for Benjamin. It offers an interpretation of the way in which each discursive practice, spoken or written, is initially regarded as having epistemological validity, and to perform different functions, but is ultimately consumed by the legal order.

The proletarian general strike

The legal crux with which Benjamin is faced, then, presents two alternatives. The first demands that Benjamin concede pure language, or what Haverkamp and Vismann construe as the ‘discursive practice’, to legal codification. In this sense the concept of pure language in Benjamin would draw exclusively on the structure of sovereignty as it appears in Schmitt, conflating legal order and sovereign order. Similarly, it would emulate the process of *Habeas corpus*, sacrificing sovereign discretion to the interests of legal codification. The second, however, requires that Benjamin concede absolute subjectivity to the ‘discursive practice’ itself. To do so, Benjamin would have to ignore the extent to which pure language is produced by structural interrelationships within a system of economics and commerce. To invest absolute subjectivity in pure language would bring Benjamin’s inquiry to the ‘endless task’¹⁰⁰ of diplomacy, a point at which pure language locates an unobtainable horizon of future possibility. The result of this legal crux is that pure language marks the site of a fraught relationship between the subjective ‘discursive practice’ and the monopolisation of discourse – both written and spoken – by the legal code. In seeking to displace this opposition between discursive practice as absolute subjectivity and discursive practice as that which is appropriated by the legal code, Benjamin proposes another model of pure violence. Here begins an introductory

characterisation of the second specification of pure violence in the 'Critique of Violence', the proletarian general strike.

As a politics of pure means the proletarian general strike comes to expression within the legal code. Benjamin terms the conception of the proletarian general strike, and thus the conception of pure violence that emerges within it, a 'moral' (*sittlichen*) conception.¹⁰¹ The occurrence of the strike through the authoritarian moral decision is such that it escapes the grasp of the legal order. In order to assess the way in which the crowd initiates revolution without blood or even, as Benjamin states the case, without violence, it is necessary to conceive the crowd as sovereign. A crowd achieves its sovereign status in the act of striking, which is to say that at the same time it strikes, it also participates in forms of action that remove its collective body from the means-ends rationality. In this way, the crowd throws away any notion of there being a future: it becomes bereft of itself, naked, or pure. It breaks the relationship to itself and without the cover of an identity, is exposed to the risk of appropriation by and subordination to the structures of power against which it turns.

The problem is that this conceptualisation of the proletarian general strike presumes consensus among the members of an allegedly homogeneous community. It invests the proletarian general strike, by implication, with the capacities of maintaining social order, rather than with the potential of critiquing and transforming the legal order. With this presumption comes the idea that the proletarian general strike should 'depose' the political totality of legal institutions, and furthermore, the implication that the illusion of reconciliation produced by the compromises of these institutions should be shattered (*zerschlagen*). Here, I refer to Hamacher, who supports the notion of the strike in the terms of an 'event which no longer posits and which represents nothing but the unrepresentable, in which the superiority of the moral order over any political order of statutory law announces itself'.¹⁰²

Apart from, but not unrelated to the interpretation of the proletarian general strike, is the question of the illusion of an appearance (*schöne Schein*). As a force that merely shattered the falsity of historical representation, the proletarian general strike would inevitably become substitutive in character – that is, it would merely substitute itself for the recently deposed power, and thereby relinquish its revolutionary imperative. It would also participate, in this substitutive role, in the production of an illusory appearance or rather in the production of an authoritative

and objective representation of history. As a specification of pure violence, however, the task of the proletarian general strike, according to Benjamin's 'Critique of Violence', is to destabilise the illusion of continuity and authority established by law-positing and preserving violence.¹⁰³ To align the proletarian general strike with destructive and substitutive tendencies would be to misinterpret the position of incommensurability it occupied with respect to the legal order. Under such circumstances the proletarian general strike would constitute nihilism alone. Equally misguided, however, would be the attempt to read pure violence, in conjunction with Derrida's 'Force of Law', as the absolute other of previous law. I refer here to Geyer-Ryan's uncritical appropriation of the framework through which Derrida reads the proletarian general strike. The notion of the proletarian general strike is correctly asserted, in Geyer-Ryan's reading of Benjamin through Derrida, as an 'incision without precedent', but is incorrect in its agreement with Derrida's interpretation of the proletarian general strike as '*contaminated*' by that earlier law, which, 'as Derrida says', she writes, 'it extends, radicalises and distorts'.¹⁰⁴ Pure and revolutionary violence, Geyer-Ryan continues, 'metaphorises and metonymises; in the political realm this manifests itself as war and the general strike. On the other hand, one can thus say that metaphors and metonymies signify revolution, war and the general strikes in the order of the logos'.¹⁰⁵ The passage from Derrida that Geyer-Ryan cites in support of this claim runs as follows:

there is a possibility of 'general strike', a right to general strike in any interpretative reading [...] One has the right to suspend the legitimating authority and all its norms of reading, and to do this in the most incisive [*les plus lisantes*], most effective, most pertinent readings, which of course will sometimes argue [*s'expliquant*] with the unreadable in order to found another order of reading, another state [...] There is something of the general strike, and thus of the revolutionary situation, in every reading that finds something new and that remains unreadable in regard to the established canons and norms of reading [...] If there is something of strike and the right to strike in every interpretation, there is also war and *pólemos*.¹⁰⁶

Derrida's specific claims aside for the moment, the point I object to above all in Geyer-Ryan's line of argument is the use of this passage to positively reinforce pure violence as 'the appearance of a programme that constitutes absolute rupture, shock, undecidability, arbitrariness, or denaturalisation'.¹⁰⁷ The distinguishing features of the proletarian general strike lie neither in its being an absolute other to the legal code, nor in its distortion, radicalisation, or extension of that law. It functions neither

to shatter, nor to disrupt, nor to fragment the existing legal order. Were it to pierce the illusion of a false appearance that has become, over the course of this exposition of the 'Critique of Violence', analogous to the falsity of a representative totality (this is understood in Benjamin's essay in terms of the historical oscillation between law-positing and law-preserving forms of violence), the proletarian general strike would merely substitute itself for a new order. The next section of this chapter will consider Benjamin's appropriation of Sorel's distinction between the political strike and the proletarian general strike to reveal that the latter does in fact involve a process of differentiation from the legal order. In so doing, however, my point will be to prove that pure violence does not raise the question of rupture or of shock, but rather raises the question of how, in terms of the proletarian general strike, it *comes into being*.

4. Benjamin's reference to Sorel

My inquiry into pure violence sees Benjamin faced with a recurring dilemma: the commercial sphere provides a forum through which the relationship between pure violence and the legal order opens, but it also delimits the occurrence of pure violence in order to control it. The legal order is the sole terrain on which pure violence comes into effect, yet it also restricts the outbreak of pure violence to a position where it has little option other than to revert, on having destabilised the legal order, to substituting itself for that order. This antinomy can be perceived more clearly in revolutionary syndicalism. Benjamin's formulation of the proletarian general strike is written in response to Sorel's *Reflections on Violence*.¹⁰⁸ In the 'Critique of Violence' Benjamin appropriates Sorel's distinction between the political general strike and the proletarian general strike, but the similarities between the two thinkers end on this distinction. That Sorel did not inspire or create the syndicalist movement has been established in literature surrounding his work.¹⁰⁹ His *Reflections* did, however, articulate a commitment to the French syndicalist movement and the tactics of direct action by the working class. It is against the background of strategic debates on the politics of striking that Sorel's study takes place.¹¹⁰ Through the general strike, according to Sorel, capitalism would be brought to an end and replaced by a society of producers rather than by a State socialism. Of particular importance is his promotion in *Reflections on Violence* of the notion of syndicalism

as Marxist, and his affirmation of the use of violence in the strike.¹¹¹ Given that Sorel's theorisation of the proletarian general strike is situated in a long trajectory of Marxist attempts to break with economism and to establish class unity at some other level, its co-ordinates offer significant resources for understanding the proletarian general strike in Benjamin.

Initially, the comparison between the two is straightforward. Benjamin appears, at the outset, to appropriate Sorel's framework. The 'Critique of Violence' makes explicit reference to Sorel's *Reflections on Violence* and to Sorel's distinction between the political strike and the proletarian general strike. 'Sorel has credit', Benjamin writes, 'from political rather than purely theoretical considerations – of having first distinguished them' and for having established their 'antithetical relation to violence'.¹¹² Where the partisans of the former merely reinforce the relationship between law-positing and law-preserving forms of violence, and hold the 'strengthening of state power' at the basis of their conceptions, the proletarian general strike seeks altogether to destroy the transfer of power from one privileged party to another, and in turn, to debilitate state power.¹¹³ Benjamin, like Sorel, prioritises the proletarian general strike over the purely political concept of a general strike that aims to replace one state with another. Benjamin goes on to establish the distinction between the two forms of strike on Sorelian terms:

Whereas the first form of interruption of work is violent, since it causes only an external modification of labor conditions, the second, as a pure means, is non-violent. For it takes place not in readiness to resume work following external concessions and this or that modification to working conditions, but in the determination to resume only a wholly transformed work, no longer enforced by the state, an upheaval that this kind of strike not so much causes as consummates. For this reason, the first of these undertakings is lawmaking but the second anarchistic.¹¹⁴

Benjamin's specific reference is to those who assume the interests of others in the name of either professional or amateur expertise. Benjamin quotes directly from Sorel here: "With the general strike, all these fine things disappear; the revolution appears as a clear, simple revolt, and no place is reserved either for the sociologists or for the elegant amateurs of social reforms or for the intellectuals who have made it their profession to think for the proletariat".¹¹⁵ Benjamin is all too aware of the bourgeois appropriation of the revolution, and the extent to which parliamentary democracy, as a contingency of bourgeois power, "nullifies all the ideological

consequences of every possible social policy”¹¹⁶ The proletarian general strike – and Benjamin quotes directly from Sorel here again – “clearly announces its indifference toward material gain through conquest by declaring its intention to abolish the state; the state was really... the basis of the existence of the ruling group, who in all their enterprises benefit from the burdens borne by the public”¹¹⁷

Sorel’s formulation of the proletarian general strike

Sorel is explicit in thinking the proletarian general strike through a shift in paradigm from an orthodox to a less orthodox Marxism. Marxism is, nevertheless, the metaphysical underpinning of his conceptualisation of the proletarian general strike. These two factors that contribute to the proletarian general strike as Sorel conceives it, will be considered independently of one another. In dealing with the more orthodox tendencies of Sorel’s theory, it is important to consider Sorel’s interest in socialism as a moral question. In the moral qualities that bind a society together, Sorel writes,

the revolutionary syndicalists wish to extol the individuality of the life of the producer; they therefore go against the interests of the politicians, who want to direct the revolution in such a way as to transmit power to a new minority; they undermine the foundations of the State. We entirely agree with all of this; and it is precisely this character (which so terrifies the parliamentary socialists, financiers and theorists) which gives such extraordinary moral weight to the notion of the general strike.¹¹⁸

Sorel is dedicated, moreover, to the *results* of the *moral quality* of the strike, which is why he induces Daniel Halévy to

know, as well as I, that all that is best in the modern mind is derived from the torment of the infinite; you are not one of those people who regard as happy discoveries those tricks by means of which readers can be deceived by words. That is why you will not condemn me for having attached great worth to a myth which gives socialism such *high moral value* and such great honesty. It is because the theory of myths produces such *fine results* that so many people seek to dispute it.¹¹⁹

At the same time that Sorel refuses to render his account of the proletarian general strike accountable to the ‘stable affirmations of science’, however, he also introduces ‘artificial worlds’ into his social analysis.¹²⁰ Now, Sorel does this because he is trying to account theoretically for how, ‘when the masses are deeply moved it then becomes possible to describe a picture which constitutes a social myth’.¹²¹ Insofar as Sorel draws from Marxism an interest in the ‘theory of the formation of a new agent

– the proletariat – capable of operating as an agglutinative force that would reconstitute around itself a higher form of civilization and supplant declining bourgeois society’, he also accepts Marxism as a science.¹²² All real science, for Sorel, is constituted on the basis of these artificial worlds, or artificial elements. Insofar as these artificial elements constitute the paradigm of social relations they are not arbitrary. They can constitute the origin of utopian or mythical errors, but are more likely, in the case of industrial society, to refer to the mechanism around which the social terrain is becoming increasingly unified. Sorel’s specific interest is in the growing unification of the social terrain around the image of industrial progress: ‘I think, moreover, that I have shown that a general strike corresponds to those that are necessary to promote production in a very progressive form of industry, that a revolutionary apprenticeship may also be an apprenticeship as a producer’.¹²³ That Sorel does not question the reliance of this socialist productivist paradigm on capitalism¹²⁴ is irrelevant for the purposes of my argument. The major point to draw from Sorel’s introduction of the productivist paradigm is that it aggregates and condenses what would otherwise stand as indeterminate and diverse social forces into a collective labour power.

This is where, in the *Reflections on Violence*, Sorel begins to make his departure from orthodox Marxism. For Sorel, it is not the objective laws of historical evolution that determine syndicalism, but rather the formation of a new agent – the proletariat – capable of operating as an agglutinative force that would reconstitute around itself a higher form of civilization and supplant declining bourgeois society.¹²⁵ In his struggle against the quietism of orthodoxy Sorel not only displaces the constitutive moment of class unity to the political level; he also feels obliged to specify the *founding bond* of political unity.¹²⁶ The syndicalist ‘general strike’, or the ‘revolution’ in Marx, comes into being through myth and functions as an ideological point of condensation for proletarian identity. From this perspective Marxism is not just a scientific analysis of society; it is also the ideology uniting the proletariat and giving a sense of direction to its struggles. The agent conscious of its own interests – the one that will shift society to a higher form – is not constituted by a simple objective movement, but is united and given a sense of direction through that ideology.¹²⁷ From this perspective the proletarian general strike takes on the role of a regulating principle, which allows the proletariat to think the indeterminacy of social

relations as organised around a clear line of demarcation. In this way, the category of totality, initially eliminated as an objective description of reality, is reintroduced as a mythical element to establish the unity of the workers' consciousness.¹²⁸ A unified myth, then, only guarantees revolutionary movement insofar as it is constituted on the basis of the dispersion of subject positions.¹²⁹ Sorel writes that

men who are participating in great social movements always picture their coming action in the form of images of battle in which their cause is certain to triumph. I proposed to give the name of 'myths' to these constructions, knowledge of which is so important for historians: the general strike of the syndicalists and Marx's catastrophic revolution are such myths...¹³⁰

Sorel is always trying to work out the level at which the forces in struggle find their unity: the unforeseeable future of a unified society depends on *action* and *will* in order to materialise, but Sorel also attributes it to an ensemble of *images* that foreshadow the theory of myth:

we should not attempt to analyse such groups of images in the way that we break down a thing into its elements, that they should be taken as a whole, as historical forces, and that we should be especially careful not to make any comparison between the outcomes and the pictures people had formed for themselves before the action.¹³¹

Among the possibilities for achieving unity in society stands the will of certain groups to impose their conception of an economic organisation. Once working-class identity ceases to be based on a process of infrastructural unity, the working class comes to depend on the break from the capitalist class, which could only be completed in its struggle against it. For Sorel, violence is the only force that can generate the consciousness of this antagonism, and under these conditions war becomes the condition for working-class identity. A search for common areas with the bourgeoisie can only lead to the weakening of the proletarian class. The proletarian general strike, then, also embodies the possibility of a heroic future that will remodel declining bourgeois civilisation:

In a society so enfevered by the passion for the success which can be obtained through competition, all the actors walk straight before them like veritable automata, without concerning themselves with the great ideas of the sociologists; they are subject to very simple forces and not one of them dreams of escaping from the circumstances of his condition. It is only then that the development of capitalism is carried out with the inevitability which struck Marx so strongly and which seemed to him comparable to that of a natural law. If, on the contrary, the bourgeoisie, led astray by the nonsense of the preachers of ethics and sociology, returns to the ideal of a conservative

mediocrity, seeks to correct the abuses of the economy and wishes to break with the barbarism of their predecessor, then one part of the forces which were to further the development of capitalism is employed in hindering it, chance is introduced and the future of the world becomes completely indeterminate.¹³²

Within this theory of a rift between the bourgeoisie and the proletariat lie further problems with Sorel's thinking of the proletarian general strike. Not least among them is a fact that he himself acknowledges: the bourgeois class constantly reaffirms and defends its position through a reactionary attitude that is equal in force to the proletarian general strike.¹³³ Furthermore, in its conservative mediocrity, the bourgeois class renders the distinction between classes dangerously subtle. And as a fervent Dreyfusard, Sorel must always reaffirm the 'cleavage' between classes,¹³⁴ but as such Sorel leaves himself no other option than to return, full circle, to the problem of a situation where one class has no alternative but to overcome the other. The contradictions in Sorel's formulation of the proletarian general strike do not end here, however. Sorel's formulation of the process in which the proletariat – as the revolutionary subject – becomes aware of a new set of rights opposing it to the class adversary, and establishes a set of new institutions in order to consolidate these rights,¹³⁵ leads the proletarian general strike into even deeper and more dangerous waters. In short, Sorel's argument for the indeterminacy of the proletariat fails to account for any contradiction between the plurality of working class positions within the political and economic system. As a partisan of the political struggle of the working class, Sorel considers the possibility for a working class that is in no way *economically* linked to the middle sectors, but that constitutes, at the same time, a pole for the political re-groupment of those sectors.¹³⁶

Benjamin's departure from Sorel

Benjamin's model of the proletarian general strike expresses some continuity with the orthodox beginnings of Sorel's Marxist career. Both Sorel, in his more orthodox leanings, and Benjamin in his conceptualisation of the general strike, refuse to establish the idea of 'an underlying historical mechanism that both unified a given form of society and governed the transitions between diverse forms'.¹³⁷ If Benjamin's formulation of the proletarian general strike were entirely Sorelian in impulse, however, it would affect a doctrine of revolution in application to history.

The connection between Benjamin and Sorel would not be unlikely: Benjamin's concept of the general strike aims at the 'elimination' of the illusion of choice that comes to characterise a bourgeois model of parliamentary discussion, and as such could be taken to evoke a doctrine of Sorelian anarchy in application to the State. The major difference between Benjamin and Sorel, however, is that for Benjamin, the proletarian general strike, unlike its political counterpart, is efficacious only insofar as it neither conforms to a paradigm from the historical canon of political and economic systems, nor aims at their simple recasting.

This is where Benjamin begins to express some distance from Sorel's formulation of the proletarian general strike. Benjamin's theory avoids the mistake of developing a transcendental pragmatic account of social and political life, or of resurrecting a production paradigm, and it refers to a refusal to take action. It constitutes a theory of the strike that suspends its previous forms in order to inaugurate another history no longer dominated by forms of positing and work, presentation and production. For Benjamin, the pure mediacy of the proletarian general strike only emerges in the suspension of any action or force of production, and develops along the lines of *inaction*. Moreover, it occurs non-violently in the spectrum of pure means, independently of the theory of ends that characterises Sorel's theory of the general strike. Insofar as it leaves no trace, Benjamin's proletarian general strike shares some analogy with divine violence. Benjamin's formulation of divine violence is worth citing here again: 'Mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it'.¹³⁸ Unlike Sorel, for whom the non-violence of the proletarian strike is mythical, Benjamin describes myth as lawmaking, and lawmaking, in turn, as 'powermaking, assumption of power, and to that extent an immediate manifestation of violence'.¹³⁹ Both the proletarian general strike, as it figures in Benjamin's essay, and its analogue, divine violence, are situated in the absence of law-positing: where the proletarian general strike is 'non-violent', and functions as a 'pure means with no end in view', the legal order is mythical, and 'intimately bound' to ends. Where for Sorel myth is the defining feature of the strike, for Benjamin myth is the only feature that can be definitively excluded from a characterisation of the proletarian general strike.

We could say that like Sorel, Benjamin is compelled to displace the constitutive moment of class unity to the political level:

[e]ven if it can rightly be said that the modern economy, seen as a whole, resembles much less a machine that stands idle when abandoned by its stoker than a beast that goes berserk as soon as its tamer turns his back, nevertheless the violence of an action can be assessed no more from its effects than from its ends, but only from the law of its means.¹⁴⁰

Unlike Sorel, however, Benjamin does not feel obliged to specify the *founding bond* of political unity. Benjamin could not enunciate his departure from Sorel more clearly than in his citation, in the 'Critique of Violence', of 'an outstanding example of violent omission' that is 'more immoral and cruder than the political general strike' and 'akin to a blockade', namely,

the strike by doctors, such as several German cities have seen. Here is revealed at its most repellent an unscrupulous use of violence which is positively depraved in a professional class that for years, without the slightest attempts at resistance, 'secured death its prey,' and then at the first opportunity abandoned life of its own free will.¹⁴¹

At issue, then, is the dual impulse of Benjamin's formulation of the proletarian general strike, which is at once complicit with and adverse to Sorel's formulation of the strike. Ultimately, the key to understanding the grounds on which Benjamin takes his departure from Sorel lies in Benjamin's apparently innocuous statement, following the comment on the depraved medical class, that '[t]aking up occasional statements by Marx, Sorel rejects every kind of program, of utopia – in a word, of lawmaking – for the revolutionary movement'.¹⁴² This statement not only reports, but also appears, in effect, to endorse a superficial interpretation of Marx. Taking Hamacher's claim that Benjamin's pure violence 'even disrupts transcendental, paradigmatic forms, and thus the possibility of its own cognition'¹⁴³ as correct, it could be said that Benjamin displaces paradigmatic forms of violence where Sorel evokes them. Benjamin's comment on Sorel's occasional references to Marx, then, highlights the point at which Benjamin takes his departure from the Sorelian theory of the proletarian general strike. To work, as Sorel does, within the framework of a Marxist ideology but only in order to reject a programmatic outline of law-positing and utopianism is, for Benjamin, too much of a contradiction in terms.

In summation: Sorel thinks the proletarian general strike through a shift in the Marxist paradigm. Benjamin, alternatively, strives to formulate a pure violence

that is removed from ideological constraint. That Sorel finds a need not only to break with economism, however, but also to establish *class* as the founding bond of political and mythical unity – this is the point at which Benjamin’s formulation of the proletarian general strike takes a definitive departure from Sorel’s. Sorel’s concept of class as the base determinant for a proletarian strike against bourgeois decadence is so flawed that even his acolytes have, historically, come to locate a more capable substitute myth in nationalism.¹⁴⁴ The irony, of course, is that for Sorel, ‘antipatriotism’ is an essential element of the syndicalist programme. Sorel writes in a footnote:

As we consider everything from an historical point of view, it is of small importance to know what reasons were actually in the mind of the first apostles of anti-patriotism; reasons of this kind are almost never the right ones; the essential thing is that for the revolutionary workers antipatriotism appears an inseparable part of socialism.¹⁴⁵

Given Sorel’s predisposition to ‘antipatriotism’, the question becomes *why* Sorel’s promotion of a unified class subject has become susceptible to appropriation by nationalist programmes, and why Sorel’s formulation of the proletarian general strike is situated within the historical trajectory of nationalism.¹⁴⁶ Laclau and Mouffe, on posing a similar question, recognize the most original moment of Sorel’s thought in the indeterminate, non-apriori character of the mythically constituted subjects. This results, for Laclau and Mouffe, in the fact that

there is no *theoretical* reason why the mythical reconstitution should not move in the direction of fascism, but equally none to exclude its advance in another direction – such as Bolshevism, for example, which Sorel enthusiastically welcomed. The decisive point – and this is what makes Sorel the most profound thinker of the Second International – is that the very identity of social agents becomes indeterminate and that every ‘mythical’ fixation of it depends upon a struggle.¹⁴⁷

Counter to Laclau and Mouffe, I will argue that there certainly is a strong and explicit theoretical reason that facilitates the movement of Sorel’s theory from class to nationalism. Sorel’s affirmation of social indeterminacy becomes more vulnerable to criticism, however, in the following study of the relationship between Benjamin and Schmitt.

5. Benjamin and Schmitt: a point of common reference

An exposition of the genealogy of the proletarian general strike has revealed the relationship between Benjamin and Sorel to be more fraught than it might have appeared on an initial reading of the 'Critique of Violence'. What is interesting is that Schmitt also appropriates Sorel's formulation of the proletarian general strike in order ultimately to refute it, and that he does so explicitly. It could be said, then, that there is a substantial meeting of two minds – of Benjamin's and of Schmitt's – in Sorel's account of the proletarian general strike. The forthcoming argument understands Sorel as an important underlying source of both Schmitt's 1923 'Irrationalist Theories of the Direct Use of Force', in *The Crisis of Parliamentary Democracy*,¹⁴⁸ and Benjamin's 1921 'Critique of Violence', but also suggests that each thinker has appropriated Sorel to very different ends.

Pivotal to the alignment and dissension of Benjamin and Schmitt through Sorel is Derrida's questioning of deconstruction's relationship to justice in the 'Force of the Law' essay. Derrida aligns his interpretation of Benjamin with a set of texts, some by himself, some by others, around the question of 'the politics of deconstruction', but also in relation to the notion of the *political*. Debates on the political possibilities or impossibilities of deconstruction in its relationship to justice aside, it is *responsibility*, for Derrida, that stands as the point of common reference between Benjamin and Schmitt in the 'Critique of Violence'.¹⁴⁹ That question of responsibility belies the critique of parliaments to which each thinker is dedicated, and leads my argument, finally, to a formal understanding of the point of convergence and divergence between Benjamin and Schmitt. Benjamin's 'Critique of Violence' emerged, after all, Derrida notes, 'in the aftermath of a war and a prewar era that saw the European development and failure of pacifist discourse' and of 'antimilitarism' and of the 'critique of violence, including juridico-police violence'.¹⁵⁰ Coupled with the changes in 'the structures of public opinion' brought about by technological advance, writes Derrida, the 'Critique of Violence' brings 'the liberal model of parliamentary discussion or deliberation in the production of laws' into question.¹⁵¹ Derrida continues:

Such conditions motivated the thoughts of German jurists like Carl Schmitt, to mention only him—and because Benjamin had great respect for him, not hiding a debt toward him that Schmitt himself did not hesitate to recall on occasion. It is ‘Zur Kritik der Gewalt’, moreover, that, upon its publication won Benjamin a letter of congratulations from the great conservative Catholic jurist, still a constitutionalist at the time...¹⁵²

Thus far, Derrida has revealed nothing groundbreaking: the relationship between Benjamin and Schmitt is no more than associative; one among several ‘historical indices’ that lend context to the ‘Critique of Violence’.¹⁵³ The point to which I draw attention, in Derrida, is his reference to the ‘Critique of Violence’ as a ‘grafting of neomessianical Jewish mysticism onto post-Sorelian neo-Marxism (or the reverse)’.¹⁵⁴

It has already been established that Benjamin’s interpretation of the proletarian general strike exposed the inconsistencies and contradictions within Sorel’s own theory of the general strike. Sorel’s theory of the proletarian general strike as a pure revolutionary myth differs vastly from Benjamin’s on several counts. Sorel formulates the general strike through a shift in Marxist paradigm, and the major flaw in his theory of the proletarian general strike lies in his contention that as a pure revolutionary myth the general strike is also an expression of the will to *act*. Sorel’s assumption of consensus for action is reminiscent of the sovereign declaration on the state of exception, and by extension of the moral decision. Each example assumes a shared and authoritative discourse. An authoritative discourse, however, knows no limits: it appropriates the indeterminacies of divine violence, of the sovereign system of grace, and of the economy through which pure violence articulates and distributes guilt. Sorel’s theory of the proletarian general strike nevertheless claims to map – or rather, attempts to delimit and account for – the emotive impulse of the strike:

The revolutionary myths which exist at the present time are almost pure; they allow us to understand the activity, the sentiments and the ideas of the masses as they prepare themselves to enter on a decisive struggle; they are not descriptions of things but expressions of a will to act.¹⁵⁵

Implicit in Schmitt’s work on *The Crisis of Parliamentary Democracy* – considered more closely in the first chapter of this thesis – is an understanding of the crisis that resides in the contrast between a state that is degenerating due to its dependence on intellectual conviction and a state that is degenerating as a result of the ‘creative proletarian force’ of violence.¹⁵⁶ Schmitt develops this contrast in response to the

events of 1793, where the outcome of talks and plans were ineffective in comparison to what Schmitt deemed the purity of a hypothetical proletarian action:

Who, then, is the vehicle of great myth today? Sorel attempted to prove that only the socialist masses of the industrial proletariat had a myth in which they believe, and this was the general strike. What the general strike really means today is much less important than the faith that binds the proletariat to it, the acts and sacrifices it inspires, and whether it might be able to produce a new morality. The belief that the general strike and the monstrous catastrophe it would provoke would subvert the whole social and economic life thus belongs to the life of socialism. It has arisen out of the masses, out of the immediacy of the life of the industrial proletariat, not as a construction of intellectuals and literati, not as a utopia; for even utopia, for Sorel, is the product of a rationalist intellect that attempts to conquer life from the outside, with a mechanistic scheme.¹⁵⁷

The question here is what, precisely, Schmitt's interpretation of the purity of a hypothetical proletarian action in Sorel involves. In posing this question, the extent to which Schmitt draws heavily on the language of Benjamin's 'Critique of Violence' in order to exercise some criticism of Sorel becomes remarkable. Schmitt sets his critique of Sorel against the background of what he articulates, in his previous chapter on 'Dictatorship in Marxist Thought', as the extent to which the 'scientific certainty of Marxism' and its reference to economics as the base determinant of class relation, is derived from 'a thoroughly metaphysical compulsion'.¹⁵⁸ Secondly, in a comparison of the dogmatism of rationalism to its irrational counterpart, or rather, socialism's 'new rationalism',¹⁵⁹ Schmitt directs his polemic against the bloodless revolution inspired by Trotsky: 'As Trotsky justly reminded the democrat Kausky', Schmitt writes, 'the awareness of relative truths never gives one the courage to use force and to spill blood'.¹⁶⁰ Schmitt's critique of the new rationalism continues:

The Hegelian construction remains the most important intellectual factor here, and almost every work by Lenin or Trotsky demonstrates how much energy and tension it can still generate. But it has become only an intellectual instrument for what is really no longer a rationalist impulse.¹⁶¹

It is a bloodless force, then, or in other words, a pure violence, at which Schmitt directs his condemnation of this new rationalism. That new rationalism in turn, Schmitt implies, would merit the appellation of irrationalism, were it to let blood. Finally, Schmitt single-handedly, in his polemic against Trotsky and Lenin, dismisses pure violence as a euphemism for the irrational, which can be more literally evoked in the example of 'the warlike image of a bloody, definitive, destructive, decisive

battle' in 1848 between the conservative Catholic Spaniard, Donosco-Cortés, and the anarcho-syndicalist, Proudhon.¹⁶² On dismissing the debates between Donosco-Cortés and Proudhon as self-defeating half-measures, Schmitt establishes a framework through which to critique Sorel's reference to myth – itself derived in part from Proudhon.¹⁶³ It is at this point, in an unrelenting critique of the bloodless revolution in Trotsky and Lenin, that according to Schmitt finds its analogue in the bloody revolution (Schmitt draws an inexplicable line of connection from the bloody to the bloodless, and the rational to the irrational), that Schmitt implicitly, and incorrectly, interprets Sorel. Schmitt's reading of Sorel continues:

The warlike and heroic conceptions that are bound up with battle and struggle were taken seriously again by Sorel as the true impulse of an intensive life. The proletariat must believe in the class struggle as a real battle, not as a slogan for parliamentary speeches and democratic electoral campaigns. It must grasp this struggle as a life instinct, without academic construction, and as the creator of a powerful myth in which it alone would find the courage for a decisive battle. For socialism and its ideas of class struggle there is no greater danger than professional politics and participation in parliamentary business. These wear down great enthusiasm into chatter and intrigue and kill the genuine instincts and intuitions that produce a moral decision. Whatever value human life has does not come from reason; it emerges from a state of war between those who are inspired by great mythical images to join battle, and depends upon 'a state of war that the people agree to participate in, which is reflected in a certain myth'.¹⁶⁴

Schmitt's analysis of Sorel here is incorrect, I argue, not so much in its own terms, but to the extent that it deploys the same terminology Benjamin uses in his *Origin*, and in his essay 'On Language as Such' – that is, the terminology of 'intrigue' and 'chatter' – in order to critique Sorel. Irrespective of its intent, the effect is one that misaligns Benjamin with Sorel. From within that misalignment, however – let me stress this point above all others – Schmitt not only aligns Benjamin's notion of pure violence with its Sorelian antithesis, which I will refer to here as the proletarian *and* mythical general strike, but by extension Schmitt also uses Benjamin's mode of discourse to nullify Benjamin's model of pure violence. In other words, Schmitt uses the same tools of communication as Benjamin in order to launch a strategic and tactical mis-communication of the terms of the proletarian general strike as it appears in Benjamin's 'Critique of Violence' as a specification of pure violence. In short, Schmitt *occupies the territory of pure violence*.

What is interesting is that Schmitt criticizes Sorel on account of the presumption of a shared authority. Schmitt continues:

The theory of myth is the most powerful symptom of the decline of the relative rationalism of parliamentary thought. If anarchist authors have discovered the importance of the mythical from an opposition to authority and unity, then they have also cooperated in establishing the foundation of another authority... *an authority based on the new feeling for order, discipline, and hierarchy.*¹⁶⁵

Here, Schmitt implies that Sorel has transposed the technical innovation of the general strike to a sliding scale of technical legitimacy that is accountable to authority and order. Without any doubt, however, Schmitt's theory of the authoritative moral decision functions in a similarly reactionary manner to re-establish an order that existed prior to the declaration of the state of exception. Where Schmitt's critique of Sorel is conditioned by the same factors as Benjamin's critique – for example, both Benjamin and Schmitt condemn Sorel's adaptation of the proletarian general strike to a metaphysical reading of Marxism – Schmitt also deploys his reading of Sorel against Benjamin's notion of pure violence. There is a struggle between Benjamin and Schmitt for the control of the interpretation of pure violence, then, that finds its expression through Sorel's proletarian general strike.

To take the final point of my analysis, now, back to Sorel. Sorel's *Reflections* establishes that without an account of emotion it is impossible to explain how the proletarian general strike might come into being. Sorel's point, of course, is that without an account of the emotive forces that drive that general strike it is also impossible to account for how the legal order comes into being. As a specification of pure violence, the potential for the outbreak of the proletarian general strike is always present in, and actually even comes to structure, the legal order. There are two perspectives from which this relationship between the legal order and pure violence can be understood. To articulate the elemental components of that residual force, the legal order would have to renounce, effectively, its own claim to authority. In this way, the legal order would render itself inevitably defenceless against the outbreak of pure violence. Alternatively, the legal order could refuse to articulate that residual force. In that refusal, the legal order would have to close ranks, necessarily, against the potential outbreak of pure violence. From either perspective, the legal order automatically acknowledges and recognises the existence of pure violence – but not from without: from *within*. Unlike Sorel, who makes an 'appeal to discover what

exists at the bottom of the creative conscience', however,¹⁶⁶ both Benjamin and Schmitt understand that the potency of pure violence lies not only in the legal order but also in its resistance to accountability by structures of power. In his refusal to articulate the pre-emptive force of pure violence Schmitt seeks to maintain at all costs the authority of the legal order. To articulate the force of pure violence would unbind the constituents of the legal order. This is why Benjamin writes that '[s]pace' in the essay does not 'permit' him 'to trace such higher orders and the common interest corresponding to them', or in other words, the motives that belie the 'feelings' and 'intelligence' of conflicting social groups.¹⁶⁷ To intuit emotion, as does Benjamin, as the force that drives the coming-to-presence of pure violence, is to understand that pure violence resists accountability to any authority or structure of power.

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- ¹ See note 9, Haverkamp and Vismann, p. 225.
- ² This reading of pure violence as technical innovation is indebted to the distinction made between technical innovation and commodity production in John Frow, *Marxism and Literary History* (Oxford, Basil Blackwell, 1986), pp. 106-109.
- ³ SW1, 244; GS 2.1, 192.
- ⁴ See Frow, pp. 107, on the literary system as mode of production.
- ⁵ SW1, 245; GS 2.1, 192.
- ⁶ SW1, 245; GS 2.1, 193.
- ⁷ SW1, 245; GS 2.1, 193.
- ⁸ SW1, 245; GS 2.1, 193.
- ⁹ SW1, 245; GS 2.1, 193.
- ¹⁰ SW1, 245; GS 2.1, 193.
- ¹¹ SW1, 245; GS 2.1, 193.
- ¹² SW1, 245; GS 2.1, 193.
- ¹³ Pure violence here is situated within a theoretical trajectory of the mediation that receives attention in Frow, pp. 108. This notion of a pure violence that precedes and gives rise to these extreme models of pure language and the revolutionary strike shares a striking similarity with Hamacher's exegesis of pure violence, p. 114.
- ¹⁴ SW1, 245; GS 2.1, 193.
- ¹⁵ SW1, 245; GS 2.1, 193.
- ¹⁶ SW1, 244; GS 2.1, 191, 'die Kulture des Herzens', which in the Jephcott translation reads 'courtesy'. Similarly, Jephcott translates 'Herzenhöflichkeit' to 'civilized outlook'.
- ¹⁷ SW1, 244; GS 2.1, 191.
- ¹⁸ SW1, 244; GS 2.1, 191-192.
- ¹⁹ SW1, 244; GS 2.1, 192.
- ²⁰ SW1, 244-245; GS 2.1, 191-192.
- ²¹ SW1, 244; GS 2.1, 192.
- ²² SW1, 245; GS 2.1, 192.
- ²³ SW1, 245; GS 2.1, 192.
- ²⁴ SW1, 245; GS 2.1, 192.
- ²⁵ SW1, 245; GS 2.1, 192-193.
- ²⁶ See Susan Shell, 'Cannibals All: The Grave Wit of Kant's Perpetual Peace', in *Violence, Identity and Self-Determination*, ed. by Hent de Vries and Samuel Weber (Stanford, California: Stanford University Press, 1997), pp. 150-161 (p. 155).
- ²⁷ Walter Benjamin, 'The Work of Art in the Age of Mechanical Reproduction', in *Illuminations*, ed. by Hannah Arendt, trans. by Harry Zohn (London: Fontana Press, 1992), pp. 211-245; 'Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit', in *Gesammelte Schriften*, 8 vols, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp Verlag, 1974), 1.2, pp. 471-508. Hereafter *Illuminations*.
- ²⁸ SW1, 244-245; GS 2.1, 192.
- ²⁹ *Illuminations*, 216; GS 1.2, 479.
- ³⁰ *Illuminations*, 214; GS 1.2, 475.
- ³¹ *Illuminations*, 184; GS 1.2, 646-647.
- ³² *Illuminations*, 217; GS 1.2, 479-480.
- ³³ Habermas, 'Consciousness-Raising or Rescuing Critique', p. 108.
- ³⁴ See note 9, *Illuminations*, 237; note 9, GS 1.2, 481.
- ³⁵ *Illuminations*, 229; GS 1.2, 499.
- ³⁶ *Illuminations*, 229; GS 1.2, 498.
- ³⁷ See note 21, *Illuminations*, 242; See Note 32, GS 2.1, 506.
- ³⁸ *Illuminations*, 226; GS 1.2, 495.
- ³⁹ *Illuminations*, 230; GS 1.2, 500.
- ⁴⁰ *Illuminations*, 214; GS 1.2, 476.
- ⁴¹ For a reading of 'cultural constructedness' See Rey Chow, 'Walter Benjamin's Love Affair with Death', *New German Critique* 48 (1989), 63-86.
- ⁴² *Illuminations*, 215; GS 1.2, 477.
- ⁴³ SW1, 251-252; GS 2.1, 202.

⁴⁴ See Frow, pp. 109, who is careful to make a distinction between repetition and the concept of the replica.

⁴⁵ Hamacher, p. 115.

⁴⁶ Hamacher, p. 115.

⁴⁷ SW1, 244-245; GS 2.1, 192.

⁴⁸ Walter Benjamin, 'On Language as Such and the Language of Man', in *Selected Writings, Volume 1: 1913-1926*, ed. by Marcus Bullock and Michael W. Jennings, trans. by Edmund Jephcott (Cambridge, Mass. and London: Harvard University Press, 1996), pp. 62-74; 'Über Sprache überhaupt und über die Sprache des Menschen', in *Gesammelte Schriften*, 8 vols, ed. by Rolf Tiedemann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp Verlag, 1977), 2.1, pp. 140-157.

⁴⁹ SW1, 63; GS 2.1, 141.

⁵⁰ SW1, 63; GS 2.1, 141.

⁵¹ SW1, 63; GS 2.1, 141.

⁵² SW1, 63; GS 2.1, 142.

⁵³ SW1, 63; GS 2.1, 142.

⁵⁴ SW1, 64; GS 2.1, 142-143.

⁵⁵ SW1, 64; GS 2.1, 143.

⁵⁶ SW1, 64-65; GS 2.1, 143.

⁵⁷ SW1, 65; GS 2.1, 144.

⁵⁸ SW1, 66; GS 2.1, 146.

⁵⁹ SW1, 66; GS 2.1, 146.

⁶⁰ SW1, 67; GS 2.1, 147.

⁶¹ SW1, 67; GS 2.1, 147.

⁶² SW1, 69; GS 2.1, 150.

⁶³ SW1, 69; GS 2.1, 150.

⁶⁴ SW1, 69; GS 2.1, 150.

⁶⁵ SW1, 70; GS 2.1, 151.

⁶⁶ SW1, 71; GS 2.1, 152.

⁶⁷ SW1, 71; GS 2.1, 153.

⁶⁸ SW1, 71; GS 2.1, 153.

⁶⁹ Note that in addition to Müller, Hölderlin and Rilke also recur in Benjamin's work as apposites of this poetic appeal to pure language.

⁷⁰ Whereas a particular is always understood in reference to a universal, the dream of Edenic or Adamite language is one that grasps the world in singularities. In the example of Edenic or Adamite language, there is a name for everything, such that one no longer mediates or universalizes.

⁷¹ SW1, 72; GS 2.1, 155.

⁷² SW1, 73; GS 2.1, 155.

⁷³ SW1, 73; GS 2.1, 155.

⁷⁴ SW1, 73; GS 2.1, 155-156.

⁷⁵ Note that the Hollander translation of Hamacher conveys 'Unterredung' as 'talk', where the Harvard translation uses 'conference'. My interpretation of pure language within the Critique uses 'conference' as that which is necessarily predicated on dialogue.

⁷⁶ SW1, 244, GS 2.1, 192.

⁷⁷ This is distinctly Hegelian in tone: at the heart of pure language in the 'Critique of Violence' is the interhuman relationship, evident also in Levinas and Marx, but missing in Heidegger and Deleuze.

⁷⁸ SW1, 247; GS 2.1, 195.

⁷⁹ SW1, 247; GS 2.1, 195.

⁸⁰ SW1, 247; GS 2.1, 195.

⁸¹ This exposition of the process of *Habeas corpus* is indebted to Haverkamp and Vismann's article 'Habeas Corpus: The Law's Desire to Have the Body', p. 223-235.

⁸² Haverkamp and Vismann restrict their argument to the development of *Habeas corpus* within England, see note 9. Their references to *Habeas corpus* are drawn from J.H. Baker's Introduction to English Legal History, 3rd edn (London: Butterworths, 1990), 537-540. Haverkamp and Vismann's citations of the *Habeas Corpus Act* are drawn from William Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, 4th edn (Oxford: Oxford University Press), pp. 518.

⁸³ The reference here is to Michel Foucault's *Discipline and Punish: The Birth of the Prison*, trans. by Alan Sheridan (New York: Random House, 1979), pp. 29. Foucault's text provides a point of focus in Haverkamp and Vismann's exposition of the reformulation of the king's position above the law in terms of a responsibility for his subjects that occurs in the process through which Habeas corpus writ is incorporated into the *Habeas Corpus* Act. The relevant passage in Haverkamp and Vismann's article, p. 228, reads:

Foucault's juxtaposition of the monarchical body politic and 'the least body of the condemned man' presupposes this decline of pardon and tries to make sense of it. But against the grain of Foucault's homage to Kantorowicz in this point, the same king's body politic is constituted by the king's court and claimed by the law's rule....

⁸⁴ See note 9, Haverkamp and Vismann p. 225.

⁸⁵ See note 8, Haverkamp and Vismann p. 225.

⁸⁶ The reference here is to the perlocutionary and illocutionary aspects of language, in Haverkamp and Vismann, p. 227, note 14.

⁸⁷ The motif of clemency is traced to Seneca's *De Clementia*, in Haverkamp and Vismann, p. 227, note 13.

⁸⁸ Haverkamp and Vismann, p. 227.

⁸⁹ Haverkamp and Vismann, p. 227.

⁹⁰ Haverkamp and Vismann, p. 227.

⁹¹ See note 18, Haverkamp and Vismann, p. 227-228.

⁹² Haverkamp and Vismann, p. 228, note 17.

⁹³ Haverkamp and Vismann, p. 228.

⁹⁴ Haverkamp and Vismann, p. 229-230.

⁹⁵ Haverkamp and Vismann, p. 229, note 22.

⁹⁶ Haverkamp and Vismann, p. 229-230.

⁹⁷ Haverkamp and Vismann, p. 230, note 24.

⁹⁸ Geyer-Ryan, p. 155.

⁹⁹ See Frow, pp. 67, for further contextualisation of 'discursive practice'.

¹⁰⁰ Howard Caygill, *The Colour of Experience*, pp. 44. Caygill's discussion of the 'endless task' highlights pure violence as the means by which Benjamin rejects Hegel's speculative transformation, in the Phenomenology of Spirit, of Kant's concept of experience. See also Howard Caygill, *Hegel and the Speculative Community*, p. 15, on the 'bad infinity' or 'endless task'.

¹⁰¹ SW1, 246; GS 2.1, 194.

¹⁰² See Hamacher, p. 122. Hamacher writes: 'The "pure word", also termed "moral" by Benjamin, is thus audible in the onset of muteness; objection (*Einspruch*) is not itself a word, not a positing, but the interruption of propositional utterance by something which neither speaks nor posits'. Hamacher's reading depends on an understanding of the distinction between the moral and the political that exceeds the parameters of my own analysis of the 'Critique of Violence'.

¹⁰³ See Geyer-Ryan, p. 158, for a feminist interpretation of the illusory appearance as exposed lack, and as the basic subtext from which the discourse of law develops into the sublime.

¹⁰⁴ Geyer-Ryan, p. 159.

¹⁰⁵ Geyer-Ryan, p. 159.

¹⁰⁶ See Derrida, 'Force of Law', pp. 271, 273. I have held to the Gil Anidjar edition (2002), in order to maintain consistency with previous extracts from the 'Force of Law'. See Geyer-Ryan, p. 159, who cites the Mary Quaintance translation (1992), of Derrida's essay, pp. 37, 39.

¹⁰⁷ Geyer-Ryan, p. 159.

¹⁰⁸ Georges Sorel, *Reflections on Violence*, ed. by Jeremy Jennings, Cambridge Texts in the History of Political Thought (Cambridge, UK: Cambridge University Press, 1999).

¹⁰⁹ For a history of the literature responding to Sorel's *Reflections*, see note 54, Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, 2nd edn (London and New York: Verso, 2001), pp. 36-46; also see Jeremy Jennings, 'Introduction' and 'Select Bibliography', in *Reflections on Violence*, pp. vii-xxiv.

¹¹⁰ Laclau and Mouffe refer explicitly to the 1872 expulsion of the syndicalists from the First International, and to their last major political document as Rosa Luxemburg's 1906 text, 'The Mass Strike: The Political Party, and the Trade Unions'.

¹¹¹ See Jeremy Jennings, pp. vii-xxi; see Laclau and Mouffe, pp. 36-46.

¹¹² SW1, 245-6; GS 2.1, 193.

¹¹³ SW1, 246; GS 2.1, 194, quoting Sorel, *Refléxions sur la Violence*, 5th edn (Paris, 1919).

¹¹⁴ SW1, 246; GS 2.1, 194.

¹¹⁵ SW1, 246; GS 2.1, 194, citing *Refléxions*, pp. 265, 195, 249, 200.

¹¹⁶ SW1, 246; GS 2.1, 194.

¹¹⁷ SW1, 246; GS 2.1, 194.

¹¹⁸ Sorel, pp. 243.

¹¹⁹ Sorel, pp. 24, emphasis mine.

¹²⁰ Sorel, pp. 27.

¹²¹ Sorel, pp. 27.

¹²² Laclau and Mouffe, pp. 37; see Sorel, pp. 44-50.

¹²³ Sorel, pp. 30.

¹²⁴ Laclau and Mouffe, pp. 38.

¹²⁵ Laclau and Mouffe, pp. 37.

¹²⁶ See Laclau and Mouffe, pp. 39, on Sorel's affinity to the Dreyfusard coalition and to Millebrand's brand of socialism.

¹²⁷ Laclau and Mouffe, pp. 38.

¹²⁸ Laclau and Mouffe, pp. 40.

¹²⁹ Laclau and Mouffe, pp. 40.

¹³⁰ Sorel, pp. 20.

¹³¹ Sorel, pp. 20.

¹³² Sorel, pp. 76.

¹³³ Sorel, pp. 182.

¹³⁴ Sorel, pp. 182.

¹³⁵ Laclau and Mouffe, pp. 39.

¹³⁶ Laclau and Mouffe, pp. 39.

¹³⁷ The hypothetical connection I am drawing here is between Benjamin, and Sorel as he is characterised by Laclau and Mouffe, pp. 37.

¹³⁸ SW1, 250; GS 2.1, 200.

¹³⁹ SW1, 248; GS 2.1, 197-198.

¹⁴⁰ SW1, 246; GS 2.1, 195.

¹⁴¹ SW1, 247; GS 2.1, 195.

¹⁴² SW1, 246; GS 2.1.194. See Hamacher, note 27. Hamacher makes the point that Benjamin never defines the proletariat as any class other than that which constitutes itself 'in and through the general strike and which, in this strike, deposes the state power and its apparatuses just as it ends the historical continuum of privilege and oppression. Since, according to Benjamin, it is impossible to say with certainty when pure revolutionary violence is actually present (SW1, 252; GS 2.1, 203), it follows that one cannot be certain who belongs to the proletariat. A resolution of this question would belong in the realm of prognoses and programmes and could thus only contribute to a crippling of revolutionary forces: it would reduce something to an object of cognition which is only possible as ethico-political experience'.

¹⁴³ Hamacher, p. 123.

¹⁴⁴ See Laclau and Mouffe, pp. 41.

¹⁴⁵ See note 16, Sorel, pp. 183.

¹⁴⁶ Laclau and Mouffe, pp. 41-42, note that it may be unfounded to conclude with nationalism as the necessary outcome of Sorel's advocacy of class unity, and stake their claim to Sorel's influence in a variety of formations that do not concede authority to nationalism – Gramsci, for example. Laclau and Mouffe also cite Sorel's enthusiastic reception of Bolshevism in support of their claim.

¹⁴⁷ Laclau and Mouffe, pp. 41-42.

¹⁴⁸ Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (MIT Press: Cambridge, Mass. and London: MIT Press, 1985), pp. 65-76.

¹⁴⁹ Derrida, 'Force of Law', pp. 288. Derrida is correctly questioning the relationship between responsibility and political action in his reading of Benjamin's 'Critique of Violence'. Here, on consideration of Benjamin's polemic, Derrida writes: 'The individual or community must keep the

“responsibility” (the condition of which being the absence of general criteria and automatic rules), must assume their decision in exceptional situations, in extraordinary or unheard of cases (*in ungeheuren Fällen*)’.

¹⁵⁰ Derrida, ‘Force of Law’, pp. 263.

¹⁵¹ Derrida, ‘Force of Law’, pp. 263.

¹⁵² Derrida, ‘Force of Law’, pp. 263.

¹⁵³ Derrida, ‘Force of Law’, pp. 263.

¹⁵⁴ Derrida, ‘Force of Law’, pp. 263.

¹⁵⁵ Sorel, pp. 28.

¹⁵⁶ Schmitt, pp. 72.

¹⁵⁷ Schmitt, pp. 69.

¹⁵⁸ Schmitt, pp. 62-63.

¹⁵⁹ Schmitt, pp. 51-52.

¹⁶⁰ See Schmitt, note 16, pp. 64.

¹⁶¹ Schmitt, pp. 64.

¹⁶² Schmitt, pp. 69.

¹⁶³ Schmitt, pp. 70.

¹⁶⁴ Schmitt, pp. 71, quoting Sorel’s *Refléxions*, pp. 319.

¹⁶⁵ Schmitt, pp. 76.

¹⁶⁶ Sorel, pp. 25.

¹⁶⁷ SW1, 245; GS 2.1, 193.

Closing Remarks

The potential for political radicalism runs through Benjamin's essay on the 'Critique of Violence' like a *leitmotif*, yet the language and logic of the secondary commentaries on Benjamin's essay demonstrate either a difficulty in marking a distinction between that potential and the conservative principles of Schmitt's discourse on sovereignty, or an exaggeration of the distinction. This might stand as the reductive and exhaustive conclusion of the dissertation, which seeks to expose the truth of these statements, as well as the underlying logic for the general indebtedness, in the secondary commentaries, to Schmitt. Benjamin's concept of pure violence offers powerful accounts of how a dialogue between the two schools of thought might be able to unfold; these accounts, however, also refer to the constant need to resist subsumption and control by rapidly emerging debates on sovereignty. For the most part, Benjamin's specifications of pure violence assume that the occurrence of pure language and the proletarian general strike are inevitable: the potential for the occurrence of these events is inherent to and latent within the very structure of sovereignty. The Sorelian theory of the general strike, however, argues that the occurrence of pure violence cannot receive validation until the 'creative consciousness' of the agent of change (in this case the proletariat) has been mapped successfully. Schmitt's refusal to accede to the logic of Sorel's argumentation suggests some congruence with Benjamin's own rejection of the terms of Sorel's account of the strike. This congruence is purely formal, however, and does not support the theory that Benjamin is complicit with Schmitt's normative theories of conservative radicalism, or alternatively, that one is the intellectual derivative of the other. Schmitt, in his disregard for Sorel's account of the proletarian general strike, neither acknowledges nor recognises the full extent of the emotive forces that underlie the strike and the significance of the constraints that delimit them in sovereign practice. In these closing remarks, my aim is to elaborate the conclusion abbreviated above by addressing three interrelated questions. Firstly, what emerges from the exposition and critique of the relationship shared between Benjamin and Schmitt? Secondly, what is the conception of the interpretation of pure violence that this intellectual conjunction between Benjamin and Schmitt makes possible? Thirdly, how do the specifications of pure violence, as they have been elaborated over the course of my own critique, substantiate this account?

1. The dispute over sovereignty

The exposition and critique of the historical association between Benjamin and Schmitt reveals that their respective positions with respect to sovereignty are difficult to separate. Both take the state of exception as the principle upon which sovereignty is structured: in the case of Schmitt, a very specific interpretation of Article 48 of the Weimar Constitution justifies the transference of extensive latitude for action from the legislature to executive. The key to understanding Schmitt's justification of the transfer of power lies in the tension he constructs in his interpretation of Article 48 between the sovereign – that is, whoever has the power 'to suspend the constitution and so redefine the relationship between civil freedom and military power' – and the commissarial function of dictatorship – or rather, the President's duty 'to take decisions which otherwise would have led to the collapse of the constitutional order'.¹ As effective critics of liberalism and the degeneracy of parliamentary democracy, both Benjamin and Schmitt advocated a state of exception and disregarded the liberal emphasis on discussion. Indeed, from one perspective Benjamin was shown to recognize, alongside Schmitt, that the moment of the political is also proper to both law and the state, that there can be no law without order, and no order without politics. Benjamin applies the framework of Schmitt's concept of the political to his own art-theoretical considerations. His prime interest, in doing so is how to critique Schmitt's vision of the historical, and his appeal to the state of exception seeks to intervene in the constant oscillation between the law-preserving and law-positing functions of violence that have come to constitute the fallacy of a unified historical representation. Both Schmitt and Benjamin acknowledge that the principle of sovereignty is structured on the state of exception. Where for Schmitt, however, the sovereign declaration of the state of exception is part of a broader appeal to nostalgia for pre-existent conditions of order, Benjamin's concept of the state of exception draws on no such dichotomy. The question becomes one of how Schmitt's language of the extreme case has come to inform Benjamin's concept, in the *Origin*, of the unique-extreme.

For both Benjamin and Schmitt the concept of the 'unique-extreme', or of the extreme case, is a borderline notion: it similarly extends to and is situated at the extremity of what is familiar, identically repeatable, and classifiable; it is the point at

which the generally familiar is on the verge of passing into something else, the point at which it encounters the other, the exterior. Benjamin's concept of the unique-extreme is generally taken to conform to Schmitt's; to appropriate Schmitt's contrast between the serious case, the borderline concept, and the exception on the one hand, and the phenomenon of continuous normality on the other: 'Ideas', Benjamin writes, 'are timeless constellations, and by virtue of the elements' being seen as points in such constellations, phenomena are subdivided and at the same time redeemed so that those elements which it is the function of the concept to elicit from phenomena are most clearly evident at the extremes'.² Given this similarity between Benjamin and Schmitt the question arises as to how and where Benjamin's critique of sovereignty can be distinguished from Schmitt's actual concept of sovereignty. In order to determine precisely the extent to which Benjamin concedes to Schmitt the authority to determine the idiom through which sovereignty is expressed, my argument takes a detour through commentaries by Meier and Žižek. A brief comparison of their conflicting interpretations of Schmitt's concept of the extreme case suggests that it resists the terms of an objective analysis in order to establish its own authority. Žižek is more articulate in setting up the problematic: especially significant is his statement on the 'dissolution of the traditional set of values and/or authorities' in Schmitt, whereby the accidental is raised to the level of the transcendental.³ The point that distinguishes Benjamin from Schmitt, according to Weber and to some extent, Bredekamp, is that Benjamin strives to articulate the idea as a singularity in order to destabilize the political order. This interpretation is based on Benjamin's rendition in the *Origin* of the relationship shared between the spectral presence of the idea, and the concept. Benjamin's position of incommensurability with respect to Schmitt is not so simply maintained, however. Both Schmitt's response to the *Origin* and Bredekamp's reading of the conjunction between Benjamin and Schmitt assist in stating this point: in each example, the extent to which Schmitt informs the language of Benjamin's evaluation of the conventions of German Tragic Drama becomes evident. The question becomes one of how to draw and substantiate a line of distinction between Benjamin's thought, and that of Schmitt's.

2. Contentious readings of pure violence

The exposition and critique of Schmitt's principle of sovereignty in the first chapter, and the difficulty that is gradually revealed to be inherent to the demarcation of Benjamin's position of incommensurability with respect to Schmitt in chapter two, establishes the task for the formulation of a model of pure violence in the 'Critique of Violence'. The readings of pure violence in the secondary commentaries that respond to Benjamin's Critique, I argue, compromise themselves insofar as they allow Schmitt's concept of the extreme case to determine the idiom through which Benjamin's concept of the unique-extreme and by extension Benjamin's critique of sovereignty should be understood. Secondly, these accounts are situated too readily in the theoretical trajectory set by Derrida in his essay on the 'Force of Law'. The strengths and weaknesses of Derrida's account of pure violence reinforce the points through which Schmitt was revealed to have come to occupy Benjamin's critique of sovereignty. Derrida establishes clear theoretical distinctions between the right to judge or to decide that is inherent in the concept of critique, and the undecidability of pure violence. The secondary commentaries on the 'Critique of Violence' appropriate this distinction, suggesting that while it may offer an important perspective on reading pure violence, they are working with a broader Derridean project in mind. These secondary commentaries do not consider the extent to which the demarcation between critique and indeterminacy might be blurred in Benjamin. Neither do they consider that the suggestion of this demarcation by Derrida offers a reading of pure violence that is situated within the sphere of critique, rather than one that seeks to overcome (or succumb to) the conventions of critique. The idea in Derrida that pure violence is open to 'reversal' or to appropriation by the anti-revolutionary cause affirms Benjamin's point, in the 'Critique of Violence', that pure violence inhabits the very sphere of legal order against which it is deployed. The Derridean separation of pure violence and the legal order, then, is altogether continuous with the earlier readings of Benjamin as complicit with Schmitt's unique-extreme. In the assertion that Benjamin's pure violence is open to 'reversal', there is an underestimation of the fact of pure violence as an on-going event, a coming-to-presence that occurs within the structure of sovereignty and the legal order.

Both of Derrida's interpretations underestimate the extent to which sovereignty, as conceived by Schmitt, is structured in *reaction* to the inevitable

occurrence of pure violence. The interpretative direction set by Derrida, moreover, fails to see that sovereignty is governed by the latent presence of pure violence within its very structure. The separation Agamben seeks to maintain between Benjamin's notion of pure violence and Schmitt's notion of sovereignty strengthens the conceptual distinctions identified above. It is in response to Agamben's claims that I begin to modify the definitions of pure violence. Benjamin's notion of pure violence, I argue at the end of chapter three, operates as much to disseminate retribution or punishment by fate as does the concept of sovereignty. I argue, furthermore, in disagreement with Agamben, that guilt belongs neither exclusively to the concept of the juridical, nor is determined by the juridical, but is a construct that is brought forth by pure violence. Pure violence, then, is a complex entity in the sense that it is inextricably linked with the processes and institutions of sovereignty. A qualitative difference emerges with respect to sovereignty, however, insofar as pure violence is instantiated in moments of technical innovation that outstrip any discourse on moral order. The exposition and critique of the two specifications of pure violence as they emerge through Benjamin's 'Critique of Violence' clarifies the uniqueness of the response to the legal order available in pure violence, and also attempts to reconcile the contradictions within each model. 'Pure language' presents the reader of Benjamin's essay with the heightened paradox of pure violence. Key here is the extent to which the innovative potential of pure language – that is, its facility to refuse to mediate between things and their names – actually reinforces the notion that there could be a pure form of rhetoric: a mode of speech superior to all others that referred to a legitimate political programme. This is a rhetoric that is politically produced, however, and insofar as it functions to elevate doctrinal belief or social class above all others it exposes its own innovative potential to a sliding scale of technical legitimacy. An account of pure language is therefore useful to understanding the driving force of pure violence, and to delineating the contingency of that force on external circumstances. Does fear, as the base determinant of the outbreak of pure violence, drive a response to the uniqueness of the moment that is characteristic of technical innovation, for example? Insofar as the system of commodity production and its symptoms of lying, fraud, and corruption govern access to the opening of the sphere of pure means? Or can it be credited with providing some interface between pure violence and structures of power? While the

model of pure language raises these questions, it does not provide a satisfactory explanation of pure violence in the terms of Benjamin's 'Critique of Violence'. At the same time as pure language seeks to moderate the rarefied aspect of pure violence, it is not equipped to provide an understanding of pure violence that renders the question of how to dialogue with structures of power more rather than less important. Before this concept of dialogue can be addressed, there is a spectrum of debate surrounding the emotive force of pure violence that are not susceptible to explanation, but that is necessary and central to any account of pure violence. Indeed, the very refusal of analysis by the emotive force of pure violence can, potentially, tell us a great deal about the varying circumstances in which pure violence will emerge.

3. From Nietzsche to Benjamin

The contradictions of 'pure language', as outlined in chapter four, substantiate the model of pure violence in two ways. Firstly, they extend pure violence as something that refers to a constant process of differentiation from the legal order. Secondly, these contradictions confirm that pure violence constitutes an opening to the aleatory; that it operates as the condition of possibility for the outbreak of chance insofar as it emerges under unpredictable circumstances, and refuses conscious willing. In both examples, pure language demonstrates the potential to bring into question existing social relations, yet succumbs, inevitably, to technical practice, to technical manipulations, and to the practice of mediation. The process of *Habeas corpus* from writ to act, where the discursive economy is realized in terms of sovereign discretionary interest, only to be monopolised by the legal order, or the rule of law provides a useful facility for gauging this tension that informs pure violence. The process of *Habeas corpus* from writ to act not only clarifies the points through which any given discursive practice comes to be formalized by institutional procedure; the stages through which writ is consolidated into act also reveal the complexity of sovereignty as a construct. The sovereign imperative to have or to produce the body here constitutes a positing of power that depends on the rule of law for its reinforcement. Viewed from another perspective, sovereign discretionary interest is consumed by the legal order: it is a testament to how the legal order monopolises

authority, the discursive economy as a whole, and the legal control of the distribution of social power. The concept of ‘pure language’ makes it possible to clarify the fraught relationship between discursive practice and the monopolisation of discourse by the legal code. The case pure language makes evident, however, is one where sovereignty no longer defines pure violence: an exploration of the proletarian general strike, the second specification of pure violence offered by Benjamin offers further assistance in substantiating this claim.

From an analysis of the shared response, between Benjamin and Schmitt, to Sorel’s concept of the proletarian general strike, pure violence is revealed to function as a condition of possibility for the diffusion of power. Its presence as a singular entity, however, is virtually impossible to predict insofar as it depends on emotive forces that are impossible to qualify or quantify. As the institutionalised form of violence from which pure violence seeks to differentiate itself, sovereignty consummates its position of authority and exempts itself from transformation and modification. Equally important to note, however, is that the crowd – conceived as sovereign – escapes the grasp of the legal order, and in this way holds the potential to modify the legal order. Schmitt’s interpretation of Sorel holds, ultimately, the key to drawing a distinctive line of difference between these two respective positions of sovereignty. I refer specifically to *The Crisis of Parliamentary Democracy*, where Schmitt presumes a crisis in the contrast between a state that is degenerating due to its dependence on intellectual conviction, and the ‘creative proletarian force’ of violence.⁴ Schmitt’s critique of Sorel’s effort to map the ‘creative proletarian force’ of violence highlights the fact that the strike is efficacious only insofar as it refuses to conform to a paradigm from the historical canon of political or economic systems, or to aim at their recasting. Schmitt, however, only reinforces the concept of a political order that takes recourse to the state of exception in order to ensure the progress of that order. This is exactly what Nietzsche is working against: the Nietzschean reading of the rule of law refuses to affirm the self in any sense of narrative continuity, or synchronicity of time. Nietzsche is exploding the self, and demonstrating that it is as a network of interrelations between active forces and reactive asceticism. Benjamin, in much the same way, describes pure violence both as a critique of sovereignty and as the very element in response to which the principle of sovereignty declares itself. Pure violence also reveals the principle of sovereignty

to refer to a complex of ever changing social relations.

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- ¹ Caygill, *Hegel and the Speculative Community*, p. 40-41, 45.
 - ² *Origin*, pp. 34-35; GS 1.1, 214-215.
 - ³ Žizek, p. 19.
 - ⁴ Carl Schmitt, *The Crisis of Parliamentary Democracy*, pp. 72.

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