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Against Biopolitics: Walter Benjamin, Carl Schmitt, and Giorgio Agamben on Political Sovereignty and Symbolic Order¹

Recent attempts by Giorgio Agamben to understand the relationship between politics and the human body have resulted in a notion of “biopolitics,” derived from texts by Walter Benjamin and Michel Foucault, in which there is a merging of biology and politics into a unified system that subjects the body to the direct violence of a political order. Though these theories have been helpful in focusing attention on the particular dynamics that link politics with the individual subject, the accompanying suppression of a cultural dimension to this linkage has obscured the role of ideological concerns in determining political events in the modern world. Unexpectedly, Carl Schmitt, one of the theorists who has been most criticized for reducing politics exclusively to questions of power, turns out to offer the most consistent attempt to understand the centrality of cultural ideals for the construction of the link between politics and the subject. Though Ellen Kennedy (“Carl Schmitt” 42–45), Agamben (*State of Exception* 52–64), Horst Bredekamp, and Susanne Heil have documented the extent of the intellectual connections between Benjamin and Schmitt, they have not recognized the degree to which Schmitt more consistently emphasizes the role of culture in the structure of the political subject. For in contrast to the attempts by Benjamin and especially Agamben to consider law and politics purely in terms of mechanisms of violence and the body, Schmitt’s contribution has been to establish the centrality of metaphysical ideals in the structuring of subjectivity. Instead of using concepts such as violence or bare life, which exclude issues of culture, Schmitt’s meditations on the decision and the enemy place theological and cultural choices at the center of his analysis, underlining the role of ideology in constituting the subject.

Benjamin on Law and Violence

The differences between Benjamin’s and Schmitt’s approaches to law and violence stem from the diverging goals of their analyses. While Schmitt con-

sistently defends the status quo of a particular political order, fearing the instability and chaos that change could bring, Benjamin begins with the idea that meaningful change is possible and that the current conditions of law and political order contain elements of domination that can be eliminated through human action. The key to such a project of emancipation becomes for Benjamin the disruption of the existing order in a way that opens up unexpected new possibilities for the future. The primary strength of his approach lies in the “Doppeleinsicht” that he describes in his *Ursprung des deutschen Trauerspiels* and that links a sense for the new with structures of thought and imagination from the past (1:226). In designating the baroque as an age in which “Geist ... weist sich aus als Macht” (1:276), Benjamin identifies the reduction of spirit to power as the key source of the melancholy that pervades the *Trauerspiel* genre. The only way to escape this world determined by power would be to leap out of it conceptually into a perspective that denies the necessity of power and thereby transcends its facticity through an appeal, in the case of the baroque, to a “Christian spirit” (Benjamin 1:335; Pan, “Political Aesthetics” 157–58). Benjamin’s strategy for maintaining the presence of a spiritual alternative to a world dominated by power is then to create the possibility for transcending this existing world in a redemptive moment leading into a new future. He develops this mode of political messianism, for instance, in his invocation of “profane Erleuchtung” in *Der Surrealismus* (2:297) and of “Jetztzeit” in *Über den Begriff der Geschichte* (1:701).

The assumption behind this goal of breaking the historical continuum through a moment of transcendence is that this continuum extends a rule of power that undermines the existing law’s claim to manifest a higher principle. As both Jacques Derrida (1017) and Jan-Werner Müller have documented (469), Benjamin grounds this assumption in *Zur Kritik der Gewalt* with the idea that the origins of law lie in violence. The link between law and violence is for him more than just a coincidence of violence with justice in a way that would emphasize their complementary relationship, as when Derrida, explicating Pascal, suggests that “justice demands, as justice, recourse to force” (937). Benjamin describes the violent origins of law not to illustrate the necessity of force in establishing justice but in order to argue that law does not establish justice at all but is just the extension of an act of violence. To the extent that existing laws refer to an ideal of justice, they are simply establishing a rationale for an underlying violence, and Benjamin, in citing Georges Sorel’s view that “in den Anfängen alles Recht ‘Vor’recht der Könige oder der Großen, kurz der Mächtigen gewesen sei” (2:198), suggests that the idea of justice within a legal system is just the mask for the manifestation of power. Conversely, he notes that violence for natural purposes has inherent to it a “rechtsetzender Charakter” (2:186), even when it is a predatory and purely instrumental violence. In addition to mentioning the workers’ strike and war (2:185), Benjamin even goes so far as to suggest that “great criminals” have the

potential of setting up a new law purely on the basis of their predatory violence (2:186). These examples of a merging of violence and law are all cases of how "Rechtsetzung ist Machtsetzung und insofern ein Akt von unmittelbarer Manifestation der Gewalt" (2:197–98).

But there is an ambiguity in his characterization of the strike and the great criminal that makes possible the move to a revolutionary messianism while at the same time maintaining the legitimacy of revolutionary violence. Whereas the strike and the criminal are examples of violence, Benjamin singles out these cases in order to distinguish them from instances of lawful violence. He then criticizes the connection between violence and law, not in order to imagine a law without violence but rather a violence without law. In order to bring about the end of the mythic violence that grounds the rule of law, Benjamin constructs his idiosyncratic idea of a "divine violence" that would supersede mythic violence and be the basis of a revolutionary transformation of society. "Wie in allen Bereichen dem Mythos Gott, so tritt der mythischen Gewalt die göttliche entgegen" (2:199). The difference between the two does not depend on the degree of violence, and the move from mythic to divine violence does not involve the abolition of violence itself (2:196). Indeed, the realm of divine purposes is itself framed by an ultimate violence. Rather, the difference between mythic and divine violence is based on the idea that past history has been dominated by the repetition of mythic violence and that divine violence would introduce a new historical age that puts an end to this repetition. While mythic violence is linked to existing laws and is thus "rechtsetzend," divine violence destroys the entire system of laws and is "rechtsvernichtend" (2:199). In this destruction, divine violence creates redemption by installing the dominance of its new order in one stroke, totally annihilating the structure of law that precedes it.

Divine violence has a revolutionary aspect to the extent that it suspends law itself and, in establishing itself, founds a new order that replaces law with divine, and thus metaphysically justified, purposes. This revolutionary quality of divine violence, which Benjamin compares to the political general strike that seeks to overturn the entire legal order (2:193–95), establishes a kind of violence whose justification lies in a realm removed from laws and located in a higher, divine justice that renders all existing law obsolete. Whereas mythic violence follows a fateful logic, in which the human challenging of fate leads to the final victory of fate over human endeavor (2:197), divine violence for Benjamin is a kind of political violence that, in establishing a new order, is not fateful but unpredictable. Because divine violence has a fundamentally different structure than mythic violence, Benjamin claims that it supersedes the entire mythic structure of violence linked to law, establishing "ein neues geschichtliches Zeitalter" (2:202).

Müller argues that Benjamin thereby distinguishes mythic violence's laws from divine violence's "non-representational" quality in order to delineate an

escape from mythic law into “an extrahistorical, redemptive realm of non-violence” (469–70). Similarly, Honneth emphasizes that for Benjamin divine violence creates a zone free of domination, regulated by uncoded customs and rituals of politeness that are based on the idea, “daß sich in den menschlichen Lebensverhältnissen eine herrschaftslose Alternative zur Zwangsinstitution des Rechts auffinden läßt” (198). But if Müller and Honneth invoke a realm of freedom from all external constraints and purposes, Benjamin himself is not so sanguine about this possibility. When he describes the freeing of violence from the status of means toward an end, the alternative understanding he proposes is violence as a manifestation of anger: “Was den Menschen angeht, so führt ihn zum Beispiel der Zorn zu den sichtbarsten Ausbrüchen von Gewalt, die sich nicht als Mittel auf einen vorgesetzten Zweck bezieht. Sie ist nicht Mittel, sondern Manifestation” (2:196). If Benjamin imagines violence here generally to be a manifestation rather than a means, then violence would have in itself a certain quality that relates it back to its source. According to this perspective, violence expresses the peculiarities of its source, and consequently Benjamin does not so much distinguish between a mythic and a divine order but between mythic and divine violence, thereby shifting the source of distinction from symbolic mechanisms to the visceral dimension of anger. He differentiates mythic violence as “Manifestation der Götter,” “Manifestation ihres Daseins” (2:197), from a divine violence that expresses itself “durch jene Momente des unblutigen, schlagenden, entsühnenden Vollzuges,” but which is nevertheless “vernichtend” without any “Rechtsetzung” (2:200). Divine violence, rather than following laws, strikes arbitrarily in moments of annihilation that simultaneously expiate, and Benjamin provides the example of God’s judgment upon Korah and his company (Benjamin 2:199; *Numbers* 16.1–35). While Benjamin thereby seeks to shift the focus from laws to be followed to an informal sphere in which commandments are understood as a “Richtschnur des Handelns” (2:200), his emphasis on modes of violence as the indicator of this shift obscures the cultural dynamics involved in the distinction between formal laws and informal guidelines for behavior.

Though he tries to emphasize the unmediated quality of divine violence, Benjamin still cannot keep it free from external purposes so that it could become “etwas Selbstreferentielles,” as Axel Honneth contends (208). Instead of imagining a space of freedom that would result from the receding of power and ideology, Benjamin contends that divine violence is linked to a “religiöse Überlieferung” and manifests itself “als erzieherische Gewalt” (2:200). Even if divine violence does not obey any laws, it is not therefore self-referential and it is still a manifestation. If the point of divine violence is to establish an order based on justice and on instructional violence rather than on power and law, this justice comes with its own set of divine purposes. “Gerechtigkeit ist das Prinzip aller göttlichen Zwecksetzung, Macht das Prinzip aller mythischen

Rechtsetzung“ (2:198). While he affirms here an orientation toward divine purposes over mythic law-making, his vision of justice, while seeking to separate justice from both power and law, still imagines a set of purposes that give his sense of justice specific cultural characteristics. His references to purposes and pedagogy indicate that, in spite of the fact that it supersedes mythic law-making, justice is not completely universal or self-referential but is still subordinate to a specific orientation.

This subordination to divine purposes does not involve a system of law for Benjamin, however, but “a sort of justice without *droit*” (Derrida 1023–25). Using a conception of judgment that is similar to Schmitt’s in its emphasis on “the irreducible singularity of each situation” (Derrida 1023), Benjamin tries to maintain the particularity of divine violence by noting that a set of just purposes can only be valid for a single situation. “Denn Zwecke, welche für eine Situation gerecht, allgemein anzuerkennen, allgemeingültig sind, sind dies für keine andere, wenn auch in anderen Beziehungen noch so ähnliche Lage“ (2:196). He contrasts these just purposes based on individual judgments with purposes based on laws, which do not function from case to case but are perceived to be both “allgemeingültig” and “verallgemeinerungsfähig” (2:196). But in rejecting the generalizability of justice and concentrating on the justice of the individual decision, Benjamin is not describing a kind of justice without law but in fact comes very close to a Schmittian decisionism that sees the legal judgment, not as a consequence of prior laws, but as an independently determining act (*Politische Theologie* 37–38). Like the Schmittian decision, divine violence is not predictable but *sui generis*, this particularity offering an escape from the fate that law has become in a positivist understanding that sees each judgment as a simple application of a rule. But as Schmitt’s analysis demonstrates, this singularity of every judgment is in fact a characteristic of judgments within every legal system as well.

But if Benjamin is in accord with Schmitt’s prioritization of the decision over the rule and the critique of legal positivism (Honneth 200–02, 204), he veers from Schmitt’s analysis to the extent that he attributes the systematic form of law, in which the individual case is just the application of the rule, not just to legal positivism’s interpretation of law but to law in general. Consequently, Benjamin feels that, in order to move toward a true notion of justice based in the freedom of the decision, he must reject all law and imagine a new form of violence to replace the mythic violence that he links to law. He criticizes law for being a “mythische Manifestation der unmittelbaren Gewalt,” (2:199) rejecting the world of myth and the rule of fate that these myths justify. The lawfulness of violence becomes for Benjamin a measure of its fatefulness and his attempt to escape fate leads him to sketch out an alternative to mythic violence that is both Marxist in its treatment of legal authority as a kind of false consciousness and messianic in its imagining of a total and sud-

den "Vernichtung" of the mythic violence upon which all existing law is based (2:199).

This schema contrasts with Schmitt's foregrounding of the exception before the rule, in which he does not reject the rule outright but merely places it in a subordinate position with respect to the decision on the state of exception (*Politische Theologie* 19, 21). Schmitt's inclusion of both the decision on the state of exception and the rule in the normal situation as two complementary elements of a legal order derives from a different understanding of the relation between law and violence from Benjamin's. Whereas Schmitt imagines that the informal sphere of the decision and the formal sphere of the norm and laws always work together to establish a particular legal order, Benjamin sees only the two options: law as a manifestation of a mythic fate or the elimination of law as the overcoming of fate in the justice of divine violence. The elimination of law can be emancipatory for Benjamin because he considers mythic fate not as a necessity but as a remnant of a barbaric age and the continuing expression of fate in law as a tool of the powerful to advance their interests. Once he takes fate to be avoidable, violence and law (as an expression of fate) can no longer be mediated with one another in a system of justice, and Benjamin understands the abolition of law as the overcoming of fate and the only path to justice. But because the only source of distinction and patterns that could replace law would be the character of divine violence as unpredictable rather than fateful, there is nothing to prevent this notion of justice from becoming completely unpredictable and arbitrary. By contrast, Schmitt does not admit the possibility of escaping fate altogether. Linking fate to the external forces and necessities that affect a society's functioning, he attempts to understand law as a mechanism for channeling the violence of external necessities, made explicit in the state of exception, into forms that are acceptable for a culture's self-understanding. Thus, while each judgment is still a unique and unpredictable event for Schmitt, this judgment is not arbitrary but rather maintains a relationship between external forces and a cultural dimension that underlies all law.

If Schmitt tries to establish a rough commensurability between fateful violence and legal violence, Benjaminian divine violence knows no constraints because such limitations are no longer deemed necessary in a situation where humans are free of fate. But if the external necessities that give rise to fate are still relevant for the modern world, then divine violence can only be distinguished from tyranny by the claim to universal validity. This monotheistic claim of universality then becomes crucial to Benjamin's argument, which seeks to establish a universal justice established by a single moral authority against the competing claims of particular political systems. The underlying assumption here is that the existing variety of political systems is not the result of equally valid but competing claims to truth, but of a rejection of truth in favor of power, resulting in the proliferation of self-interested groups that

use a predatory violence to enforce their domination over others. Benjamin's alternative is the post-historical era of an overarching, monotheistic unity in which laws are no longer necessary because domination has been replaced by the general acceptance of the divine order and a subordination of self-interest to the general good.

The messianic structure of Benjamin's argument indicates a specific political theology that is grounded in his basic stance that the modern world can put fate behind it and advance to a new stage of freedom. The theocratic character of divine violence that Honneth notes becomes evident at this point as a commitment to the absolute and universal validity of divine violence as a transcendent structure against which all prior legal and political systems are merely forms of self-interest (Honneth 209). Benjamin shares in an implicit rejection of any competing understandings of the general good that marks movements such as Nazism and communism that claim to have achieved a final truth based on the objective results of biological or economic analysis and that then seek to institutionalize this truth in a revolutionary upheaval, as, for instance, when Benjamin, in *Über den Begriff der Geschichte*, indicates: "Gewinnen soll immer die Puppe, die man historischen Materialismus nennt" (1:693). Historical materialism in this later text is not just a particular position, but one that Benjamin supports because it offers a perspective that is not defined by domination but by an existence "unter dem freien Himmel der Geschichte" (1:701). The connection to *Zur Kritik der Gewalt* is clear in the way that historical materialism plays the role of an emancipatory perspective, whose superiority would justify the possible divine violence necessary to establish it. As Derrida points out, divine violence, while bloodless, is just as lethal as mythic violence for Benjamin, and in some ways is even more horrifying, to the point where Derrida compares divine violence to the violence of the Nazi holocaust and Honneth labels Benjamin's notion of right as "terroristisch" (Derrida 1044–45; Honneth 209).

Yet one of the strengths of Benjamin's thinking is that his revolutionary rejection of law and fate is still coupled with a sense of the abiding significance of tradition. The puppet of historical materialism is after all controlled by the hunchback of theology (1:693). While one might argue that Benjamin turns theology into a tool for a secular, historical materialist project, the theological perspective that Benjamin invokes does not function according to an instrumental logic of control but rather according to an unpredictable process, summed up in his notion of *Jetztzeit*, whereby a forgotten tradition suddenly becomes relevant to the present. In contrast to a manifestation of an unmediated, lethal violence, such a return to a forgotten tradition depends upon a revival of the symbolic aspect of mythic violence.

Benjamin maintains a sense for a symbolic tradition in his discussion of "das bloße Leben," in which he criticizes the mechanistic quality of mythic violence and law for reducing life to "das bloße Leben" and describes how

divine violence redeems life in its true metaphysical significance. His description of this spiritual notion of life indicates a cultural specificity that is incompatible with his idea that divine violence is unmediated. He states specifically that existence understood as “bloßes Leben” is lower than a just existence (2:201), and he differentiates between life understood as “bloßes Leben” and life understood as the life within a human that transcends physical existence and death. Since the sacred element in man consists of “dasjenige Leben in ihm, welches identisch in Erdenleben, Tod und Fortleben liegt” and there is no sacredness that attaches to “sein leibliches, durch Mitmenschen verletzliches Leben” (2:201), life requires a metaphysical quality, which can only be manifested through some symbol, in order to transcend physical destruction (Weigel 75).

Though Benjamin interprets mythic violence to be a violence that seeks to preserve itself by establishing its bloody violence over “das bloße Leben,” mythic violence’s subjection of human life to its laws also involves a subordination of human endeavor to a sacred ideal, leading to the affirmation of a symbolic dimension in which humans can survive spiritually beyond their mere physical existence. Symbolic determinations constitute the cultural realm in which they can make the existential trade-offs that are necessary for dealing with external violence. A view that emphasizes the unavoidability of violence sees law as the culturally mediated reaction to the necessities of fate.

When Benjamin writes, however, that divine violence rules over all life “um des Lebendigen willen” (2:200), he undermines any distinction between “das bloße Leben” and this “Lebendige” because the latter can only go beyond bare, physical life if it can maintain some kind of symbolic identity, which, in establishing continuity through life and death, also entails the specific culturally marked identity that comes with every symbol. Since divine violence exists only “um des Lebendigen willen,” there could be nothing beyond mere life that could pull this life out of its physical context and into a metaphysical one. By cleansing divine violence of any symbolic qualities, Benjamin also makes it impossible for divine violence to treat life as anything but bare life. Moreover, because divine violence relinquishes any demand for sacrifice and is content to accept it (2:200), such violence remains without any abiding content or idiosyncratic structure that could give to the “Lebendigen” a symbolic meaning that could transcend mere physicality.

Perhaps in a recognition of these difficulties, Benjamin explicitly reintroduces a measure of cultural particularity into divine violence in a final move at the end of his essay, thereby undermining his own distinction between mythic and divine violence: “Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen” (2:203). As opposed to the mythic violence that Benjamin refers to as “schaltende” and “verwaltete” and therefore “verwerflich,” divine violence, as “Insignium und Siegel” rather than a “Mittel” of execution, retains a trace of a

proper name in the insignia that guarantee that the move from mythic to divine violence is a move from mere material life to a sacred life. Benjamin seeks to distinguish the symbolic aspect of divine violence from the mechanical aspect of mythic violence as a mere “means.”

Yet, the situations that Benjamin links to divine violence—the “true war” and the “crowd’s divine judgment upon the criminal”—are ones in which codified law recedes in favor of a kind of self-righteous feeling for justice within the people. To the extent that he decouples this feeling for justice from a mythic content and a legal tradition, he is left without any institutional controls or any responsible authority to constrain the crowd. Benjamin runs here into a basic contradiction between the unmediated character of divine violence and his insight that it must have a proper name as well. If the primary task of divine violence is to establish the “insignia and seal” of sacred execution, then it is based in a sign with the significance of a proper name within which sovereignty functions. The establishment of the domination of this proper name becomes for Benjamin the primary task of a divine violence that seeks to preserve the sacred.

But this link between insignia and sovereignty is precisely the structure of the normal functioning of sovereignty, according to Schmitt’s idea that the key issue is “who decides” (*Politische Theologie* 40). The decision on the state of exception institutes the proper name of sovereignty in competition with other possible names, and in doing so establishes a specific subject whose symbolic connections define a particular tradition, for instance the specific rituals of a peace ceremony. But while Benjamin criticizes such a ceremony as part of the occupation process, after a military conquest, of sanctioning the new power relations as law (2:186), it may in fact be that the priority is reversed: the ritual may form the larger symbolic context within which the violence must take place, if the law it establishes is to gain legitimacy. If divine violence is not about specific punishments or physical effects but is primarily concerned with establishing a new tradition, then divine violence cannot be immediate, but must be linked to insignia, that is, to precisely the type of culturally specific rituals and mythic traditions connected to a proper name that relate a metaphysical perspective to specific laws. The way to preserve life as part of a sacred context rather than “bloßes Leben” would not be to reject the mythic grounding of law, but to see in the symbolic traditions underlying myth the spiritual mediation of an administrative task. By contrast, if the coming of divine violence as an immediate violence had no connection to insignia, it could not inaugurate the rule of justice that replaces the rule of power with an orientation toward the sacred. The establishment of such a “nameless” immediate violence in place of mediation through myth would reduce order to pure power, without the help of ideals that themselves must incorporate an invocation of a proper name in the insignia in order to operate. Though Benjamin only gestures toward this symbolic context in his reference to insig-

nia in *Zur Kritik der Gewalt*, by the time of *Über den Begriff der Geschichte*, he speaks explicitly about the importance of the “Bestand der Tradition” (1:695) and of the way in which even the French Revolution understood itself as “ein wiedergekehrtes Rom,” thus citing the proper name of Rome “wie die Mode eine vergangene Tracht zitiert” (1:701).

Agamben and Bare Life

Benjamin’s failure to adequately account for the particularity of ideals in *Zur Kritik der Gewalt* has major consequences for Agamben’s reading because the latter focuses primarily on the idea of mere or “bare” life as essential to the notion of sovereignty. Because he ignores the dynamic in which the superseding of juridical violence in divine violence also involves an invocation of a symbolic dimension, Agamben’s argument, though less contradictory than Benjamin’s, ends up being even more emphatically destructive of the sacred element that could prevent the reduction of humans to their bare life. In taking over the concept of bare life from Benjamin, he levels the distinction between bare life and sacred life that would provide the possibility of recognizing a symbolic and spiritual aspect of human life. In a move that William Connolly has criticized for unduly limiting our notion of the sacred (28–29), Agamben equates bare life with sacred life: “The life caught in the sovereign ban is the life that is originally sacred—that is, that may be killed but not sacrificed—and, in this sense, the production of bare life is the originary activity of sovereignty” (*Homo Sacer* 83). Whereas Benjamin insists on the difference between bare life and sacred life, Agamben folds the two into each other. When Benjamin criticizes the “dogma of the sacredness of life” (2:202), he is referring to the idea of the sacredness of bare life as opposed to the idea of sacred life which is “identically present in earthly life, death, and afterlife.” But as Connolly has suggested (29), when Agamben equates bare life with sacred life, he conceptually forecloses any way of understanding sovereignty in terms of a cultural system.

Like Benjamin, Agamben commits himself to a project in which the goal is not only to overcome a political structure of sovereignty that he argues is linked to bare life, but also to supersede law itself. Yet, it is difficult to imagine the character of this new order beyond law, since Benjamin already, to the extent that he rejects all previous myth and law as fateful violence, also disposes of the very traditions that could be the basis of cultural order in the future. Agamben “purifies” Benjamin’s approach by adhering to an “absolute” decisionist understanding of law when he argues that “the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence” (*Homo Sacer* 32). Arguing that there is no difference between law and violence, Agamben then

constructs his idea of politics around the notion of a bare life stripped of any legitimacy or vestiges of cultural markings. Though Benjamin runs into contradictions between the unmediated character of divine violence and his wish that it have a symbolic content as well, he still maintains a conceptual distinction between bare life and the “living” core that lies at the basis of the sacred through life, death, and the afterlife. Consequently, where Benjamin anomalously sees the appearance of bare life as something new, Agamben “cleans up” the analysis by considering sacred life and bare life as equivalent, beginning in ancient Rome. If there remains in Benjamin a certain nostalgia for the “insignia and seal” of an order that are to remain as the markers of divine violence, even as it is supposed to replace the old political order with a new, revolutionary one, Agamben asserts that “from the point of view of sovereignty *only bare life is authentically political*” (*Homo Sacer* 106) and that consequently any juridical order necessarily participates in a violence that reduces humans to bare life.

Agamben considers bare life and the sovereign decision as two sides of the same phenomenon. The decision that founds the state and the decision that declares life itself to be mere life are the same (*Homo Sacer* 84), and Agamben postulates an enduring link between the sovereign and the bare life of the *homo sacer* within a political space without religious ideals. As Eva Geulen has noted (91), the *homo sacer* becomes the primary image of all politics, the sovereign decision becoming a biopolitical one for Agamben in which bare biological life and purely political life collapse into one another, so that “the inclusion of bare life in the political realm constitutes the original—if concealed— nucleus of sovereign power” (*Homo Sacer* 6).

But if the sovereign declares life to be bare life in the same action that establishes sovereignty, then there are by definition no limits on sovereign power from the side of the subject and its commitments. The sovereign decision is an unmediated and violent act for Agamben that is sufficient for defining order prior to any cultural mediation. The lack of any notion of a cultural mediation of politics in Agamben’s analysis means that there is only pure violence, and biopolitics becomes a matter of cause-and-effect, instrumental calculations divorced from any sense of ethical principles. Though Agamben is critical of this situation, his theory implies that there is no escape from it. For he has purged the Benjaminian escape into divine violence of the particular cultural vestiges that would prevent bare life and the sovereign decision from becoming complementary opposites that determine each other in a logic of pure violence. By extending the absolute decisionist understanding of political power into an argument that a legal order originates in an unmediated and violent act, Agamben’s biopolitical theory can no longer present any alternative to an elimination of culture and a treatment of humans as bare life. Even a possible return to “classical politics,” in which the private and the public are clearly separated, is already foreclosed by the fact that violence will always be a tool

of oppression focused on the body rather than based on principles (*Homo Sacer* 188).

As a result, Agamben's only alternatives are utopian ones that are only sketchily indicated, as in his description of a humanity that "will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good" (*State of Exception* 64). This imagination of a future humanity that is beyond law as we know it is both so removed from any conceivable reality and so empty of content because Agamben has excluded from his analysis the cultural realm as a dynamic sphere that would be the justification and constrainer of law on the one hand and the provider of ideals for imagining the future on the other hand. In contrast, though Benjamin is inconsistent in rejecting the injunctions of myth yet still holding onto the symbolic qualities of myth in a new divine sovereignty, he nevertheless manages to retain the possibility of the sacred in his notion of a divine violence that inaugurates a new period of justice without law.

Culture and Politics in Schmitt

But there is an alternative way of understanding the situation of justice without law, not as a rejection of law as a form of violence but as an acknowledgement of the plurality of perspectives that might ground law. Whereas Benjamin does not question the objective validity of divine violence, Schmitt links the situation of justice without law to an explicitly political situation that is marked by competing conceptions of justice. This "state of exception" is not a space of divine violence but of conflict in which law recedes but remains within the "Rahmen des Juristischen" (*Politische Theologie* 19). Schmitt considers law to be necessary as a mediator between cultural ideals and external violence because he assumes a fundamentally "multicultural" political theology in which the source of political conflict is not competing factions, each defending their own particular interests, but rather the result of competing conceptions of the general good (*Politische Theologie* 16; Pan, "Carl Schmitt on Culture and Violence" 66).

Whereas for Benjamin existing examples of law are only based on violence, and the divine violence linked to justice is only a possibility in a future after the revolutionary end of these existing legal structures, in Schmitt's thinking every establishment of order through a sovereign depends on some set of metaphysical ideals. He by no means neglects an analysis of power, however, but rather constructs a unified theory of law that understands power and justice as always linked concepts—in marked contrast to the Benjaminian model that separates these two aspects from each other in the distinction between mythic and divine violence.

Schmitt links power and justice by offering a non-progressivist understanding of the difference between what Benjamin calls mythic violence and divine violence. Benjamin's insistence on a categorical difference between the two, in which mythic violence is based on the rule of power while divine violence introduces the rule of justice, can only make sense if, as Benjamin assumes, there is a fundamental, world-historical break between a traditional world based on myth and fate and a new, post-revolutionary world of justice (2:194). In this way, Benjamin sets up Jürgen Habermas's approach to the difference between traditional and "post-traditional" society as the key to the possibility of a new type of justice, which in Habermas, for example, would be based on a communicative model of rationality (117–18, 167). Schmitt rejects such a progressive philosophy of history and assumes that social orders will always have to contend with external necessities. At the same time, each society must define its approach to these necessities in its own way, the determination of this approach then constituting the basic metaphysical commitments of that culture. Because each culture's establishment of what constitutes the general good cannot be objectively justified, Schmitt argues that exception and rule are intimately related to each other, and that every existing system of law—past, present, or future—is ultimately justified by an initial decision. Consequently, the decision does not remain totally removed from justice. Indeed, he emphasizes that "beide Elemente, die Norm wie die Entscheidung, im Rahmen des Juristischen verbleiben" (*Politische Theologie* 19). There is for Schmitt no world-historical distinction between a mythic violence based on power and a divine violence based on justice. Instead, Benjamin's notion of mythic violence would correspond in Schmitt to the forms of state coercion (laws and police) that are used to enforce norms within a stable political order. At the same time, Benjamin's idea of divine violence would correspond in Schmitt to the violence connected to the decision that is used in the state of exception to establish the system of norms in the first place. Though Schmitt does not see this establishment of a system of norms as a form of progress from a mythic system to a modern system, he does understand the decision as a singular event that grounds an entire order, and in this way the decision is like Benjamin's divine violence. As a consequence, the key difference between Schmitt's and Benjamin's categorizations of forms of violence is that, while Benjamin sees law-preserving violence and law-establishing violence as just two faces of mythic violence (2:186–88, 203), from Schmitt's point of view, Benjamin's notion of law-preserving violence is the same as mythic violence, i.e., violence within the normal situation, and law-establishing violence is the same as divine violence, i.e., violence in the state of exception. Because the exception makes clear on what basis the rule functions, the decision is the founding event for all law for Schmitt, and the state of exception will always involve a struggle to establish the form of justice for the future. By contrast, the violence connected with the norm is not part of a

struggle against alternative forms of law but one that suppresses criminal activity.

Schmitt is at great pains to distinguish both criminal activity and rebellions from true politics because he consistently defends the existing order against the overturning of established order (*Begriff des Politischen* 10–11, *Theorie des Partisanen* 21). As Benjamin Arditì argues (14–16), Schmitt's theory implies a constant conflict between the prevailing structure of politics in a particular order and the potential for the "political" as such to assert itself as the emergence of a competing notion of order that would undermine the existing hegemonic structure of politics. As opposed to Benjamin's assumption of a single trajectory for a world-historical shift from power to justice, Schmitt outlines a constantly shifting dialectic between an established politics and a new understanding of the political, in which this possibility of a new politics can always threaten the established order, bringing about the state of exception. But while Schmitt has a keen sense for the approach of such a state of exception, his concrete judgments regarding contemporary politics maintain a consistently conservative defense of whatever structure of politics is currently established—whether it be the Weimar constitution in *Legalität und Legitimität* (98), Hitler's Enabling Act in *Staat, Bewegung, Volk* (6–7), or the *jus publicum Europaeum* in *Nomos der Erde* (200–01)—against the threat of politically revolutionary tendencies. On the other hand, because Benjamin writes in support of revolution, he is too quick to argue that the fascination with the great criminal indicates how criminal violence is always a potentially political divine violence that establishes a new order. He neglects the extent to which this criminal activity needs to develop both a symbolic structure and a representational authority to become a real political possibility.

Because Schmitt concentrates on these representational prerequisites for the transformation of pure violence into politics, he conceives of culture as a dynamic process that underlies laws and must be taken into account in any discussion of their foundations. The tie between exception and norm is a consequence of the fact that the influence of the ideals that determine the decision is sometimes obscured by the normal operation of laws but can be clearly perceived in situations, such as the state of exception, where law breaks down due to the emergence of an alternative conception of the political. Because he does not distinguish a mythic violence from a divine violence as two historical epochs, Schmitt establishes a relationship between violence and justice for all law but makes the distinction between the norm and the state of exception into the key one. As Andreas Kalyvas has shown (115–36), the norm for Schmitt is the form of politics within a stable order while the decision in the state of exception is the impulse that establishes a particular understanding of the political against alternative ones.

Enemy and Way of Life

Schmitt thereby develops a cultural notion of decisionism that is opposed to Agamben's biopolitical understanding. If according to Benjamin divine violence declares life to be a sacred entity while mythic violence subordinates bare life to myth through explicit laws, punishments, and sacrifices, Schmitt adjusts his decisionism so that its object is not bare life but rather a collective's way of life, and he understands law and politics as inextricably tied to a cultural context of myth and tradition that helps define such a way of life as a collective vision that predetermines the individual subject as always more than its bare life.

This cultural interpretation of political change seems at first to run counter to other aspects of Schmitt's thought, for instance, the idea that the fundamental political distinction between friend and enemy can exist independently of "alle jene moralischen, ästhetischen, ökonomischen oder andern Unterscheidungen" (*Begriff des Politischen* 27). Though Kennedy, for instance, reads this passage as evidence for how Schmitt "liberates political decisions from moral criteria" (*Constitutional Failure* 19), a careful look at Schmitt's description of the enemy reveals that the political distinction is not as pure and independent as one might at first assume. For the way in which the enemy must be defined as "other" presupposes a cultural determination about what constitutes sameness and otherness. As Schmitt notes, this determination can never be based on a general norm or the judgment of a neutral party. Rather, he refers to the state "als einer organisierten politischen Einheit, die als Ganzes für sich die Freund-Feindscheidung trifft" (*Begriff des Politischen* 30). On the one hand, within the context of state politics this decision about the enemy cannot be made by some "objective" agent or authority outside the state. On the other hand, this decision is not just the decision of the sovereign but of the state in its entirety—"als Ganzes." As a consequence, however, this determination of the enemy must be, first, decisionist to the extent that it is not objective and, second, culturally bounded to the extent that it involves the specific attitudes and conceptions of the entire political entity. The importance of the decision on the state of exception lies in its ability to sum up the near-unanimous perspective of the entire group of people for which the decision should be binding. Yet, it may be that in certain situations no such homogeneity of perspective exists within the people, meaning that no decision is possible and there can be no clear sovereign. The possibility of the decision therefore depends on the cohesiveness of the polity and its understanding of itself as a unified group.

Because the possibility of decision depends on the consent of the group, the definition of the enemy is a judgment, not about existence itself, but about the particular "way of life" that is defined and established in the decision: "Den extremen Konfliktsfall können nur die Beteiligten selbst unter sich

ausmachen; namentlich kann jeder von ihnen nur selbst entscheiden, ob das Anderssein des Fremden im konkret vorliegenden Konfliktsfalle die Negation der eigenen Art Existenz bedeutet und deshalb abgewehrt oder bekämpft wird, um die eigene, seinsmäßige Art von Leben zu bewahren" (*Begriff des Politischen* 27). The appeal to the actual participants rather than to an outside observer as the only ones capable of making a judgment means that the judgment depends on a unity of perspective within the polity, beginning with the concrete experience and situation of the particular judging subject within this polity, rather than the application of any objective moral or rational principles. This is because the content of this judgment on the enemy does not just concern pure biological survival but, as Andrew Norris has indicated (73–76), involves a self-understanding of what constitutes "der eigenen Art Existenz"—one's own particular form of existence. Rather than simply defending one's bare existence against the enemy, the decision establishes the existence of a group of people who see themselves as part of a particular cultural form that must be defended against what the group judges to be alien and threatening to this form.

In a process that Sarah Pourciau describes as a "practice of radical self-constitution" (1071), the decision attains a foundational meaning for the self-construction of a collective based on cultural ideals, but not in the mechanism of a pre-existing norm. Schmitt is working within the same framework of a critique of the normative emptiness of rationality that motivates texts such as Max Horkheimer and Theodor W. Adorno's *Dialektik der Aufklärung*. Facing the same process of secularization that has on the one hand delegitimized and relativized theological truths and on the other hand demonstrated the inability of reason to ground a set of values objectively, Schmitt pursues a line of thought in which each set of values can attain validity within a particular political sphere, not through any objective, universal truth, but through a process of collective will formation. The constitution of collective identity that is carried out in the sovereign decision that establishes order is not just a decision for order itself but for a particular order, and Schmitt's innovation is to see this decision as the foundation of any set of norms that, because they can never have any universal validity, can only attain validity on a local level as the metaphysical ideals that have gained broad support within a group and are then established into a particular legal and political order through the sovereign decision.

It is significant here that the decision is a decision and not a construction, which is to say that the sovereign's decision involves a choice amongst a number of previously existing, competing conceptions of collective identity. Though the decision is indeed a defining moment and in that sense unprecedented, it cannot in fact arise out of a void, because the friend-enemy distinction that underlies this decision is dependent on a pre-existing cultural context. Though the designation of the enemy may seem to be an arbitrary act of

political will by a sovereign, the sovereign's decision is always bounded by the available cultural understandings of both that which might constitute the group's way of life and that which would threaten this constitution. Because the political determination of the enemy is always based on previously developed conceptions of just what constitutes the collective's way of life, the decision is bounded by the possibilities available to the cultural context within a specific tradition. The contents of these possibilities are not defined by the political decision but precisely by those other oppositions—moral, aesthetic, economic—that are available for politicization.

Schmitt explains this dependence of the political determination of the enemy on nonpolitical factors by pointing out that the political has no substance of its own: “[das Politische] bezeichnet kein eigenes Sachgebiet, sondern nur den *Intensitätsgrad* einer Assoziation oder Dissoziation von Menschen, deren Motive religiöser, nationaler (im ethnischen oder kulturellen Sinne), wirtschaftlicher oder anderer Art sein können und zu verschiedenen Zeiten verschiedene Verbindungen und Trennungen bewirken” (*Begriff des Politischen* 38–39). Because it does not have its own substance but only describes an intensity of an association, the political can never exist in a “pure” state. Instead, it is always a property that attaches itself to a prior association with a specific cultural content. Such a religious or national or economic association must always provide the cultural basis and content for a political definition of the enemy. Once this happens, that cultural basis is itself transformed through the politicization. The friend-enemy distinction cannot be constructed without a pre-existing religious, national, economic, or other distinction. Thus, far from imagining the political friend-enemy distinction as that which grounds an order *ex nihilo* from an “abyssal act of violence” (Žižek 18–19), Schmitt always conceives of the political as a characteristic that a pre-existing cultural association can take on. By the same token, the cultural association, once it is politicized, becomes subject to a political dynamic that takes decision-making beyond the bounds of the purely religious, national, or economic criteria that were the initial basis of the association of people and subjects them to the “oft sehr inkonsequenten und irrationalen Bedingungen und Folgerungen der nunmehr politischen Situation” (*Begriff des Politischen* 39). The political and the cultural are intertwined in a relationship in which a human association with a particular content becomes intense enough to be the basis of a decision that defines enemies in terms of the need to preserve the collective's existence as cultural form.

Within this process of defining a cultural identity, the final designation about the enemy still depends upon the possibility of armed struggle between two groups (*Begriff des Politischen* 29). But even if the ultimate political intensification of an opposition can only arise when two groups face each other in battle, this descent into war is not a situation of pure violence. Politics for Schmitt can never be about a biopolitics in which violence and the body come

into direct contact without mediation, because politics can never even constitute itself as such without a prior set of ideological oppositions. Because he defines politics as an intensification of a previously existing opposition, the political for Schmitt always presupposes some substantive opposition that will then form the basis for law. Though any particular religious, national, or economic opposition might not be political, it will gain a political meaning when it intensifies to the point where an association of people will define an enemy based on the opposition and thereby link their identity to that opposition to such an extent that they are willing to both risk death and kill in order to maintain the significance of the distinction.

Though the possibility of war is necessary for the definition of the enemy, Schmitt's conception is not an incitement to war. Rather, the prospect of war defines the most intense point along a continuum between a total lack of politicization and the most extreme politicization of a particular opposition. Schmitt does not call for the creation of enemies but rather uses the concept of the enemy as a tool to take the political "temperature" of an existing opposition. A particular opposition, such as that between rich and poor or between Christian and Muslim, may have a relatively low political intensity in a particular time and place, reflecting the fact that there is little potential in that context that, for example, rich people would see poor people (or *vice versa*) or that Muslims would see Christians (or *vice versa*) as their enemy. But over time, this intensity could increase to the extent that one group begins to see the other as a threat to its existence as a group. By considering the probability that the rich/poor opposition or the Christian/Muslim opposition could lead people to take up arms against each other based on this opposition, one determines the relative political intensity of the opposition. The enemy in war is not a desideratum for Schmitt but a limit concept, and the political is not itself an opposition that could exist independently of other oppositions, but can only develop through the intensification of an existing opposition.

As a consequence, the descent into civil war (as opposed to criminal violence) must be based on the commitment to some type of value system in which oppositions can be defined on a cultural level that involves basic principles. This set of oppositions, then, is both the underlying schema for defining politics in a particular situation and the ideological basis for a set of laws. Anomic violence may be a possibility for Schmitt, but it is not political. Violence can only be political once it is linked to a symbolic field of oppositions that can define enemies. This definition is not simply a reaction to an existential threat to physical survival but a determination of what counts as *cultural* survival. This "mythic" basis of law is not merely an instrument for maintaining power that can be turned on and off at will, as Müller suggests (466), but an independent realm of cultural dynamics that follows its own logic and is not subject to simple instrumentalization. It is to this realm that Schmitt

turns in order to understand the forces that underlie political conflicts and upheavals.

Conclusion

As opposed to Agamben's biopolitical paradigm that leaves out cultural differences as a motivating factor in political conflict, Schmitt's sense for the cultural ideals that underlie such conflict can be particularly useful in those situations, such as Germany in the Weimar Republic or the period of civil war in Iraq, in which the fundamental sources of conflict do not lie simply in a struggle for resources between competing interest groups but in the disparate religious, ethnic, and economic systems that collide with such intensity that the resulting political instability leads to a state of exception. Though the sovereign's decision may be the defining moment in establishing the political identity of a people, this decision is only one moment in a broader and longer process that involves the building of the cultural and ethical foundations that are necessary for such a decision to take place. Consequently, the cultural analysis of both religious and secular literary traditions should be able to throw light on the deeper trends that motivate the most intractable political conflicts, and Schmitt's political theory is structured so as to leave a space in which cultural theory could address the gaps that a purely political analysis would be unable to fill. Indeed, Benjamin's notion of *Jetztzeit* might be successfully integrated with Schmitt's idea of the decision, as both represent unprecedented moments that link a cultural tradition with an immediate political context.

Accordingly, a possible "Schmittian" approach to cultural studies would involve a new kind of inquiry into the political parameters of cultural production and reception. If 1918 and 1933 represent key decision points in German political history, the results of those decisions also had consequences for the character of culture in the Weimar Republic and Nazi Germany. At the same time, though these crises were decided by political events, the options available to political actors were tightly constrained by the cultural history leading up to those points. Schmitt's reading of the sovereign decision and the state of exception as moments when culture and politics collide opens up an approach to cultural objects that sees them as offering competing models for defining cultural identity in the confrontation with external exigencies.

The strength of Schmitt's political theory lies in its ability to interpret crisis points of politics as turning points in culture as well. But Schmitt's several attempts to explain the precise workings of culture in politics turned out to be either inadequate or downright disastrous. His *Staat, Bewegung, Volk*, for instance, argues that the Nazi movement provided the cultural mediation between the people and the state that is missing in a liberal framework that is

based on a dualistic opposition between the two (14-17). While Schmitt is obviously searching here for a way to integrate the realm of culture into the political sphere, his solution ends up destroying the independence of the cultural realm that he was trying to save by reducing it to unity with the Nazi movement. If Benjamin's political theory turns out to be just as dangerous in leading him to imagine, in divine violence, the one true form of justice that can only be established through the violent destruction of all previously existing systems of law, his cultural theory, in allowing for the freedom of cultural life to establish new connections between current circumstances and past traditions, provides the antidote to Schmitt's heavy-handed approach to culture. Agamben's biopolitical paradigm, however, in imagining a possible space of freedom from cultural inscriptions, pushes toward a notion of an empty subject, freed from law, but by the same token void of culture and defined by bare life. As much as he criticizes the notion of bare life, his image of freedom from law implies it by de-legitimizing all those "mythic" constructions that are the only path toward maintaining the sacred as something that is more than just power or bodily existence. Agamben seeks a life that is freed from ideology, imagining that its mythic character is the source of domination. But if we consider language "*als den wirklichen Unterscheidungscharakter unsrer Gattung von außen*" (Herder 43), then language and its accompanying ideological underpinnings would not be the source of domination but merely the human means of adapting to the sources of violence that form the fundamental parameters of human existence.

Note

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