

# **The Sovereign, the Revolutionary and Deconstruction: Derrida on Law and Reality**

**Rick Slotboom 1137174**

Instructor: Dr. R. Uljée

Leiden University

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# Introduction

## Research Problem

What is to be done when recourse to the legal order does not solve current problems, and rather forms an impediment to dealing with them? In other words, what is to be done when law and reality are driven too far apart from each other? This is a question which has occupied the minds of legal scholars and philosophers for centuries.

The common answer to this question has been that when this is the case, the legal order has to be temporally suspended, in order to save the legal order itself. A state of exception has to be declared which falls outside of the legal order. After all, in this particular scenario, the legal order itself is not fit to deal with the pertaining problems. Along this line of reasoning, one could for example argue that the legal order has to be temporarily suspended in the case of an exceptional scenario such as the current refugee crisis, as to enable the political and juridical leaders to make suitable decisions based on their own judgement.

However, the question then arises where a state of exception has to be located. One could argue that the state of exception has to remain outside of the order otherwise it is not possible to move beyond the limits of law and overcome the gap between law and reality. Yet, one could also argue that a state of exception has to remain inside of the lawful order, because a state of exception has to be justified on the basis of the norms which exist within that particular lawful order. After all, an exception is something which deviates from a particular norm. Consequently, Giorgio Agamben argues that “the conflict over the state of exception presents itself essentially as a dispute over its proper *locus*”.<sup>1</sup>

This question is both of philosophical importance and of relevance in the world of today. In the world of today – even outside of philosophical and academic circles – it is a pending question to what extent one can live outside of one’s own constructions. It is, for example, in vogue to speak of alternative truths and a post-truth world order. This is to say that we all measure reality by means of our own subjective truths, and it seems to be impossible to get a grasp of absolute reality, if there is any. So, we have our own subjective truths by which we have to live by, yet if we want to make any sound judgements, we have to move beyond our subjective truths.

The latter problem also comes to the surface in the case of law, for law is only an order constructed by man himself, and it is not at all clear if the law within this order truly represents divine or natural law; one can never be sure if one’s order of law is the most just version possible. Yet, man has to live within an order of law, just as he has to live by his own subjective truths. In sum, it seems that man has to live within the bounds of his own subjectivity, but that he also has to rely on something outside of it if he wants to make sound judgements, which are not made according to one’s own whims.

Derrida is one of the important philosophers with regards to this philosophical problem, because he has written extensively on the idea that there is no objective reality one has access to, and – to state it briefly – that there is nothing outside of discourse. However – as will become clear –, because of this statement, people often interpret Derrida as if he is completely trying to get rid of any form of discourse or any form of order – as will be shown later on in this introduction. Yet, this is not the case at all, Derrida takes a much more modest approach towards the problematic relationship between law (or order in general) and reality. I argue that he also takes an intermediary position in between law/order and reality. In order to show this I will focus on his critique on Schmitt and Benjamin. Schmitt, in this case, represents those who are in favour of law and order, while Benjamin represents those who want reality to tear down the order of law. By bringing both critiques into connection with each other – which has not been done before – Derrida’s intermediary position will come to light. It will also shed more light on the relationship between law and reality,

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<sup>1</sup> Giorgio Agamben, *State of Exception* (Chicago, Chicago University Press: 2005), 24.

because Derrida's intermediary position will make it clear that it is also possible to take a position in between a lawful order and a disrupting reality.

## **Research question**

The dispute over the proper locus of a state of exception has found its culmination point in the philosophical discussion between the philosophers Carl Schmitt and Walter Benjamin. Giorgio Agamben sums up the philosophical disagreement between Schmitt and Benjamin in the following way:

“While Schmitt attempts every time to reinscribe violence within a juridical context, Benjamin responds to this gesture by seeking every time to assure it—as pure violence—an existence outside of the law”<sup>2</sup>

The violence which Agamben is writing about, is the violence done to the current juridical order. It is the violence which happens when the old order is torn down, and a new order is instituted in the place of it. Schmitt wants to lay this violence in the hands of the sovereign – situated within the juridical order –, while Benjamin wants to lay this violence in the hands of the revolutionary – situated outside of the juridical order. In short, Schmitt ultimately situates the state of exception within the realm of law, while Benjamin situates it outside of it; this distinction will be given more substance to later on in this thesis.

However, both thinkers run into problems of their own, with regards to their view on a state of exception. The problem with Schmitt's definition of a state of exception is that the exception ultimately stays within the order, and can not be called an exception, for this very reason. The problem with Benjamin's definition of the state of exception is that it is not clear how one can get outside of the existing order and break with it.

Derrida takes an intermediary position between Schmitt and Benjamin. He does not only analyze and criticize both Benjamin's position and Schmitt's position, but he also has his own elaborate standpoint with regard to the relation between law and reality. In order to focus on this intermediary position of Derrida with regards to the relationship between law and reality, the research-question of this thesis is the following: *To what extent is Derrida able to overcome the problems of Schmitt and Benjamin with regards to the problematic relationship between law and reality?*

Even though much has been written on Derrida's positioning towards Schmitt or his positioning towards Benjamin, the two positionings have not been brought into connection with each other, not even by Derrida himself. Nonetheless, this is of interest to the academic debate, not only because Derrida takes an intermediary position, but also because his position has not been brought into connection with the general discussion concerning the relationship between law and reality. Yet, it will further the discussion for the simple reason that it offers a different standpoint on the whole matter. What is more, this standpoint is not just a standpoint chosen at random, but a standpoint based on the philosophical mistakes made by two important figures in the academic discussion: Carl Schmitt and Walter Benjamin.

## **Method and Structure**

This thesis will argue how Derrida, in his account of law and reality, is able to overcome the problems which Schmitt and Benjamin are dealing with. In order to do so, four things need to be clarified: Benjamin's account of the relationship between law and reality, Schmitt's account of this relationship, Derrida's response to both of them, and the relation between Derrida's response and his own philosophical standpoint towards the relationship between law and reality. To clarify all of this as clearly as possible the thesis is separated in three different sections.

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<sup>2</sup> Ibidem, 59.

The first section is centred around Schmitt's account of the state of exception, and Derrida's critique of this account. Since Derrida's critique of Schmitt mostly has to do with his friend/enemy distinction, and since this distinction is closely related to Schmitt's notion of the state of exception, the question of the first section will be the following: *Does Derrida's critique of Carl Schmitt's friend/enemy distinction jeopardize Carl Schmitt's notion of the state of exception?*

The first part of this section will focus on Schmitt's account of the state of exception in itself and his notion of the sovereign decision – closely related to it –, by closely analysing *Politische Theologie, die Diktatur* and *Leviathan im Staatslehre des Thomas Hobbes*. The second part will relate this notion with Carl Schmitt's friend/enemy distinction, by focusing on Schmitt's *Der Begriff des Politischen*. The third part will focus on Derrida's critique of Schmitt in *Politiques de l'amitié*.

The second section of the thesis will first of all focus on Derrida's response to Benjamin's critique of Schmitt's state of exception. Then it will be shown how Benjamin has developed his own standpoint regarding the relationship between law and reality; it will also be shown that Benjamin runs into problems of his own. The final part of this section will focus on Derrida's critique of Benjamin. The central question of this section is therefore the following: *In what sense is Derrida's account of the relationship between law and reality an improvement upon Benjamin's account?*

In order to give a clear answer to this question, it will first of all be made clear how Benjamin has exactly developed his own philosophical standpoint regarding the state of exception, in response to Schmitt. In the first part, it will be explained how Benjamin – in developing his own standpoint regarding a state of exception – is to a large extent influenced by Schmitt, not only to make clear what is at stake with his position but also to make the difference clearer between a philosophical position in which a state of exception is situated within the legal order – as is the case with Schmitt – and a position in which a state of exception is situated outside of it – as is the case with Benjamin. The focus will therefore lie on Benjamin's *Über der Begriff der Geschichte* and *Ursprung des deutschen Trauerspiel*, for he responds to Schmitt in these works. In the second part of the section, I will use Benjamin's essays *Über der Begriff der Geschichte*, *Zum Bilde Prousts* and *Zur Kritik der Gewalt* to flesh out his position. The third part is centred around Derrida's essay *Force de Loi*, because he criticizes Benjamin in this particular essay.

In the final section, Derrida's critique of Schmitt and Benjamin will take a central place. In this section, Derrida's critique of Benjamin and his critique of Schmitt will be brought into connection with each other. By bringing both critiques in connection with each other, it will come to light that Benjamin's account of a state of exception and Schmitt's account are in fact two sides of the same coin. That is, both thinkers, as will become clear, run into problems because they either rely on what is inside the order or outside of the order – whether they are aware of it or not. And then it can also be explained how Derrida is able to overcome this larger problem which both Schmitt and Benjamin are dealing with, by taking an intermediary position. However, this can only be shown in the case of a clear overview of Derrida's standpoint on law and justice. The central question of this third section will be the following: *How is Derrida's position on law and justice related to his critique on Benjamin and Schmitt?*

The first part of this section will begin with a recapitulation of Derrida's critique on both Schmitt and Benjamin, to identify the larger problem both Schmitt and Benjamin are dealing with. And then Derrida's critique on both thinkers will be brought into connection with his own position on law and justice, which will happen in two different parts: part two and part three. In part two Derrida's view on the relationship between law and justice will be explained, by closely analysing *Force de Loi*. And, in part three a further explanation of Derrida's notion of messianic justice will be given, because Derrida's view on the relation between law and reality hinges upon this notion; this will be done by analysing relevant parts of *Force de Loi* and *Spectres de Marx*. In the fourth and final part of this section, it will be explained why it is exactly that Derrida's position on law and justice is an improvement upon both Schmitt's account of the relation between law and reality, and Benjamin's account, and how this has not been given due attention by other academics.

## Elaboration Research Problem

This dispute over the proper locus of a state of exception – as has been explained – had found its culmination point in the philosophical discussion between the philosophers Carl Schmitt and Walter Benjamin. In the 1920s and 1930s these two thinkers had made a lot of references to each other in their own philosophical works. Walter Benjamin, for example, expresses the affinity he feels with Schmitt's theory of sovereignty and his research methods, in one of his letters written in 1930.<sup>3</sup> Carl Schmitt, in his turn, expresses his indebtedness to Benjamin, in a correspondence with Hansjörg Viesel. In this correspondence he makes it clear that his works *Der Leviathan im Staatslehre des Thomas Hobbes* and *Hamlet oder Hecuba* have to be conceived as an answer to Walter Benjamin.<sup>4</sup>

However, even though Benjamin and Schmitt were sympathetic to each other in the 1920s and 1930s, both thinkers were drifted apart from each other very soon after, due to philosophical differences. These differences were most of all centred around the question concerning sovereignty, and it is in this discussion that the discussion pertaining to the state of exception had found its culmination point.

In *Politische Theologie*, Schmitt writes that all order rests upon a sovereign decision made during a state of exception.<sup>5</sup> Against this background he claims that the Weimar Republic – the German form of government which existed between 1919 and 1933 – had led the German nation to ruin, because it repressed the importance of the sovereign decision.<sup>6</sup> For this reason, Schmitt tried to persuade Paul von Hindenburg – the President of the Weimar republic – to integrate the state of exception within the constitution. In other words, Schmitt wanted to normalize the state of exception.

It was exactly this attempt at normalization which had drifted Benjamin away from Schmitt. Benjamin had expressed his critique in his essay *Über den Begriff der Geschichte*. In his eighth thesis on history, Benjamin writes the following:

“Die Tradition der Unterdrückten belehrt uns darüber, daß der 'Ausnahmestand', in dem wir leben, die Regel ist. Wir müssen zu einem Begriff der Geschichte kommen, der dem entspricht. (...) dadurch wird unsere Position im Kampf gegen den Faschismus sich verbessern ”<sup>7</sup>

In short, Benjamin is suspicious of Schmitt's state of exception, because this could change the exception into a rule, and this rule could normalize Fascism. The problem with Schmitt's account is that if the exception becomes the rule, it can no longer be used to move beyond the present juridical order anymore, and it will rather be used to maintain that particular order.

Later on in the same essay, Benjamin claims that we can prevent Fascism and gain progress if we move outside of the existing order. In the fifteenth thesis he for example writes the following:

“Das Bewußtsein, das Kontinuum der Geschichte aufzusprengen, ist den revolutionären Klassen im Augenblick ihrer Aktion eigentümlich. Die Große Revolution führte einen neuen Kalender ein.”<sup>8</sup>

However, as Owen Ware makes clear, this disruption with the present order also makes self-presence impossible. He argues that Benjamin only wants to redeem the past and turns away from the future in its totality. It is also in this light that Ware renders Benjamin's messianic justice

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3 Walter Benjamin, *Gesammelte Schriften I* (Frankfurt, Suhrkamp: 1998), 887.

4 Hansjörg Viesel, *Jawohl, der Schmitt. Zehn Briefe aus Plettenberg* (Berlijn, Support-ed: 1988), 60.

5 Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin, Duncker & Humblot: 2015), 10.

6 Ibidem, 11.

7 Walter Benjamin, *Gesammelte Schriften 2* (Frankfurt, Suhrkamp: 1980), 697.

8 Ibidem, 701.

impotent.<sup>9</sup> After all, if one turns oneself away from the future, how is it possible to take the messianic promise in consideration. Or, as Ware puts it: “Messianic time breaks from any faith in the imminence of future salvation”.<sup>10</sup> So, by breaking with the order, Benjamin renders the messianic power – which he relies on – impotent; this is in short the problem with Benjamin’s position; an in-depth explanation of this problem will follow in the second section of this thesis.

Derrida – similar to Benjamin – also makes use of a messianic account to deal with the problematic relation between law and justice. However, the two big differences between Derrida and Benjamin are that the future plays a much more important role in Derrida's philosophy than it does in Benjamin's, and that Derrida does not fully break with the existing order. For these reasons, Derrida's messianic account, in contrast with Benjamin's account, does not lack the presence necessary to construct a new juridical order. So, Derrida's account of law and justice is quite similar to Benjamin's account, but is able to overcome the problems Benjamin has to deal with. Yet, at the same time, Derrida is also able to deal with Schmitt's problematic normalization of the state of exception. Sadly though, little has been written on this intermediary position of Jacques Derrida. Instead of that, academics such as Frederic Jameson and Aijaz Ahmad conflate Derrida's and Benjamin's messianic views.<sup>1112</sup> This thesis will argue against the positions of academics such as Jameson and Ahmad, and will show that Derrida’s position is rather an intermediary one than a radical one.

In sum, the research problem is the following: if one situates a state of exception within the existing order, a state of exception can no longer be used to move beyond the existing juridical order, for the simple reason that it is integrated within that order. Yet, if one situates it outside of it, it seems to be fully impossible to make use of it, due to a lack of presence. I want to show how Derrida's intermediary account makes it possible to move beyond the existing juridical order without risking a lack of presence.

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9 Owen Ware, 'Dialectic of the past/disjuncture of the future: Derrida and Benjamin on the concept of messianism', *Journal for Cultural and Religious Theory* (2004), Vol. 5, 101.

10 Ibidem, 103.

11 Frederic Jameson, “Marx’s Purloined Letter,” in *Ghostly Demarcations: A Symposium on Jacques Derrida’s Specters of Marx*, ed. Michael Sprinker (New York: Verso, 1999), 62.

12 Aijaz Ahmad, “Reconciling Derrida: ‘Specters of Marx’ and Deconstructive Politics,” *Ghostly Demarcations: A Symposium on Jacques Derrida’s Specters of Marx*, 103.

# **Section 1 Carl Schmitt, a State of Exception and Derrida's Response**

## **1.1 Introduction**

Carl Schmitt is one of the most controversial philosophers of the twentieth century. This is mostly because he joined the Nazi-party on 1 May 1933. He is harshly critical against democratic societies, and in appraisal of an autocratic leadership. For example, in *der Führer schützt das Recht* – a Parliament speech which Schmitt has dedicated to Adolf Hitler –, Carl Schmitt claims that a true leader has to be judge at the same time [“Der wahre Führer ist immer auch Richter”].<sup>13</sup> For Schmitt the law has to lie in the hands of one leader, and not in the hands of multiple actors, otherwise the nation will dissolve into chaos. It is for the latter reason that Carl Schmitt is hostile against a parliamentary democracy, and the Weimar Republic in specific – the parliamentary form of government in Germany between 1918 and 1933.

Consequently, Carl Schmitt defines the sovereign leader as the one who decides upon the exception [“Souverän ist, wer über den Ausnahmezustand entscheidet”].<sup>14</sup> This is to say that the sovereign leader decides which people and which things form a part of the community, and which people and things do not. This sovereign decision is closely connected to another important concept in Schmitt's philosophy: The friend/enemy distinction. Since Schmitt's understanding of sovereignty – and by extension his understanding of law and reality – is based on the friend/enemy distinction, it is crucial to look at this distinction as well.

This distinction forms the central concept in Schmitt's most famous work: *Der Begriff des Politischen*. In this work Schmitt explains that it is an essential part of a group's identity to have a clearly defined enemy. Because the sovereign decides what is situated within the community, and what is situated without it, the sovereign also decides upon the friend/enemy distinction, and therefore also plays an defining role in shaping the identity of the group. At the same time, the friend/enemy distinction is of an ontological nature and precedes every other political decision, as will come to light later on in this section. The French philosopher Derrida problematizes this relationship between the sovereign and the friend/enemy distinction. He does so in his attempt to show that the friend/enemy distinction is anything but ontological. The central question of this section will therefore be the following: *Does Derrida's critique of Carl Schmitt's friend/enemy distinction jeopardize Carl Schmitt's notion of the state of exception?*

For the sake of clarity, this section is divided into three different sub-sections. The first subsection will focus on Schmitt's account of the state of exception in itself and his notion of the sovereign decision. The second subsection will relate this notion with Carl Schmitt's friend/enemy distinction, by focusing on Schmitt's *Der Begriff des Politischen*. The third part will focus on Derrida's critique of Schmitt in *Politiques de l'amitié*.

## **1.2 Carl Schmitt and a State of Exception**

A central notion in Schmitt's philosophy – as has been explained in the introduction – is Schmitt's notion of sovereignty. The sovereign leader is the person, according to Schmitt, who decides upon the exception. But what does this exactly mean? This sub-section will serve as an answer to that question.

In *Die Diktatur*, Carl Schmitt explains that the question of sovereignty is in its core the same as the one of the state of exception.<sup>15</sup> What he means by this is that the one who rules over the state –

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13 Carl Schmitt, 'Die Führer schützt das Recht', *Deutschen Juristen-Zeitung* Vol. 39, No. 15 (1934), 948.

14 Carl Schmitt, *Politische Theologie*, 17.

15 Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedanken bis zum proletarischen Klassenkampf* (Berlin, Duncker & Humblot: 2015), 19.



and therefore is the sovereign – automatically rules over the exception. According to Schmitt, a state of exception arises when the state and public order are under threat.<sup>16</sup> So, for example, when a hostile state is threatening to invade the German country, the state of exception has to be declared, according to Schmitt's terms. It is therefore only reasonable to Schmitt that the sovereign decides upon the exception. After all, he happens to be in charge when a state of emergency arises, and in order to prevent damage as much as possible, he has to act quickly and declare a state of exception in order to do so.<sup>17</sup>

The legal order has to be suspended, and a state of exception has to be declared in times of chaos and peril, as Schmitt writes, because there simply does not exist a norm which is applicable to chaos [“Es gibt keine Norm die auf ein Chaos anwendbar wäre”].<sup>18</sup> Therefore, what characterizes an exception is unlimited authority and the suspension of the entire legal order [“eine prinzipiell unbegrenzte Befugnis, das heißt die Suspendierung der gesamten bestehenden Ordnung”].<sup>19</sup> Furthermore, a state of exception cannot be subsumed and defies general codification [“Die Ausnahme ist das nicht Subsumierbare; sie entzieht sich der generellen Fassung”].<sup>20</sup> After all, in times of chaos and peril it is important for the sovereign to respond as quickly as possible and decide on his own.

However, most of the times exceptions – and by extension a state of exception – do not occur very often either. So, in the meantime – that is, in a normal situation – it makes perfectly sense to rely on a legal order to depend on general norms. It is true that these general norms are only inferred from what normally repeats itself [“die klaren Generalisationen des durchschnittlich sich Wiederholenden”] without taking into account that in reality many exceptional things happen as well.<sup>21</sup> But still, a normal situation and homogenous medium need to exist in order for a legal order to make sense. In sum, even though Schmitt attaches much value to the exception, he still believes that most of the times legal orders need to rely on general norms.

Nonetheless, for a legal order to make fully sense, it needs to integrate the exception as well. It is of interest for a legal order, as Schmitt argues, to anticipate states of exception in which general norms are not able to deal with the upending chaos. Against this background, Schmitt attacks the rationalist philosophers, who only focus on general norms and not on states of exception at all:

“Aber auch den Rationalisten müßte es doch interessieren, daß die Rechtsordnung selbst den Ausnahmefall vorsehen und „sich selber suspendieren“ kann. Daß eine Norm oder eine Ordnung oder ein Zurechnungspunkt „sich selber setzt“, scheint dieser Art juristischen Rationalismus eine besonders leicht vollziehbare Vorstellung zu sein.”<sup>22</sup>

Norms prove nothing, according to Schmitt, while the exception proves everything. This is because real life is full with exceptional occurrences, and it is only in fossilized mechanical frameworks that everything is perfectly ordered without any exceptions to it.<sup>23</sup> He even writes that the exception explains the general and that if one wants to study the general, one needs to study the exception because the exception explains the general in a much clearer way than the general in itself [“Die Ausnahme erklärt das Allgemeine und sich selbst. Und wenn man das Allgemeine richtig studieren will, braucht man sich nur nach einer wirklichen Ausnahme umzusehen. Sie legt alles viel deutlicher an den Tag als das Allgemeine selbst”].<sup>24</sup>

Furthermore, if one wants to study a lawful order, one has to study the exception as well, because

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16 Carl Schmitt, *Politische Theologie*, 14.

17 Schmitt, *Die Diktatur*, 17.

18 Schmitt, *Politische Theologie*, 19.

19 Ibidem, 18.

20 Ibidem, 19.

21 Ibidem, 21.

22 Ibidem, 20.

23 Ibidem, 21.

24 Ibidem, ibidem.

the norm is based on the exception [“die Regel lebt überhaupt nur von der Ausnahme”], just as the specific is derived from the general.<sup>25</sup> The exception is superior and anterior to the norm, and the sovereign, the one who rules over the exception, is therefore superior and anterior to the lawful order. After all, because he decides upon the exception, he also decides upon that which follows from it: the norms and therefore the lawful order.

Schmitt adds to this that a state of exception can only be valid in concrete situations. That is to say, the sovereign has only to do as much as is appropriate in the actual circumstances [*nach Lage der Sache*]. Put simply, he can only do things outside of the law if it helps him to reach the goal and protect the community.<sup>26</sup> As a result of this, the specific form of sovereignty depends on concrete circumstances, such as the character of the people, geography and social relations. In addition to this, the sovereign leader, as Schmitt notes, emerges from a constitutive act made through the people.<sup>27</sup> In short, the right of sovereignty and the right to decide upon the exception is derived from the people.

However, Schmitt also writes that the right of exception [*Ausnahmerecht*] is only subject to divine right [*Gottliches Recht*].<sup>28</sup> According to Schmitt, state power is divine because of its supreme nature, but not divinely derived because it “Because state power is supreme, it possesses divine character. But its omnipotence is not at all divinely derived: It is a product of human work and comes about because of a “covenant” entered into by man”.<sup>29</sup> Put differently, even though the sovereign is divine in its omnipotence, this does not mean that it derives its power from the divine; sovereignty emerges out of the human community.

At the same time, Carl Schmitt makes it very clear that he takes a similar position as Thomas Hobbes with regard to state power. Schmitt, for example, writes that Hobbes' Leviathan is the mortal god who brings peace and security to mankind.<sup>30</sup> The Leviathan does so, as Schmitt argues, by curbing inner turmoil – caused by warring princes, churches, estates and the like – and driving “the invisible distinctions of outer and inner, public and private to an ever sharper separation and antithesis”.<sup>31</sup> As a result of this, all wars become state wars; civil, factional or religious wars simply cease to be. And because the Leviathan can stop the latter forms of war from happening, the community grants the Leviathan the absolute power to protect them.<sup>32</sup>

In his depiction of the Leviathan, Schmitt stresses his belief that the concentration of power has to be concentrated in the hands of one strong leader. For he also writes that in the eighteenth century the Leviathan ceased to exist due to the popularization of individual freedom. Due to this popularization, elite powers – outside of the state – could bring the Leviathan in a bad daylight, tear him down, only to “to cut up the Leviathan and divide his flesh among themselves”.<sup>33</sup> In short, as soon as the idea of the absolute sovereign was discredited, elite powers seized the opportunity and divided the power amongst themselves. However, a modern state organization could only function, according to Schmitt, in the case of a uniformity of will and spirit. Because “when a variety of different spirits quarrel with one another and shake up the armature, the machine and its system of legality will soon break down”.<sup>34</sup> For this reason, the sovereign is the one who decides about what is right and wrong, what is yours and mine, what is decent and indecent.<sup>35</sup> Otherwise, chaos will inevitably abound. In short, the sovereign is the one who, to a large extent, shapes the community.

Consequently, the sovereign is in a paradoxical position, if one follows Schmitt's line of reasoning. This is because Schmitt's sovereign is both a product of the community as the one who

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25 Ibidem, ibidem.

26 Ibidem, 11.

27 Ibidem, 8.

28 Ibidem, 19.

29 Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (Westport, Greenwood Press: 1996), 33.

30 Ibidem, 53.

31 Ibidem, 58.

32 Ibidem, 47.

33 Ibidem, 74.

34 Ibidem, ibidem.

35 Ibidem, 24.

shapes it, in the sense that he decides what is right and wrong, yours and mine, decent and indecent. To put it differently, the sovereign stands both inside the system and outside of the system. This is a problematic standpoint, and this is exactly the standpoint which Jacques Derrida criticizes. However, this critique can only be explained clearly, after Schmitt's friend/enemy distinction has been explained, and after it has been shown how this distinction is related to Schmitt's notions of a state of exception and of sovereignty.

### **1.3 Carl Schmitt and the Friend/Enemy Distinction**

In the previous sub-section it has become clear that Schmitt believes a centralization of power to be necessary, in order for a nation to function properly; a strong leader has to make the decisions for the community to rely on, according to Schmitt. However, it also becomes clear that political power emerges from the community, even though it is superior to it. In similar vein, Carl Schmitt writes in *Der Begriff des Politischen* that the concept of the state presupposes the concept of the political [“Der Begriff des Staates setzt den Begriff des Politischen voraus”].<sup>36</sup> In order to understand what Schmitt means by this, it first of all needs to be clarified how Schmitt exactly uses the concept of the political.

Schmitt clarifies that a definition of the political can only be obtained by discovering and defining the specific political categories [“Eine Begriffsbestimmung des Politischen kann nur durch Aufdeckung und Feststellung der spezifisch politischen Kategorien gewonnen werden”].<sup>37</sup> The political, as Schmitt argues, rests on the distinction between friend and enemy, just as morality can be reduced to the distinction between good and evil and aesthetics to the distinction between beautiful and ugly.<sup>38</sup> He adds to this that of all distinctions, the political is the most intense of all distinctions [“den äußersten Intensitätsgrad einer Verbindung oder Trennung, einer Assoziation oder Dissoziation”].<sup>39</sup>

Next to that, the friend/enemy distinction is of a primordial nature. In other words, there already is a distinction between friend and enemy before other forms of distinction – such as an aesthetic, moral or economic one – have been made. So, it is not necessary for an enemy to be ugly, bad or economically harmful, as long as the enemy is other than the friend, in a solely existential manner.<sup>40</sup> Because the friend/enemy distinction is of an intense, existential nature to Schmitt, he believes that this distinction makes true knowing, understanding and judging [“richtigen Erkennens und Verstehens und damit auch die Befugnis mitzusprechen und zu urteilen”] possible.<sup>41</sup> He is even clearer on this matter when he writes that all other political concepts will only become empty, incomprehensible abstractions in the case that the friend/enemy distinction is not taken as the basis of the political:

“Worte wie Staat, Republik, Gesellschaft, Klasse, ferner: Souveränität, Rechtsstaat, Absolutismus, Diktatur, Plan, neutraler oder totaler Staat usw. sind unverständlich, wenn man nicht weiß, wer in concreto durch ein solches Wort getroffen, bekämpft, negiert und widerlegt werden soll”.<sup>42</sup>

In sum, all concepts are of a polemical nature, because the friend/enemy distinction is the primordial distinction.

What is more, the friend/enemy distinction is not only of a primordial nature, it is also of an ontological nature, according to Schmitt – which is why he believes that all political concepts lose

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36 Carl Schmitt, *Der Begriff des Politischen* (München, Duncker & Humblot: 1932), 7.

37 Ibidem, 13.

38 Ibidem, 14.

39 Ibidem, ibidem. Funere

40 Ibidem. 14.

41 Ibidem, 15.

42 Ibidem, 18.

their value when they are not understood as polemical anymore. He, for example, takes it as a fact that the human being is a combatant and his entire life a struggle [“weil nun einmal das ganze menschliche Leben ein 'Kampf' und jeder Mensch ein 'Kämpfer' ist”].<sup>43</sup> Schmitt puts it even more controversially when he writes that in a completely pacified globe there would be no antithesis meaningful enough to sacrifice one's life [“sinnvollerweise keinen Gegensatz, auf Grund dessen von Menschen das Opfer ihres Lebens verlangt werden könnte und Menschen ermächtigt werden, Blut zu vergießen und andere Menschen zu toten”].<sup>44</sup>

So, the friend/enemy distinction is not only the most intense distinction of all, but also the distinction which deeply defines human nature. Schmitt can not envisage life without struggle and life without a friend/enemy distinction. However, this does not mean that human beings always have to actively combat each other, in order for life to make sense. He stresses that the political does not reside in the battle itself, but in the mode of behaviour which is determined by the possibility of it [“Das Politische liegt nicht im Kampf selbst (...) sondern wie gesagt, in einem von dieser realen Möglichkeit bestimmten Verhalten”].<sup>45</sup> What Schmitt means with the mode of behaviour is simply the grouping of friend and enemy. He again emphasizes that the political is about the intensity of an association or disassociation and that the enemy-friend grouping is of such an intense nature that all religious, moral, economic and ethical antitheses are subordinate to it.<sup>46</sup> The political entity, according to Schmitt, is by its very nature the decisive entity [“die politische Einheit ist eben ihrem Wesen nach die maßgebende Einheit”], simply because the ever-present possibility of a friend/enemy grouping forges such a strong identity that it transcends all other societal-associational groupings.<sup>47</sup> In short, even though there are many possible antitheses, what it all comes down to is the friend/enemy grouping; the decision who belongs within the group and who belongs without it strongly determines the identity of the group.

As a consequence, when Schmitt claims that the state – or the sovereign leader – has the right to declare war, the state also has the right to decide who is a friend and who is an enemy. [“Zum Staat als einer wesentlich politischen Einheit gehört das *jus belli*, d.h. die reale Möglichkeit, im gegebenen Fall kraft eigener Entscheidung den Feind zu bestimmen und ihn zu bekämpfen”].<sup>48</sup> So, since the friend/enemy grouping strongly determines one's identity, and since the state determines who is a friend and who is an enemy, the state strongly determines the identity of the group. Yet, at the same time, Schmitt writes that before a group can possibly exist there already has to exist a clear friend/enemy distinction:

“Die politische Einheit setzt die reale Möglichkeit des Feindes und damit eine andere, koexistierende, politische Einheit voraus. Es gibt deshalb auf der Erde, solange es überhaupt einen Staat gibt, immer mehrere Staaten (...) die politische Welt ist ein Pluriversum, kein Universum”.<sup>49</sup>

In other words, in its prime beginning the world is already divided in multiple political states – striving against each other –, even before strong leaders were chosen.

So, the relationship between the friend/enemy distinction on the one hand, and sovereignty and a state of exception on the other hand, is that sovereignty – and by extension a state of exception – is determined by the friend/enemy distinction. However, Carl Schmitt also writes that the sovereign decides upon the friend/enemy distinction, and makes a decision upon the state of exception which falls outside of the existing order. In section 1.2 it already was brought to light that the sovereign is in a paradoxical position since he both stands in and outside of the system, in the sense that he is

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43 Ibidem, 20.

44 Ibidem, 23.

45 Ibidem, 25.

46 Ibidem, 27.

47 Ibidem, 32.

48 Ibidem, 33.

49 Ibidem, 41.

both a product of human work and the one who shapes the products of human work. In the case of the friend/enemy distinction this paradoxical position comes more clearly to the fore, since the sovereign is both a product of the friend/enemy distinction and the one who produces the friend/enemy distinction.

This line of reasoning has led to a critique against Carl Schmitt's notion of sovereignty. Anne Norton for example concludes that the exception is illusory and ultimately incoherent because Schmitt does not give clear criteria for deciding upon the sovereign and the normal situation.<sup>50</sup> Against the same background, W. E. Scheuermann contends that Schmitt says nothing about how one could combat legal indeterminacy. He only criticizes the liberal view of legal determinacy, without formulating a post-liberal view of legal determinacy.<sup>51</sup> To be sure, one could try to avoid this critique that Schmitt's notions of sovereignty and a state of exception by accepting that these notions are simply a blend between the organic and the constitutive – just as Kam Shapiro does –, but then it still remains the question how the friend/enemy distinction could be both a product of the sovereign and the primordial distinction out of which all political concepts – such as the concept of sovereignty – emerge.<sup>52</sup> Next to that, both sovereignty and a state of exception have to be determined by a pure decision which emanates from nothingness, but how is this possible when it is also constituted by a leader who emerges from a human community?<sup>53</sup> In order to delve deeper into this question, we have to focus on Derrida's critique on Schmitt's philosophy, since this critique is centred around Schmitt's paradoxical description of the friend/enemy distinction.

#### **1.4 Jacques Derrida's Critique of the Friend/Enemy Distinction**

In the previous two sub-sections it has become clear that three of Schmitt's important notions – sovereignty, a state of exception and the friend/enemy distinction – are supposed to emerge both out of nothingness and out of the human community. In *Politiques de l'amitié*, Jacques Derrida attacks Schmitt's friend/enemy distinction on this specific ground. This critique of Derrida will be the central topic of this sub-section.

Derrida also brings it to the attention that Schmitt goes at great lengths to place the political – and in specific the friend/enemy distinction – above all other concepts. To put it in Derrida's own words, Schmitt wants to exclude the purity of the political – which he calls the proper and pure impurity [“la propre et pure impureté”] from all other purities (such as objective, scientific and aesthetical purity).<sup>54</sup>

Schmitt wants to do so, according to Derrida, by focusing on the polemical nature of the political. For this reason, there are moments, as Derrida writes, at which Schmitt's attempts can be judged as pathetic [“Ce paradoxe prend une forme qu'on peut juger parfois pathétique”].<sup>55</sup> They can be judged as pathetic at times because the political depends on a friend/enemy distinction and this distinction is a practical identification [“identification pratique”].<sup>56</sup>

This practical identification makes a theoretical mode of knowing [“mode d'un savoir théorique”] impossible, which also entails that the political cannot be of a pure nature; it is always polemical, and therefore of a particular nature.<sup>57</sup> Put differently, the political will always be determined by the decision who belongs inside of the community and who belongs outside of it. Derrida writes that

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50 Anne Norton, 'Pentecost: Democratic Sovereignty in Carl Schmitt', *Constellations* (September 2011), Vol. 18., No.3., 41.

51 W.E. Scheuermann, 'Legal Indeterminacy and the Origins of Nazi Legal Thought: The Case of Carl Schmitt', *History of Political Thought* (1996), Vol. 17, No. 4., 589.

52 Kim Shapiro, 'Politics is a Mushroom: World Sources of Rule and Exception in Carl Schmitt and Walter Benjamin', *Diacritics* (2007), Vol. 37., No. 2., 128.

53 Ibidem, 123.

54 Jacques Derrida, *La Politique de L'Amitié* (Galiléé, Paris: 1994), 135.

55 Ibidem, ibidem.

56 Ibidem, 136.

57 Ibidem, ibidem.

this determination is linked in Schmitt's philosophy to the concrete; he calls the concrete a correlate to the polemical [“corrélat du polémique”]. Along this line of reasoning, he also writes that the concrete is always overtaken by the abstraction of its spectre, and that therefore the concrete will always remain out of reach [“Cette concrétion du concret, détermination de dernière instance à laquelle Schmitt en appelle sans relâche, nous verrons qu'elle est toujours excédée, débordée, disons hantée par l'abstraction de son spectre”].<sup>58</sup> What Derrida means by this is that a neutral, purely theoretical interpretation after a practical decision such as the friend/enemy grouping. This practical decision makes it that one already views the concrete from a specific point of view, namely from a community of friends, putting themselves against newly determined enemies.

Nonetheless, as Derrida writes, Schmitt does not focus on this problem. Instead of that, he makes the political function as a regional stratum [“une strate régionale”] and a grounding stratum of existence at the same time:

“Même si elle est fondatrice, *et* la détermination supplémentaire ou surdéterminante qui traverse toute autre région du monde humain ou de la communauté culturelle, symbolique, « spirituelle ».]<sup>59</sup>

In other words, the political is both the particular – or the community – itself and the outside cause of the particular.

Against this background, Derrida notices that it is not easy to determine the place which Schmitt has assigned to the decision [le lieu que Schmitt assigne à cette pure décision”], and whether the decision supposes, rends, undermines or produces the community [“il n'est pas facile de décider si elle suppose, déchire, travaille ou produit la communauté.”].<sup>60</sup>

Derrida clarifies why it is not easy to determine the place of the decision, by pointing out that the decision is determined by an oscillation and association between actuality/effectivity and possibility. [“D'où l'oscillation et l'association entre réflectivité et la possibilité”].<sup>61</sup> What he means by this is that for Schmitt the possibility of conflict and a state of exception – *the possibility* – determines the decision what to do when political events as such would actually happen – *the actuality/effectivity*. So, the decision is determined by the probability of conflict and a state of exception.

This determination is exactly the reason for Derrida why it is hard to determine the place of the decision. Derrida draws a consequence of these propositions which Schmitt himself does not draw at all. He first of all reminds his readers that for Schmitt a state of exception is in its very definition an improbable thing to happen. This means that the improbable determines the decision. This entails, according to Derrida, that one has to measure politicization in terms of depoliticization. As Derrida himself puts it: “Moins il y a de politique, plus il y en a, moins il y a d'ennemis, plus il y en a”.<sup>62</sup> To put it differently, for something to be exceptional, it has to happen less often and has to be less part of the political. So, Derrida brings the following paradox in Schmitt's thinking to the fore: the less political something it is, the more it determines the political. This is something which Schmitt does not want to happen. After all, he writes that a depoliticized, pacified globe would be a world in which no serious decisions could be made, as has come to the fore in sub-section 1.3.

On the basis of this paradox, Derrida reinterprets Schmitt's notion of the possibility as *telos*. Derrida reinterprets a state of exception as a *telos*, whereas Schmitt writes about a state of exception as a determining force outside of the existing order. He argues that the structure of the friend/enemy grouping – and by extension the political – is immanently teleological [“Elle a une structure téléologique immanente, elle est auto- et tauto-téléologique”].<sup>63</sup>

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58 Ibidem, 137.

59 Ibidem, 147.

60 Ibidem, 149.

61 Ibidem, 152.

62 Ibidem, 153.

63 Ibidem, 156.

To further explain this, Derrida points out that this immanently teleological structure is the reason why Schmitt goes at such great lengths to put the friend/enemy distinction – determined by the possibility of a state of exception – above all other distinctions. Schmitt wants to do so, according to Derrida, not because a state of exception is something outside of the political order improbable to happen, but because the possibility of conflict – or a state of exception – is the real possibility upon which all decisions are to be made; it is the ground of the teleological order. To phrase it in Derrida's own words:

“Mais il semble bien, stratégie consciente ou inconsciente, que la phrase schmittienne s'acharne à dissocier les deux valeurs téléologiques (la guerre n'est pas bonne en vue d'une autre fin, morale, religieuse, etc. mais elle a sa fin en elle-même) tout en oscillant de l'une à l'autre (...) Cela paraît rendu possible - et facile - par la permanente *présence*, par la *présence* survivante, en tout cas, par la *présence* « aujourd'hui encore », de la guerre comme « possibilité réelle »”<sup>64</sup>

In short, Derrida goes along with Schmitt's reasoning that the political order is determined by a state of exception. However, he argues that this state of exception should not be interpreted in the same way as Schmitt does, namely as something improbable which falls outside of the political order, but rather as a possibility which determines the teleological order. In doing so, Derrida also makes it clear that the friend/enemy grouping is not – as Schmitt believes – of an ontological nature, because the *telos* precedes it; it is therefore of a particular nature, and not of an ontological and universal nature.

## **1.5 Conclusion**

According to Schmitt, the sovereign – he who decides upon the state of exception – is both a product of the community as the one who shapes it. More concretely, the sovereign is the one who produces the friend/enemy grouping, while, at the same time, the friend/enemy grouping is the primordial decision upon which all other decisions follow, which means that the decision upon all matters pertaining to sovereignty could not be prior to it. This is a paradoxical position of which Derrida also is aware. In *Politiques de l'Amitié*, Derrida phrases the paradox in a following way: the less political something is, the more it determines the political. In order to solve this paradox, Derrida shifts the focus away from a improbable state of exception outside of the political order, and towards a state of exception as *telos*. He contends that Schmitt's friend/enemy grouping is not of an ontological, universal nature, but of a particular, communal nature. So, Derrida's critique does not entirely jeopardize Schmitt's notion of a state of exception, he only reinterprets this notion – by following Schmitt's own logic – as something within the community rather than without it.

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<sup>64</sup> Ibidem, ibidem.

## **Section 2: Walter Benjamin, Violence and the Critique of Derrida**

### **2.1 Introduction**

Walter Benjamin, as has been explained in the introduction, is very critical of Schmitt's position regarding a state of exception. The main reason for this is that Schmitt, according to Benjamin, attempts to normalize a state of exception. That is, he tries to integrate it in the juridical order itself, and that is exactly where the problem lies for Benjamin. Instead of integrating a state of exception inside of the juridical order, Benjamin goes at great lengths to keep it outside of the juridical order. However, according to Derrida, Benjamin's position is not entirely unproblematic either, regarding the relationship between law and reality. This is, as Derrida argues, because Benjamin locates divine justice outside of the order of law, whereas Derrida himself believes that it is only possible to apprehend things – such as justice – from within the order of law, or discourse, one happens to inhabit. In order to focus more on Derrida's intermediary position, the following question will stand central in this section: *In what sense is Derrida's account of the relationship between law and reality an improvement upon Benjamin's account?*

This question has to be answered because it clarifies how the positions of Benjamin and Schmitt are diametrically opposed, yet as problematic. If this has become clear, it can also be argued in a clear manner how Derrida exactly overcomes the problems which Benjamin and Schmitt both have to deal with.

In order to answer this question as clearly as possible, this chapter is divided into five sub-sections. In the first sub-section it becomes clear why Benjamin disagrees with Schmitt's account of a state of exception. The second and third sub-section will focus on Benjamin's position towards law and reality. The fourth section will elaborate the problems of this specific position and the fifth section will focus on Derrida's critique on Benjamin.

### **2.2 Benjamin versus Schmitt**

In *Über den Begriff der Geschichte*, Walter Benjamin warns his readers about the risk of normalizing a state of exception. According to him, this normalization would lead to a state of repression, as in the case of Fascism. As he himself writes:

“Die Tradition der Unterdrückten belehrt uns darüber, daß der 'Ausnahmezustand', in dem wir leben, die Regel ist. Wir müssen zu einem Begriff der Geschichte kommen, der dem entspricht. (...) dadurch wird unsere Position im Kampf gegen den Faschismus sich verbessern”.<sup>65</sup>

This citation has already been used in the introduction of this thesis, but it has not yet been explained why Benjamin exactly believes this to be the case, and what Benjamin himself exactly wants to do to counter the risk. This section will offer a further explanation of this citation.

Benjamin is wary of the attempt to normalize a state of exception because he distrusts sovereign leaders. This distrust comes to the fore in its clearest in his book *Ursprung des deutschen Trauerspiel*. In this book he contends that the theory of sovereignty “demands the completion of the image of the sovereign, as tyrant”.<sup>66</sup> In order to show why he believes this theory to be problematic, he focus on the German *Trauerspiel*. In this type of play, according to Benjamin, the sovereign is presented as an incarnation of God, but is in fact just a mundane creature swayed by “a sheer arbitrariness of a constantly shifting emotional storm”.<sup>67/68</sup> In other words, the central message of the German *Trauerspiel* is that even though sovereign powers pretend to be godly creatures, they are in reality nothing more than arbitrarily acting humans. Benjamin refers to this as “the unique

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65 Benjamin, *Gesammelte Schriften II*, 697.

66 Walter Benjamin, *The Origin of German Tragic Drama* (London, Verso: 1998), 69.

67 Ibidem, 62.

68 Ibidem, 71.



ambiguity of his [the sovereign] spiritual sovereignty which provides the basis for the thoroughly baroque dialectic of his position”.<sup>69</sup>

The sovereign, according to Benjamin, “falls victim to the disproportion between the unlimited hierarchical dignity, with which he is divinely invested and the humble estate of his humanity”.<sup>70</sup> As a result of this, the sovereign has to make decisions about things which are way over his head. For example, he has to make a decision about when a state of exception – or a state of emergency, as Benjamin phrases it – has to be declared. This is why Benjamin identifies “the indecisiveness of the tyrant” as the central feature of the *Trauerspiel*.<sup>71</sup> After all, the tyrant – or sovereign – takes the centre stage in the *Trauerspiel*, and the central tension which a tyrant has to deal with is the tension between the divine dignity endowed to him and the humble estate of his humanity. In sum, in his analysis of the German drama Benjamin makes it loud and clear that he does not believe in a sovereign who is able to make objective decisions – such as the decision upon a state of exception – as if he is some godly creature falling outside of the human order.

In order to avoid that the state of exception falls into the hands of some incompetent, capricious sovereign, Benjamin places the locus of the state of exception outside of the order of law. This comes to the fore in his essay *Über den Begriff der Geschichte*, when he describes his conception of progress. Progress, as Benjamin argues, cannot happen in the way Social Democrats believe it will happen. This is because Social Democrats, as Benjamin argues, believe progress to be happening in a straight course forward. A good example of this is that Social Democrats have lauded factory work as a political achievement, for the simple reason that it has furthered technological progress [“Die technische Entwicklung galt ihr als das Gefälle des Stromes, mit dem sie zu schwimmen meinte. Von da war es nur ein Schritt zu der Illusion, die Fabrikarbeit, die im Zuge des technischen Fortschritts gelegen sei, stelle eine politische Leistung dar”].<sup>72</sup> However, what they fail to notice, is that this technological progress is mostly beneficial to the ruling class; the working class only got exploited more severely. Against this background, Benjamin writes the following:

“Es gibt nichts, was die deutsche Arbeiterschaft in dem Grade korrumpiert hat wie die Meinung, sie schwimme mit dem Strom”.<sup>73</sup>

He even goes further than this and contends that this conception of progress has the same technocratic features as Fascism [“Er weist schon die technokratischen Züge auf, die später im Faschismus begegnen werden”].<sup>74</sup>

Furthermore, along the same line of reasoning, Benjamin criticizes historicism. This understanding of history, as he makes clear, interprets history as if all historical events move towards a final endpoint: the present moment. In other words, all historical events are interpreted from the viewpoint of the present day and age. For example, Robespierre views the French state, established after the French revolution, as Rome incarnate [“ein wiedergekehrtes Rom”]. Yet, Robespierre fails to notice that he looks at Rome in a way specific to the ideals of the French Revolution, and not specific to ancient Rome itself.<sup>75</sup> It does not stop at this, according to Benjamin, because the ruling class also dictates how the oppressed class has to view history [“Nur findet er in einer Arena statt, in der die herrschende Klasse kommandiert”].<sup>76</sup> In short, the ruling class looks at history from a very specific viewpoint and through their power they make the ruled classes look at history from that specific point of view as well.

In order to deal with this bias, Benjamin turns towards the revolutionaries, for these figures

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69 Ibidem, 98.

70 Ibidem, 70.

71 Ibidem, 71.

72 Benjamin, *Gesammelte Schriften II*, 698.

73 Ibidem, ibidem.

74 Ibidem, ibidem.

75 Ibidem, 701.

76 Ibidem, ibidem.

understand that they have to explode the historical continuum to make things happen. [“Das Bewusstsein, das Kontinuum der Geschichte aufzusprengen, ist den revolutionären Klassen im Augenblick ihrer Aktion eigentümlich”].<sup>77</sup> So, according to Benjamin, progress is not made by going along with the viewpoints of the ruled class, but by breaking with the historical continuum, according to Benjamin.

He differs from Schmitt in this regard, because Schmitt believes that the sovereign can speak in the name of a transcendental force, whereas Benjamin believes that the sovereign is much more limited in his interpretive powers. As a result, Schmitt wants to rely on the sovereign and stay within the order created by the sovereign, whereas Benjamin distrusts this sovereign and wants to break away from the order created by the sovereign. How Benjamin actually envisages this will be explained in the next sub-section.

## **2.3 Oppression, Forgetting and the Act of Remembrance**

An important notion with regards to Benjamin's conception of progress is the notion of *Jetztzeit*. (now-time) In his *Über den Begriff der Geschichte*, Benjamin explains that history is nothing else than time filled full by now-time [“Die Geschichte ist Gegenstand einer Konstruktion, deren Ort nicht die homogene und leere Zeit sondern die von Jetztzeit erfüllte bildet”].<sup>78</sup> Parallel to this, Benjamin pits materialist historiography against historicism. Historicism is made by the ruling class and centred around the belief that the site of history is homogenous, empty time, whereas materialist historiography is for the oppressed classes and centred around the belief that is about the notion of *Jetztzeit*. The latter notion enables one to encounter history as an unique event, and as something more than an oppressive fable manufactured by the ruling class. He also points out that it is in the act of remembrance where there is a messianic cessation of history, and where the revolutionaries can fight for the oppressed past [“In dieser Struktur erkennt er das Zeichen einer messianischen Stillstellung des Geschehens, anders gesagt, einer revolutionären Chance im Kampfe für die unterdrückte Vergangenheit”].<sup>79</sup>

In the essays *Über einige Motiven bei Baudelaire* and *Zum Bilde Prousts*, Walter Benjamin makes it clear how an act of remembrance could enable one to break with the continuum of history. In *Über einige Motiven bei Baudelaire* Benjamin introduces Proust's notion of *memoire involuntaire* (involuntary memory). Proust contrasts this involuntary memory with voluntary memory. One big difference between both forms of memory is that the voluntary memory is in service of the intellect [“in der Botmäßigkeit der Intelligenz”], while involuntary memory is not.<sup>80</sup> A good example of an involuntary memory is the scene where the taste of a Madeleine pastry helps Proust to vividly remember his childhood days in Combray for the first time. This memory is not conjured up by the intellect, but is a memory which overcomes Proust. What is more, this memory of his childhood days is much stronger than any voluntary memory conjured up by the intellect. So, the involuntary memory is a memory which overcomes one by chance, is outside of the realms of the intellect, and is much stronger than a voluntary memory [“das Verfllossene befindet sich außerhalb des Bereichs der Intelligenz und ihres Wirkungsfeldes in irgendeinem realen Gegenstand ... In welchem wissen wir übrigens nicht. Und es ist eine Sache des Zufalls, ob wir auf ihn stoßen, ehe wir sterben, oder ob wir ihm nie begegnen”].<sup>81</sup>

In his essay *Zum Bilde Prousts*, Benjamin writes about a painful shock of rejuvenation in the case of an involuntary memory: “Wo das Gewesene im taufrischen »Nu« sich spiegelt, rafft ein schmerzlicher Chock der Verjüngung es noch einmal so unaufhaltsam zusammen”.<sup>82</sup> At the end of this essay he also writes that an involuntary memory brings one in front of eternity,

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77 Ibidem, 698.

78 Ibidem, 701

79 Ibidem, 703

80 Walter Benjamin, *Gesammelte Schriften I*, 609.

81 Ibidem, 610.

82 Walter Benjamin, *Gesammelte Schriften II*, 320.

which he describes as “bildlos und ungeformt, unbestimmt und gewichtig von einem Ganzen”.<sup>83</sup> This is similar to his description of historical materialism in his theses on history. In the seventeenth thesis of *Über den Begriff der Geschichte*, Benjamin explains how in historical materialist thinking, historical configurations are given a shock and as a result crystallize as monads and are blasted out of the homogenous course of history. Furthermore, it is in this crystallization that one can find the sign of a Messianic cessation of happening. As Benjamin himself writes:

“Wo das Denken in einer von Spannung über den Begriff der Geschichte gen gesättigten Konstellation plötzlich einhält, da erteilt es derselben einen Schock, durch den es sich als Monade kristallisiert. Der historische Materialist geht an einen geschichtlichen Gegenstand einzig und allein da heran, wo er ihm als Monade entgegentritt. In dieser Struktur erkennt er das Zeichen einer messianischen Stillstellung des Geschehens”.<sup>84</sup>

In short, it is through a Proustian involuntary memory that one can fight for the oppressed past, for the involuntary memory brings forward another, more personal view on the past than the one manufactured by the ruling class.

In addition to this, Benjamin writes that *memoire involuntaire* consists most of all of memories which are largely isolated and enigmatically present as visual images [“zum guten Teil isolierte, nur rätselhaft präsente Gesichtsbilder”]. These enigmatically visual images could only be felt by placing oneself in the deepest strata of the involuntary memory, where memories make their presence felt not as simple images, but as an amorphous, formless, indefinite and weighty whole [“bildlos und ungeformt, unbestimmt und gewichtig von einem Ganzen”].<sup>85</sup> He adds to this that this presence could, for example, be felt by means of sensory stimulation – such as touch in the case of Proust's Madeleine pastry. By means of this Proustian example, Benjamin already explains the relationship between the act of forgetting and remembrance, but he is even clearer on this relationship when he writes about the notion of *déjà vu*, in his autobiographical work *Berliner Kinderzeit um neunzehnhundert*:

Man hat das déjà vu oft beschrieben. Ist die Bezeichnung eigentlich glücklich? Sollte man nicht von Begebenheiten reden, welche uns betreffen wie ein Echo, von dem der Hall, der es erweckte, irgendwann im Dunkel des verflommenen Lebens ergangen scheint. Im übrigen entspricht dem, daß der Schock, mit dem ein Augenblick als schon gelebt uns ins Bewußtsein tritt, meist in Gestalt von einem Laut uns zustößt. Es ist ein Wort, ein Rauschen oder Pochen, dem die Gewalt verliehen ist, unvorbereitet uns in die kühle Gruft des Einst zu rufen, von deren Wölbung uns die Gegenwart nur als ein Echo scheint zurückzuhalten.<sup>86</sup>

He even explicitly mentions the term *Ausnahmefall* (state of exception), in his description of *déjà vu*. He does so by arguing that *déjà vu* is in fact a state of exception in which both the past and the future are felt [“Das déjà vu wird vom pathologischen Ausnahmefall, den es im zivilisierten Leben darstellt, zu einer magischen Fähigkeit, weil es im Tiefsten ja durchaus etwas anderes ist als die intellektuelle Erkenntnis, es sei die neue Situation die gleiche wie die alte”].<sup>87</sup>

This act of remembrance is of the utmost importance according to Benjamin, because only the past has the power to redeem individuals, or as Benjamin himself states it in *Über den Begriff der Geschichte*: “Freilich fällt erst der Erlösten Menschheit ihre Vergangenheit voll auf zu. Das will sagen: erst der Erlösten Menschheit ist ihre Vergangenheit in jedem ihrer Momente zitierbar geworden”.<sup>88</sup> This redeeming force is of importance to Benjamin because history is always in

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83 Ibidem, 323.

84 Ibidem, 703.

85 Ibidem, 323.

86 Walter Benjamin, *Gesammelte Schriften VII*. (Frankfurt Am Main, Suhrkamp: 1991), 410.

87 Walter Benjamin, *Gesammelte Schriften IV*. (Frankfurt Am Main, Suhrkamp: 1991), 995.

88 Benjamin, *Gesammelte Schriften I*, 694.

danger of becoming a tool in the hands of the ruling class, which is why the historical materialist must always try to retain an image of past which comes to the individual unexpectedly, as in the case of the Madeleine pastry [“Dem historischen Materialismus geht es darum, ein Bild der Vergangenheit festzuhalten, wie es sich im Augenblick der Gefahr dem historischen Subjekt unversehens einstellt”].<sup>89</sup> In short, the oppressed could undermine the ruling class by getting into connection with their own past experiences, conjured up through sensory stimulation. This past is of importance because it also conjures up a forgotten future, and makes it clear that another future is possible than the one propagated by the ruling class.

To underline the importance of this act, Benjamin even refers to the remembrance of the past as a weak Messianic power [“Dann ist uns wie jedem Geschlecht, das vor uns war, eine schwache messianische Kraft mitgegeben, an welche die Vergangenheit Anspruch hat”], while he also refers to the historical materialist as a Messiah who subdues the Antichrist – the ruling class [“Der Messias kommt ja nicht nur als der Erlöser; er kommt als der Überwinder des Antichrist”]. What Benjamin exactly means with this Messianic power will become clear in the following subsection – on mythic violence and divine violence.<sup>9091</sup>

## **2.4 Violence and Redemption**

In Benjamin's essay *Zur Kritik der Gewalt*, Benjamin explicitly deals with the relationship between law and justice, as the opening lines already indicate: “Die Aufgabe einer Kritik der Gewalt läßt sich als die Darstellung ihres Verhältnisses zu Recht und Gerechtigkeit umschreiben”.<sup>92</sup> The task of a critique of violence, according to Benjamin, is to describe the relationship between violence on the one hand, and law and justice on the other hand. In this essay, as will become clear, Benjamin deals most explicitly with the order manufactured by the oppressing class, and the redeeming force of the oppressed class, as has stood central in the previous sections.

All law, in the eyes of Benjamin is, in fact formed by means of violence and power. “Rechtsetzung ist Machtsetzung”, as Benjamin writes, “und insofern ein Akt von unmittelbarer Manifestation der Gewalt”. A clear example of this, according to Benjamin is that most boundaries and codes of law are written after a war has been waged. In other words, those who have taken power determine what is law and what is not. As he writes himself: Wahrheit rührt, wenn er vermutet, daß in den Anfängen alles Recht Vorrecht der Könige oder der Großen, kurz der Mächtigen gewesen sei. Das wird es nämlich mutatis mutandis bleiben, solange es besteht. Denn unter dem Gesichtspunkt der Gewalt”.<sup>93</sup> He refers to this form of law as *mythischen Rechtsetzung* (mythical legislation), and clearly distinguishes it from *göttliches Rechtsetzung* (divine legislation).

Benjamin sees a clear difference between mythical legislation on the one hand, and divine legislation on the other hand. Mythical law is only based on might, whereas divine law is truly based on justice. As he puts it himself: “Gerechtigkeit ist das Prinzip aller göttlichen Zwecksetzung, Macht das Prinzip aller mythischen Rechtsetzung”.<sup>94</sup> Another clear difference is that mythical law creates boundaries, whereas divine law destroys boundaries, albeit in an inviolent manner:

“Ist die mythische Gewalt rechtsetzend, so die göttliche rechtsvernichtend, setzt jene Grenzen, so vernichtet diese grenzenlos, ist die mythische verschuldend und sühnend zugleich, so die göttliche entschuldigend, ist jene drohend, so diese schlagend, jene blutig, so diese auf unblutige Weise letal”.<sup>95</sup>

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89 Ibidem, 695.

90 Ibidem, 694.

91 Ibidem, 695.

92 Benjamin, *Gesammelte Schriften II.*, 179.

93 Ibidem, 198.

94 Ibidem, ibidem.

95 Ibidem, 199.

In other words, mythical law determines who is within the group and who is without it, while divine law renders these determinations arbitrary and obsolete. For this reason, Benjamin refers to the divine legislative power as *entsühnend*, which could be translated to English as both redemptive and conciliating.<sup>96</sup> So, mythical law is violent because it violently sets boundaries and violently oppresses opponents. Divine law is violent in another sense: it destroys the boundaries, but does so without shedding any blood. To summarize it in Benjamin's words: "Die mythische Gewalt ist Blutgewalt über das bloße Leben um ihrer selbst, die göttliche reine Gewalt über alles Leben um des Lebendigen willen".<sup>97</sup>

Benjamin is also very explicit on which kind of legislation he prefers. At the end of *Zur Kritik der Gewalt* he explains that divine legislation has to gain the overhand:

"Verwerflich aber ist alle mythische Gewalt, die rechtsetzende, welche die schaltende genannt werden darf. Verwerflich auch die rechtserhaltende, die verwaltete Gewalt, die ihr dient. Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen".<sup>98</sup>

He mainly despises mythical legislation because it uses divine right as an excuse for power abuse and violent control of territory ["der reinen göttlichen Gewalt [...] die der Mythos mit dem Recht bastardierte"].<sup>99</sup>

Benjamin writes that mythical law has often been conceived as a manifestation of the gods ["Die mythische Gewalt in ihrer urbildlichen Form ist bloße Manifestation der Götter"] and argues that in mythical thinking one rather should connect the mythical origin to bare life ["das bloße Leben"] than to some impenetrable cosmic origin ["kosmologisch Undurchdringlichen"].<sup>100</sup> What he means by this is that oppressive powers could only be countered effectively if the oppressed powers take a critical standpoint against them, based on temporal data ["zeitlichen Data"]. Put differently, it is not based on a mythical divine revelation, but on every moment of bloodless, piercing and conciliating fulfillment ["jene Momente des unblutigen, schlagenden, entsühnenden Vollzuges"].<sup>101</sup> This fulfillment is something which happens when the boundaries – drawn by mythical lawmaking powers – disappear and when the individual becomes aware of the world around him. And only when this happens, is it possible for the oppressed to rise against their oppressors. For Benjamin writes the following: "Ein nur aufs Nächste gerichteter Blick vermag höchstens ein dialektisches Auf und Ab in den Gestaltungen der Gewalt als rechtsetzender und rechtserhaltender zu gewahren".<sup>102</sup>

So, in order to break off the chains, one should focus on the happenings of their own bare life, instead of the myths perpetuated by those in power, only then can justice prevail instead of oppressive forces. These happenings of bare life, as we have seen in earlier sections, come to the attention of the individual through involuntary memories. In short, involuntary memories have the redemptive power to break individuals free from the oppressors and tear down their enslaving myths. However, what an individual has to do after he has freed himself from the oppressors does not become clear in Benjamin's writing, as will be shown in the next sub-section.

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96 Ibidem, 199.

97 Ibidem, 200.

98 Ibidem, 203.

99 Ibidem, ibidem.

100 Ibidem, 202.

101 Ibidem, 200.

102 Ibidem, 202.

## **2.5 Benjamin's problematic account**

It is shown in the previous sections that Benjamin wants to deconstruct the notion of history maintained by the ruling class. He argues this to be possible if individuals move beyond this 'objective' notion of history and focus on their own oppressed history – which comes to the fore through Proustian involuntary memories. This is of the utmost importance to Benjamin, because justice is only possible if the rulers' myths are disassembled. Nonetheless, it does not become clear in Benjamin's writings what has to be done after an individual experiences a *memoir involuntaire* and breaks away from the ruling class as a result of it.

In line with this, Owen Ware argues that Benjamin is most of all concerned with the past, and not all that much the future. To back up this claim, he reminds his readers that Benjamin - in *Über den Begriff der Geschichte* – writes mostly about a forgotten past which has to be relived in order to undermine the ruling classes' notion of progress. However, “The dialectic”, as Ware writes, “no longer moves magnetically towards a transcendent future, but rather concerns itself with tradition, with the memory of a genuine past that flares up momentarily in times of danger”.<sup>103</sup> What Ware means by this is that Benjamin only wants to give historical materialists and revolutionary forces the means to tear down the ruling classes' notion of progress and the future, but he does not give them any means to build up their own notion of it.

This is problematic, as Ware shows, because it is also a central point in *Über den Begriff der Geschichte* that historical movement is inevitable.<sup>104</sup> In other words, Benjamin shows us how existing orders – in contradistinction to Schmitt's belief – can easily be corrupted, how one could undermine them, but he does not us how we ought to build up a new order. One could argue that Benjamin just wants us to feel at home in the chaos, but this does not follow from the arguments he has made. After all, he writes in *Über den Begriff der Geschichte* that the movement of history is certain – even after the deconstruction of the ruling classes' notion of history – and in *Zur Kritik der Gewalt* he argues that divine law, which brings the individual in front of a whole, has to prevail over mythical law. Yet, it is not at all clear how an individual, overcome by involuntary memories, should move towards this.

In short, even if it is clear in what sense Benjamin's notion of messianic force is redemptive, it is not clear how it is anything more than a messianic cessation; in the following paragraphs it will become clear how Derrida's position on the relationship between an order of law and what lies outside of it is more active and therefore an improvement upon Benjamin's notion.

## **2.6 Derrida's Critique on Benjamin**

In *Force de Loi*, Derrida elaborately comments on Benjamin's position on law and justice, as put forward in *Zur Kritik der Gewalt*. In this essay Derrida makes it clear Benjamin's position is not without any problems. Similar to Ware, Derrida points out that divine violence, and by extension the ability of the oppressed to disassemble the rulers' myths are rendered impotent, due to its reliance on messianic cessation. He refers to this cessation as a revolutionary instant [“instant révolutionnaire”] and exceptional decision [“décision exceptionnelle”], and adds to this that this instant is ungraspable and therefore incapable of giving a critique of violence. It is ungraspable, according to Derrida, because it does not belong to a historical, temporal continuum, and has no anterior law on which it can base its critique:

“il y a la question de cet instant révolutionnaire insaisissable, de cette décision exceptionnelle qui d'appartient à aucun continuum historique et temporel mais dans lequel pourtant la fondation d'un nouveau droit joue, si on peut dire, sur quelque chose d'un droit antérieur qu'elle étend,

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103 Ware, O., 'Dialectic of the past', 104.

104 Ibidem, 105.

radicalise, déforme, métaphorise ou métonymise”<sup>105</sup>

In other words, even if revolutionary forces are able to tear themselves away from a corrupted order of mythical law, Benjamin does not make clear how they are able to lay out a foundation on which to base their own critique.

All of this shows, according to Derrida, that one has to criticize law from within law; it is not possible to go along with Benjamin and criticize it from the outside. A critique of violence is only possible from within, Derrida writes, because the revolutionary forces always base their right to strike on the order of law they have been in and against which they want to strike: “Ce qui menace le droit appartient déjà au droit, au droit au droit, à Forigine du droit”.<sup>106</sup> In his analysis of Benjamin's account, Derrida also uses a term which Benjamin himself does not use: performativity [“performative”].<sup>107</sup> This word, however, is not a betrayal to Benjamin's purposes, as Derrida believes. This is because law-establishing violence is always an act of performativity, according to Derrida.<sup>108</sup> It is always an act of performativity for Derrida because a human being can never have fully access to law. He writes about an inaccessible transcendence before which man stands fast: “la transcendance inaccessible de la loi devant laquelle et avant laquelle l'« homme » se tient”.<sup>109</sup>

Because of this impenetrable transcendence, Derrida want to put more emphasis on presence than Benjamin does. Through focusing on law-establishment as an act of performativity, Derrida makes it clear why presence is of such importance with regards to understanding the relationship between law and justice. The law-establishing moment, according to Derrida always takes place in a presence. However, at the same time, as Derrida writes, this moment never takes place in a presence too [“Ce moment a toujours lieu et n'a jamais lieu dans une présence”].<sup>110</sup> It always takes place in a presence because the foundation of new law, in Derrida's eyes, always consists of a modalization of the present and simple feigning of presence [“feindre la présence ou la simple modalisation de la présence”].<sup>111</sup> In other words, it is the interpretation of law by law-establishing individuals. These individuals interpret the law through their own epochal view. Those who establish law in the belief that they so in the name of some transcendental form of law or justice, always do so while thinking of it as things particular to “our present” or “our time”, as Derrida writes.

However, Derrida thinks it to be naive to think of “our present” or “our time” while interpreting the transcendental nature of law. This is simply because the transcendental nature of law causes law to be never fully present. The law, according to Derrida, always transcends the subject, because law can only be established through a performative act of the individual. This entails that newly established law is always established upon a subjective presence; the establishment of law is a performative violence for Derrida which takes place at the heart of an interpretative reading of it [“une violence performative à l'intérieur même de la lecture interprétative”].<sup>112</sup> Since the law-establishing individual does not fully grasp the extent to which law is interpreted subjectively, there is always something more to law than the individual can grasp. Only through the acknowledgement that there will always be something more to law than our own subjective interpretation, is it possible to interpret law, according to Derrida.

Put differently, if one acknowledges that there will always be new interpretations of law to come, then it is both possible for outdated law to be deconstructed, as it is for newly established law to be justified. Law can be deconstructed because law is never fully complete, and law can be established because the individual acknowledges that it is only a subjective, performative act and will accept

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105 Jacques Derrida, *Force de Loi: Le Fondement mystique de l'autorité* (Paris, Galilée: 1994), 98.

106 Ibidem, 87.

107 Ibidem, 83.

108 Ibidem, ibidem.

109 Ibidem, 89.

110 Ibidem, ibidem.

111 Ibidem, 88.

112 Ibidem, 91.

that there will be more law, coming from other subjective identifications, established in the future. Hence Derrida writes the following: “De cette loi Favenir seul produira l'intelligibilité ou l'interprétabilité”.<sup>113</sup>

So, by focusing on presence, it becomes possible for Derrida to show that the establishment of law always takes place through a subjective, epochal interpretation. This means for Derrida that the individual has to acknowledge there will always be new interpretations and new laws to come. After all, the performative, subjective act of law-establishment is only finite, which means that it is not complete and there will always be things outside of it. For this reason, it is important, when achieving law and justice, to take notice of the future. After all, there will always be new interpretations to come. This means that the establishment of law will always be an open-ended, ongoing process; there will never be a strong Schmittian leader who has the final say on it. Yet, at the same time, it gives guidance to revolutionary forces who want to deconstruct law and establish new laws. It gives more guidance to revolutionary forces than Benjamin's account does, since it explains that every establishment of a new order is a performative act and therefore of limited power. In the case of Benjamin, the revolutionary will be guided by involuntary memories coming outside of the current order. However, it is not all clear how these memories could help revolutionary forces to understand that their own understanding of the past is, in the end, as subjective and limited as the oppressing rulers they have risen up against; the involuntary memories only make it clear that the rulers' understanding of history is of a subjective and limited nature.

## **2.7 Conclusion**

In short, Derrida's account is an improvement upon Benjamin's account, because in establishing new law, individuals will not follow in the same lead as the violent law-establishing powers they have risen up against. After all, they construct law in the full knowledge that it is only of a subjective nature, and that in the near future there will come new voices and new interpretations of law which could deconstruct the currently established law and maybe even improve it.

In Benjamin's case, revolutionary forces – triggered by involuntary memories – can only become active through tearing down the historicist view of the ruling class, only to replace it with a new guiding view based on their own past experiences. In other words, one subjective view will prevail over the other subjective view. In Benjamin's writings it does not become clear how to prevent that the newly established views of the revolutionary classes could become just as oppressing as the views of the ruling class. If the revolutionaries want to stay true to their idea that one has to break with the historical continuum every once in a while, to prevent oppressing historicism to happen, it will not be possible to establish an order of continuous order, and they have to stay in the chaos, contrary to Benjamin's wishes. Yet, if they do want to establish an order and move along with the arrow of time – which points to the direction of divine justice –, then they run the risk of establishing an oppressing order which draws specific boundaries, which is also contrary to the wishes of Benjamin.

In Derrida's case, there is much less risk of oppression due to the acknowledgement that the interpretation of law always happens through a subjective presence, be it through the eyes of the ruling class, be it through the eyes of a revolutionary. After all, through the acknowledgement of presence it also becomes possible to acknowledge that one's interpretation of law is never complete and that there will always be new interpretations in the future which will make it more complete; one's presence is always limited and there will always be something more outside of it.

So, due to the role of presence, Derrida's account of law is more open-ended and is less likely to fall prey to oppression; it is for this very reason that Derrida's account is an improvement upon Benjamin's account. In the following section it will become clearer what this account exactly consists of, and why this account can play a mediating function between Schmitt's account and Benjamin's account.

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113 Ibidem, 90.





## **Section 3: Derrida as Mediator**

### **3.1 Introduction**

In the previous sections it has become clear that both Schmitt and Benjamin both have a problematic account of the relationship between law and reality. It has also been shown in the previous sections that Derrida has criticized both of the views, and for which particular reasons. However, nowhere in his literature does he bring the two thinkers in connection with each other. Yet, Derrida's critique on Schmitt is in fact very similar to his critique on Benjamin, as will be shown in this section. Bringing these two critiques in connection with each other will not only shed more light on several important issues concerning the relationship between law and reality, but it will also make it clearer which position Derrida takes in this discussion, and in which sense this position is of importance to the discussion. To make this clear, the following question will stand central in this section: *How is Derrida's position on law and justice related to his critique on Benjamin and Schmitt?*

For the sake of clarity, this section is divided into four different sub-sections. The first sub-section consists of a recapitulation. This recapitulation will not only serve as a summary but also as an explanation how Benjamin's problematic account and Schmitt's problematic account are connected to each other. This sub-section will show how Schmitt and Benjamin stand at the opposite sides of the same spectrum, while Derrida is standing in the middle of the spectrum. After this has been shown, we will move on to Derrida himself. The second sub-section will give the reader an overview of Derrida's position on law and justice, by focusing on his essay *Force de Loi*. In order to delve deeper into the subtle difference between Benjamin and Derrida regarding their conception of presence, the third section will delve deeper into Derrida's notion of presence. This will be done by focusing on several passages of *Force de Loi* and *Spectres de Marx*. In short, the second and third section will consist of an analysis of Derrida's own position regarding law and reality. After this clear analysis has been given, I will conclude by arguing why this particular position is both a mediating position between Benjamin and Schmitt's position, and an improvement upon both accounts. I will do so by showing how Benjamin and Schmitt are dealing with the same problem and how Derrida is able to overcome this problem due to the role of presence in his own account.

### **3.2 Schmitt and Benjamin: Two Sides of the Same Coin**

This thesis has mostly focused on the difference between Schmitt and Benjamin so far. However, in their philosophical accounts they are both trying to solve the same problem: what is to be done with the order of law when reality has rendered it obsolete. In other words, what is to be done when an exceptional situation arises to which no existing law applies?

Schmitt's answer to this is that the normal situation has to be suspended temporarily, in order for a strong leader to arise and bring back order as soon as possible. This strong leader is within the existing order, but is also outside of it in the sense that he represents a transcendental will. Put differently, for progress to be possible, the people should not move outside of the juridical order. They should rely on a strong leader instead, who belongs to the same order, but has a bond with the transcendental. I argue that Schmitt presents the sovereign as the human incarnation of God's will.

Benjamin gives a different answer to this question than Schmitt. An important reason for this difference is that Benjamin distrusts the sovereign. He believes the sovereign to be a mere finite creature with arbitrary beliefs, whereas Schmitt believes the sovereign to be a creature of absolute nature. Benjamin does not believe that the sovereign can stand into connection with the transcendental at all. Instead of that, he believes that the sovereign only represents his own biased view of reality, which becomes clear in Benjamin's explanation of historicism. This biased view is problematic according to Benjamin because the ruler imposes his views on the ruled classes, in such

a manner that the ruled classes believe the ruler's version of history to be the one and only version of history, as if it is the absolute truth. Benjamin wants to deal with this problem by breaking away from the existing order, through the help of Proustian, involuntary memories. These involuntary memories help the ruled classes to understand that there are also different, personal versions of history, and by extension other imagined futures than the one propagated by the ruling classes. So, Benjamin wants to mend the gap between law – that is, the juridical order maintained by the ruling classes – and reality by breaking away from it. What he means by this is that through introspection, individuals will come into contact with their own remembrance of the past and their own vision of the future. This will bring them into contact with something that Benjamin calls a messianic force, and this force will tear open the inbounded orders created by the sovereign powers. In sum, for Benjamin it is only possible to mend the gap between law and reality from outside of the order; if one stays inside the juridical order, one will only stay brainwashed.

So, in Schmitt's story, the sovereign is the protagonist who bridges the gap between law and reality, but in Benjamin's story, the sovereign is the antagonist who maintains the gap between law and reality, in order to stay in power. Nonetheless, both thinkers seem to believe that law is mostly established within a juridical order, while a bigger truth lies outside of it. Both thinkers also believe that this gap has to be bridged. The only difference is that Schmitt believes that only the sovereign should be in contact with this reality outside of the juridical order, while Benjamin believes that the ruled classes should all move outside of the order and get in contact with this reality, in order to turn against the sovereign.

Derrida criticizes Schmitt and Benjamin for a similar reason. He is critical against Schmitt because Derrida does not believe it to be possible to get into contact with something of an ontological nature. This is because the telos of one's community precedes every decision made within that community. In other words, the society one lives in will always determine the way one perceives the world; there is no such thing as a pure perception. If one follows Derrida's line of reasoning, it will not be possible for a sovereign to be a human incarnation of God's will, for even the sovereign's mind is tainted by the juridical-political order he lives in. This means that if the sovereign declares a state of exception, he is doing so on the basis of beliefs shaped by the community he has lived in, and not on the basis of a transcendental will. In short, Derrida criticizes Schmitt because Schmitt is too little aware that all human beliefs come to rise within a particular order, there is nothing outside of that order which is of any influence in this regard. The

Derrida is critical against Benjamin, because Benjamin also appeals to something outside of the juridical-political order. Benjamin does so by relying on Proustian, involuntary memories that stir up the revolutionary, oppressed classes by bringing them into contact with other versions of the past than the version manufactured by the ruling class. However, in doing so, as Derrida believes, Benjamin is incapable of giving a critique of violence. According to Derrida, Benjamin's revolutionaries rely on a revolutionary instant and exceptional decision which is intangible. It is intangible, as Derrida argues, because it does not belong to a historical, temporal continuum. Put differently, it lies outside of the order humans inhabit. It is not only problematic in Derrida's view because it is intangible, but also because the foundation of a human belief will always lie within the particular order the human is living in. For example, revolutionary forces always base their right to strike on the order of law they have been in and against which they want to strike, as has already been highlighted in section two. In short, Derrida is critical against Benjamin because he appeals to something intangible outside of the human order, and is too little aware of the extent to which one's beliefs are determined by the order one resides in.

In sum, Derrida is critical against Benjamin and Schmitt for the exact same reason. Both thinkers want to rely too much on a transcendental force outside of the juridical-political order, and both thinkers are too little aware of the extent to which human beliefs are determined by the order one resides in. Schmitt's account is problematic because the sovereign does in fact not stand into contact with something of a divine, transcendental nature, while Benjamin's account is problematic because the revolutionaries rely on intangible involuntary memories and because the revolutionaries are not aware of the extent to which the order they are striking against has determined their thoughts and

beliefs. According to Derrida one should not try to appropriate things which reside outside of one's particular order at all; one should grow more aware of how the particular order one resides in or has resided in determines one's thoughts and beliefs. The following two sub-sections will respectively make it clear how this belief stands central in his position on law and justice and in his writings on presence. The second section already contains a short explanation of the role of presence in Derrida's philosophy. However, this was done to distinguish his philosophy from Benjamin's philosophy. In this section a more detailed explanation of the role of presence in Derrida's work will follow, because this enables me to flesh out Derrida's position on law and reality.

### **3.3 Derrida on Law and Justice**

In his essay *Force de Loi*, Derrida contends that the problematic relationship between law and justice – which he also calls the relationship between convention and nature – lies at the heart of deconstructive studies [“Il est d'ailleurs normal, prévisible, souhaitable, que des recherches de style de style déconstructif aboutissent dans une problématique du droit, de la loi et de la justice. (...) c'est-à-dire l'opposition entre la loi, la convention, l'institution d'une part, et la nature d'autre part”].<sup>114</sup>

Derrida wants to deconstruct this relationship, which is to say that he wants to destabilize the relationship between law and justice. He wants to do so by showing that it is difficult to determine whether a law is a rule of decorum, the law of the strongest or just an equitable law of democracy. [une bienséance, une politesse, la loi du plus fort ou la loi équitable de la démocratie”].<sup>115</sup> Furthermore, it is also hard to determine, according to Derrida, whether an established law depends on law – convention – or justice/nature. He believes this to be difficult to determine first of all because it is also a form of justice to Derrida that one speaks the language of the majority; adequation is a form of justice for Derrida too. This entails that if one adheres to a law established by a community, it is difficult to determine whether he does because of adequation, or because those in power have enforced him to follow this convention. In other words, does one follow a law because this has to be done in order to be a part of a community, or does one solely do so because mighty rulers have enforced this law on him?

Later on in the essay, Derrida brings to light that the relationship between law and justice is also problematic because they can not function without each other. In order to point this out, he quotes Blaise Pascal:

La force sans la justice est tyrannique. La justice sans force est contredite, parce qu'il y a toujours des méchants; la force sans la justice est accusée. Il faut donc mettre ensemble la justice et la force.<sup>116</sup>

Derrida agrees with Pascal that it is necessary to combine justice with force, because one always has to express justice within a certain discourse. Even if one establishes a law based on justice, then this still will be done in a certain discourse, there will still be an interpretative violence, which is to say that a subject will always establish interpret justice in his own subjective manner.

So, the problem here is that justice always has to be integrated within a certain discourse, because human beings live within discourses, but that, at the same time, justice can not be fully integrated within a discourse, because then it will be of a subjective nature. Nonetheless, law and justice are intertwined with each other, because for justice to be interpreted it has to be integrated within a certain discourse, which means that a law has to be established that the people can integrate into an ordered whole. This is why Derrida writes that no justice is exercised, rendered, determined or effective, without a decision that cuts and divides [“Aucune justice ne s'exerce, aucune justice n'est

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114 Derrida, *Force de Loi*, 22.

115 Ibidem, 16.

116 Ibidem, 28.

rendue, aucune justice ne devient effective ni ne se détermine dans la forme du droit, sans une décision qui tranche”].<sup>117</sup> Justice is something intangible for Derrida, whereas law is something tangible. People can learn, read and understand law, and it is also possible to make calculations on the basis of law, which means that law enables one to make decisions and actions based on an interpretation of justice. In line with this, Derrida clearly states that to be just, one must not only follow a rule of law, but one must also assume it, approve it and confirm its value by a reinstating act of interpretation [“Pour être juste, la décision d'un juge, par exemple, doit non seulement suivre une règle de droit ou une loi générale mais elle doit l'assumer, l'approuver, en confirmer la valeur, par une acte d'interprétation réinstaurateur”].<sup>118</sup> In similar vain, he notices that it is the condition of all possible justice to address oneself in the language of the other, and that this is only possible to assimilate and appropriate this language of the other by means of law:

“S'adresser à l'autre dans la langue de l'autre, c'est à la fois la condition de toute justice possible, semble-t-il, mais cela paraît non seulement impossible en toute rigueur (puisque je ne peux parler la langue de l'autre que dans la mesure où je me l'approprie et l'assimile selon la loi”].<sup>119</sup>

In sum, justice has to be interpreted in the form of law because otherwise it is not possible for human beings to make sense of it to themselves and to each other.

Nonetheless, this is still not the end of the story for Derrida. After all, justice can never be fully integrated within a certain order of law. Derrida addresses this issue concerning justice by stressing that if justice is interpreted in the form of a law, it can no longer be *presently* just or *fully* just [“elle n'est plus *présentement* juste, *pleinement* juste”].<sup>120</sup> The moment justice is interpreted in the form of a law, it becomes a means of calculation. That is to say, it only serves to integrate its understanding in one's juridico-political order and relate it to the other things within that order; it is only there to make more sense of the world. However, for Derrida justice is only possible in the case of absolute alterity. This absolute alterity means that one has to understand that there are other beings with completely different lives, who make decisions and understand the world based on principles which can easily not be found within the discourse. The other is completely different and one should not validate the other based on principles one happens to adhere to. This is because, in finding law there will always be a performative act, which, in interpreting justice, grounds itself on conventions, which implies that there will always be an interpretive, irruptive violence and a certain dissymetry [“Celle—ci ne va jamais sans une certaine dissymétrie et quelque qualité de violence”].<sup>121</sup> In short, there is always something subjective to a law found on the basis of justice, since it is always found by individuals who live within a certain order, and adhere to subjective truths particular to that order, when interpreting justice.

In order to deal with this interpretive violence, Derrida writes that justice is always something to come. It can never be fully adequated or grasped, which means that one can never speak of somebody's justice. There will always be something to justice outside of the reach of an individual. To state it in Derrida's own words:

“« Peut être », il faut toujours dire peut-être pour la justice. Il a un avenir pour la justice et il n'y a de justice que dans la mesure où de l'événement est possible qui, en tant qu'événement, excède le calcul, les règles, les programmes, les anticipations, etc. La justice, comme expérience de l'altérité absolue, est imprésentable, mais c'est la chance de l'événement et la condition de l'histoire.”<sup>122</sup>

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117 Ibidem, 52.

118 Ibidem, 50.

119 Ibidem, 40.

120 Ibidem, 53.

121 Ibidem, 60.

122 Ibidem, 61.

So, what Derrida tries to say in this quote is that justice is amongst others the understanding that there is something other, outside of the discourse and juridico-political order, to which one should stay open to. In other words, justice is only possible when one accepts that one's order is not absolute and that there will always be something other to and it and always something outside of it. In connection to this, Derrida writes that justice is deconstruction. [“La déconstruction est la justice.”]<sup>123</sup> After all, justice has always something ingraspable to it, and it will always be out of reach. This entails that for a juridico-political order of law to be as just as possible, it always has to deconstruct itself, because justice is always beyond reach, and therefore the order has to always be on the move and is always deconstructing itself to get closer to absolute justice. Nonetheless, Derrida also warns his readers that the interpretive violence of law-establishment does not mean that one should stay out of juridico-political orders, for if one only resides outside of it one has to deal with an ingraspable justice and one will be rendered impotent with regards to installing justice.<sup>124</sup> Instead of that, Derrida advises his readers to stay within the order, and deconstruct that order every once in a while, in order to integrate more justice. Derrida's position is therefore in between Benjamin and Schmitt. He stays within the order just like Schmitt, but also wants to destroy it to a certain extent, just like Benjamin. In the next sub-section it will be explained how Derrida is able to do so by focusing on presence.

### **3.4 Derrida & Presence**

In the second section – on Walter Benjamin and Derrida's critique – it was already shown that Derrida is critical against Benjamin because Benjamin does not focus on presence at all. As a result, Benjamin's revolutionaries stand outside of the order and have nothing to base their strike against the order on. By focusing on presence, Derrida is able to give revolutionary, deconstructing forces some guidelines how to establish a society in which one does not the run risk to be just as oppressing and shut-off from reality as the sovereign powers the revolutionaries were rising up against. A focus on presence makes one aware that there is always a subjective individual within a certain discourse who is subjectively interpreting the transcendental, such as divine justice – in the case of Benjamin –, or the will of the divine – in the case of Schmitt.

In *Spectres de Marx*, Derrida focuses more extensively on this notion of presence, and its political ramifications. In this book he connects deconstruction and the undeconstructible condition of justice to the presence of the present. He, for example, writes that deconstruction always begins with the condition of the presence of the present. This is because, when one is interpreting justice, one always is doing so within a certain present, a certain time and place:

“La disjointure nécessaire, la condition dé-totalisante de la justice, c'est bien ici celle du présent – et du coup la condition même du présent et de la présence du présent. Ici s'annoncerait toujours la déconstruction comme pensée du don et de l'indéconstructible justice, la condition indéconstructible de toute déconstruction, certes, mais une condition qui est elle-même *en déconstruction* et reste, et doit rester, c'est l'injonction, dans la disjointure de l' *Un-Fug*.”<sup>125</sup>

Regarding the transforming act of interpretation, Derrida is also very clear on this matter, since he explicitly writes that interpretation transforms that which it interprets, due to its performative nature, as he himself writes: “Cette dimension de l'interprétation performative, c'est-à-dire d'une interprétation qui transforme cela même qu'elle interprète”.<sup>126</sup>

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123 Ibidem, 34.

124 Ibidem, 62.

125 Jacques Derrida, *Spectres de Marx : L'Etat de la dette, le travail du deuil et la nouvelle Internationale* (Paris, Galilée: 1993), 89.

126 Ibidem, Ibidem.

In addition to this, Derrida writes that both deconstruction and the indestructibility of justice is not possible without a radical, infinite critique. This critique, as Derrida states, belongs to a future which is necessarily indeterminate, and could only be reached by waiting for the other [“L’indéconstructibilité d’une certaine idée de la justice (ici dissociée du droit). Une telle pensée ne peut opérer sans justifier le principe d’une critique radicale et interminable, infinie (théorique et pratique, comme on disait). Cette critique appartient au mouvement d’une expérience ouverte à l’avenir absolu de ce qui vient, c’est-à-dire d’une expérience nécessairement indéterminée, abstraite, désertique, livrée, exposée, donnée à son attente de l’autre et de l’événement.”].<sup>127</sup> To clarify this, Derrida also points out that justice is an incalculability of the gift and the singularity of an economic exposition to others. In other words, one does justice to justice, by acknowledging that one always stands in a performative, subjective relation to others, which is to stay that one always and already is in the world with a certain predisposition [“la justice comme incalculabilité du don et singularité de l’ex-position an-économique à autrui”].<sup>128</sup> This gift, of which Derrida is writing about, is the gift of the *Dikē*. *Dikē* is an ancient Greek word which Derrida interprets in the same way as Martin Heidegger does. In *Der Spruch des Anaximanders*, as Derrida explains, Heidegger interprets this word as joining, adjoining, adjustment, articulation of accord or harmony.<sup>129</sup> However, another common interpretation of this word is justice. So, what Derrida means with the gift of *Dikē* is the given fact that one is always and already present within a certain order, and, by extension, that one always interprets the world within a certain order. And what Derrida means by the singularity of an economic exposition to others is that one always interprets the world within a certain order. For he writes that no singularity is possible without the here-now and no alterity without singularity. So, the fact that one always live within a certain present (a certain here-now) makes one unique, which both means that one interprets the world in a particular way, and that the other interprets the world in an unique way which can not be fully captivated within a certain discourse [“point d’altérité sans singularité, pas de singularité sans ici-maintenant”].<sup>130</sup> In sum, one does justice to justice by recognizing that one interprets justice within a certain order, and within a particular here-now.

For the latter reason, Derrida writes about justice as an ineffacable mark [“*ineffaçable marque*”].<sup>131</sup> Due to this ineffacable mark, he also believes that we have to wait without knowing what it is we are exactly waiting for. That is, we have to wait on justice to come, without exactly knowing what that justice exactly consists of. After all, this justice is only possible if we take into account that one always interprets justice from a certain standpoint, while there are other unique standpoints that could not be fully interpreted and done justice to from one’s own standpoint. This justice as openmindedness to the absolute other is what Derrida calls the messianic:

“Dans l’attente ou dans l’appel de ce que nous surnommons ici sans savoir le messianique la venue de l’autre, la singularité absolue et inanticipable de l’arrivant *comme justice*.”<sup>132</sup>

Derrida adds to this that the messianic is always something revolutionary and therefore always something urgent and imminent. Yet, if one waits on this messianic moment to happen, one always has to wait on the messianic without a specific horizon, otherwise one will not do justice to complete justice to absolute alterity [“Le messianique, y compris sous ses formes révolutionnaires (et le messianique est toujours révolutionnaire, il doit l’être), ce serait l’urgence, l’imminence, mais, paradoxe irréductible, une attente sans horizon d’attente.”].<sup>133</sup> So, in the case of the messianic Derrida has to deal with a paradoxical situation. On the one hand, it is imminent, yet on the other hand it could not be too imminent, otherwise absolute alterity will be at stake. Derrida deals with this paradox by letting the individual stay within the discourse – as we have also seen in subsection 3.3 –, in order to deal with the imminent character of the messianic, while doing justice

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127 Ibidem, 148.

128 Ibidem, 48.

129 Ibidem, 49.

130 Ibidem, 60.

131 Ibidem, 55.

132 Ibidem, ibidem.

133 Ibidem, 267.

to absolute alterity – and therefore the messianic – by letting the individual wait on messianic justice without a horizon. So, Derrida deals with the gap between law and reality by installing an openminded attitude within the current of order, which is an attitude that recognizes that there is always something outside one's discourse and here-now and always something other to it. Put simply, according to Derrida, one always has to work within a discourse, but in order for justice to be possible the individual has to recognize that even though this discourse is necessary, it is also limited. In the next subsection it will become clear how this view exactly relates to Derrida's critique of Schmitt and Benjamin.

### **3.5 Schmitt, Benjamin, and Derrida in Between**

Derrida, as has become clear in the previous section, contends that it is only possible to move beyond a current standpoint by staying within that particular discourse. Otherwise it will not be possible to be conscious of the extent to which this discourse has determined one's own viewpoint. For example, in reaction to Benjamin's standpoint on revolutionaries, he argues that revolutionaries base their right to strike on the foundations of the particular order they are striking against, and that same order they themselves have lived in as well. However, this does not mean that it is enough for Derrida to stay in that particular order. After all, deconstruction is justice according to Derrida. Deconstruction is justice according to Derrida because every order is based on an interpretation of justice, and an interpretation always transforms that which it interprets. This means that an interpretation of justice never gets the full picture of that which it interprets, and that something will always fall out of this interpretation. For this reason, it is important for Derrida to stay open-minded and to recognize that the order's 'truths' are never absolute truths, and that there is always something outside of it which could be integrated within the order. In short, an order is never complete, which is why deconstruction will always happen to it. After all, it has never fully integrated justice, and is therefore never the absolute representation of it. Yet, this has to happen within that order, otherwise one will not be aware of the extent to which this order has determined one's own thinking.

By maintaining this viewpoint, Derrida does not only stand in between Schmitt and Benjamin, but he also moves beyond them. On the one hand he wants to stay within the order just as Schmitt, but on the other hand he feels the same need to break with the order as Benjamin does. Yet, he does not choose for either the inside or the outside, because there is no absolute inside or absolute outside in his philosophy. He also believes that it is never justified to have an absolute interpretation of the truth, in contrast to Schmitt's sovereign. Also, he does not believe it to be wise to break up the order from the outside, in contrast to Benjamin's revolutionaries. Derrida's motivation runs against Schmitt's sovereign and Benjamin's revolutionaries for the exact same reason, since both figures rely on a justification – which I consider to be transcendental – that lies outside of the order. Derrida does not want to rely on anything outside of the order and contends that every belief is formed within a particular discourse – even a belief about the outside and the transcendental. In other words, the belief about what is without the order is always formed within the order; the outside is always an inside job. So, Derrida moves beyond Schmitt and Benjamin because he shows that everything happens within the discourse, and that it is impossible to motivate one's actions on the basis of some pure and transcendental truth which is to be found outside of the order. For this reason, Derrida does not run the risk of hubris, that is, dangerous overconfidence. In his philosophical perspective one will always be aware that one's standpoint is always limited and subjective, and that one always has to be open-minded to the other standpoint in order to do justice to the whole of justice and mankind – in all its different flavours.

### **3.6 Conclusion**

In conclusion, Derrida's position on law and justice is based on the belief that on the one hand



justice can never be fully adequated, while on the other hand a human being has to do with some limited interpretation of justice in order to function within an order. This means that an order of law has to be established by which people can calculate, determine things and relate things to each other, while, at the same time, they have to be aware that the lawful order is only a limited interpretation of justice and that there is always something to justice which the interpretation has left outside of it; the story is never complete and in order to do justice to justice, deconstruction of the order is necessary every once in a while. This belief is closely tied to his critique on both Schmitt and Benjamin, because both thinkers base their motivations for actions on something outside of the order, be it through a Schmittian sovereign which functions within the order, be it through a Benjaminian revolutionary who functions without the order. Derrida, as has become clear in the first and second section of this thesis, criticizes Schmitt and Benjamin because he believes it not to be possible to have pure access to a transcendental truth outside of the order; every belief is formed within the discourse one functions in or one has functioned in.

## Conclusion

On first appearance it looks like Carl Schmitt and Walter Benjamin have diametrically opposed viewpoints, but their viewpoints are in fact very closely related to each other. The latter has especially become clear after taking Derrida's critique against both thinkers in consideration. Derrida shows that both thinkers rely on something akin to a transcendental truth outside of the truth. Schmitt wants to rely on this truth in order to justify the sovereign's decisions when current law falls short in exceptional situations, while Benjamin wants to rely on this truth to justify revolutionary strikes against lawful orders which are not in sync with reality anymore. However, both thinkers have trouble to find the foundation on which they can justify either the sovereign decision or the revolutionary strike.

The problem with Schmitt's sovereign decision is that the sovereign is justified to suspend law because he is an incarnation of a transcendental will. Yet, as Derrida points out, he still is determined by the political order he lives in, which makes it hard, if not impossible, to be a truthful incarnation of some pure transcendent will which remains outside of the order.

The problem with Benjamin's revolutionary force is that this force bases its right to strike on something which resides somewhere outside of the order. This foundation is to be achieved through involuntary memories, and is also pure and untainted by the order – or discourse – human beings live in. Nonetheless, as Derrida also contends, this foundation is intangible and therefore hard to base one's right to strike on. Derrida also believes that Benjamin runs astray in his thinking about revolutionaries, because Benjamin forgets the fact that the revolutionaries always base their right to strike on rights within the order they are striking against and in which they have lived themselves. In other words, we have to focus on what happens inside of the order and stop focusing on what lies outside of it, because this is intangible and not accessible in its pure form anyhow because one is always shaped by the order – or discourse – one inhabits.

However, it is still necessary for Derrida to break down the order one inhabits every once in a while, because this order is only a limited interpretation of justice and only does justice to a part of reality. To do justice to a bigger part of reality it is therefore necessary to deconstruct the order and integrate new things into it.

eacho, on the one hand one can never get outside of the order/discourse one inhabits, yet on the other hand there is always something to reality outside of this order. Derrida deals with this problematic relationship between law and reality by staying within the order in an open-minded fashion. I consider his philosophical standpoint to be a reflection on how determined our thinking is by the discourse we inhabit. It is for this reflection that I believe to be Derrida's standpoint to be an improvement upon Benjamin's standpoint and Schmitt's standpoint, with regards to the relationship between law and reality. Instead of focusing on an intangible transcendental force outside of the order we live in, he wants us to focus on our own finiteness and limitedness, which especially comes to be through the fact that we always have to deal with a limited interpretation of justice and reality. By reflecting on this limitedness and finiteness it becomes possible to grow more aware of how big the world outside of us is. This also makes it easier to acknowledge that the order we inhabit is only of relative value and that it will be deconstructed every once in a while. In sum, I believe Derrida's standpoint to be an improvement upon Schmitt's standpoint and Benjamin's standpoint because it does not justify one's actions by means of some transcendental will (in the case of Schmitt's sovereign) or pure access to reality (in the case of Benjamin's involuntary memories), but forces one to reflect on one's limited standpoint instead and that deconstruction is always happening.

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