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Secularization of Political Authority. On the Political Content of Theology in Benjamin's Theory of Trauerspiel

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Abstract. This article investigates the relationship between secular politics and theology in Walter Benjamin's *The Origin of German Trauerspiel*. It explores that question by starting from how the Weimar legal theory conceived the relationship between modern, secular law and the theological tradition. Focusing on Carl Schmitt's concept of secularization, it investigates the analogy model in term of which the legal discourse understood the named relationship as well as its political consequences. The article suggests that Benjamin's theory of the *Trauerspiel* elaborates a different, dialectical model which deploys, on the contrary, the crisis of any analogy between theology and modern politics.

Keywords: *Trauerspiel*, Political Theology, Benjamin, Schmitt, Kelsen, Secularization.

1. INTRODUCTION

In *The Origin of the German Trauerspiel*, Benjamin developed a theory of matter and the form of the baroque drama. The Trauerspiel is in many ways bound to the emergence of the idea of secular politics. This bond manifests itself in the sovereign being the center of the baroque stage. The sovereign is not just any person, character, or role; in fact, he represents the supreme political authority of a secular territorial state. Even the audience of the Trauerspiel was entangled in a secular reality, since it consisted mainly of court officials, who were mostly jurists. As Benjamin emphasizes, even the poets spent most of their time as statesmen (Benjamin [1928]: 38).

The secular state idea, undeniably present in the Trauerspiel, occurs paradoxically under the sign of theology: the *secularisation* of the Counter-Reformation era, «nowhere did [...] make the religious concerns feel less weighty» (Benjamin [1928]: 65). Although staging the sovereign as the ruler of a temporal regiment, the Trauerspiel nevertheless holds the conviction that the sovereign's person

is invested by God with an «unlimited hierarchical dignity» (Benjamin [1928]: 56). Considering the tension between the secular state idea on the one hand, and the predominance of religious modes of thought on the other, one asks how, according to Benjamin, the Trauerspiel conceives political authority. Does it present political authority as being structured analogously to religious models – or as radically profane? Is political authority the manifestation of a divine will, or a mere function of the profane order? How can we understand the correlation between the tendency towards secularization, so characteristic of seventeenth-century drama, and the undeniable hieratic coloring of political authority by it? All these questions lead back to the following: how secular politics and theology interrelate in Benjamin's theory of the Trauerspiel? This is the question to which this essay is devoted.

The question how secular politics and theology interrelates in Benjamin's theory of the Trauerspiel is twofold. On the one hand, it regards the conception of political authority during the Counter-Reformation, i.e. the era to which Benjamin's theory of baroque drama refers. On the other hand, the same question became particularly important for the period Benjamin composed his study on the baroque drama, i.e. the Weimar period¹. Indeed, the question about the relationship between theology and politics arose again within the Weimar legal and political theory; it is often associated with Schmitt's *Political Theology* and his influential secularization thesis.

Here, I will investigate the relationship between politics and theology in Benjamin's theory of Trauerspiel regarding the double *Zeitkern* described above. *At the outset*, I will examine the analogy model in terms of which Carl Schmitt, whose *Political Theology* Benjamin cites in his baroque-book, attempted to conceive this relationship. In order to better explain Schmitt's position and intentions, I will briefly refer to his counter-

part, Hans Kelsen, who, even before Schmitt, also used the analogy model; although with opposite aims. As I will argue, the analogy model is deeply problematic, mainly because it can serve both, the affirmation and the denial of the political content supposed to be expressed in the analogies between theology and modern secular law. Based on this reconstruction, I will then deal with Benjamin's *Trauerspiel-book*. I will suggest that Benjamin's theory of Trauerspiel offers a different understanding of the political-theological question. Instead of drawing on analogies between the two domains, Benjamin portrays the crisis of the analogy model itself by recurring to the political-historical experience reflected at the level of factual content («Sachgehalt») of baroque drama. Following Benjamin, theological and juridical-political thought are not analogous because they are interrelated in a dialectical way, resulting in the crisis of their analogy. As I will argue based on Benjamin's theory, the baroque theological discourse legitimized profane authority as divinely given, and precisely by doing so, it defined political authority as purely profane.

Of course, I am not claiming that this approach covers the issue of how theology relates to politics in the entire Benjaminian oeuvre. I rather intend to explore how Benjamin's theory of the baroque Trauerspiel can offer an answer to a highly controversial question posed within the Weimar legal theory. So, when I refer to «theology», I mean this term not in a general sense, but in the way Weimar legal theorists understood it.

2. CARL SCHMITT AND THE POLITICO-THEOLOGICAL QUESTION

The question regarding the relationship between theology and modern law became known through Schmitt's *Political Theology*. In its third essay, Schmitt sums up this question in the form of his well-known secularization thesis: «All significant concepts of the modern theory of the state are secularized theological concepts» (Schmitt [1922]: 36). That is, not merely a statement about

¹ Regarding the re-emergence of theological thought schemes in the German-speaking intellectuals during the Weimar period, see Gangl (2007) and Graf (2005): 49-81.

their pedigree; it is a statement about their conceptual structure: the concepts of modern constitutional law are secularized theological concepts «not only because of their historical development but also because of their systematic structure» (Ibid.: 43). Schmitt's intention is to suggest that the structure of legal concepts is identical to the structure of theological concepts. And the means towards this end is the detection of analogies between the named domains, or as Volker Neumann call it: the analogy model (Neumann [2008]: 170).

According to Jean-François Kervégan, Schmitt's secularization thesis «is both "descriptive" and "political", that is, polemical» (Kervégan [2019]: 105)². To understand it, it is thus necessary to identify the thesis opposed by Schmitt. Schmitt's secularization thesis counters Hans Kelsen, to whom Schmitt ascribes «the merit of having stressed since 1920 the methodical relationship of theology and jurisprudence» (Schmitt [1922]: 40).

In a series of publications aimed at establishing the Pure Theory of Law, Hans Kelsen indeed endeavored to point out parallels in the way of thinking between Christian theology and the predominant theory of the state³. Unlike Schmitt, by detecting such analogies, Kelsen was not aiming at bringing to light a supposedly unbroken bond between Christian theologoumena and modern legal concepts worth to be preserved. By emphasizing the methodological parallelism between the legal thinking of his time and Christian theology, he attempted instead to draw attention to the fact that the predominant doctrine of *Staatsrecht* had not yet reached the standpoint of modern science. On the contrary, it still lay on the level of unscientific, theological thinking. Kelsen intended to overcome the jurisprudence's theological mode of thought by extricating legal theory from any metalegal or extralegal concept, and above all the

extra-legal concept of state power or will. Thus, Kelsen's legal philosophy – the Pure Theory of Law – has an explicit critical and anti-theological orientation, as has been already pointed out (Dreier [2019]: 27-66; Górniewicz [2020]; Matos [2013]).

Kelsen dealt extensively with those analogies in his work *Der soziologische und der juristische Staatsbegriff* (1922). In its last section, entitled *State and Law: God and Nature* (Ibid.: 222-247), he traces the analogies between theological and jurisprudential theorems to the «double hypostatization» (Ibid.: 215) of the object, common to both theology and jurisprudence. This double hypostatization indicates two thought steps: Firstly, the predominant legal theory divides law into law and the state, like theology divides the world into world and God. It assumes the existence of a state, standing behind the legal order, like theology asserts that behind the world there is God's will. Law is thus conceived as an emanation of the state's will, just as theology considers the world to be an emanation of the divine will. This is the first hypostatization. The second hypostatization consists of attributing inherent dynamics to the first hypostatization, i.e. the state respectively God. As in theology, God is not identical with the world representing a distinct potency, the predominant legal theory considers the state to be non-identical with positive law and to bear a kind of higher «legal potency» transcending positive law and undermining its «dominion» (Ibid.: 210). Attributing a non-positive legal potency to the state, the predominant legal theory accepts, in the extreme case, the suspension of positive law declaring legally undefinable state acts to be legitimate. Thus, the notion of an extra-legal state act undertaken in favour of the state's integrity, finds its theological analogy in the concept of an immediate divine act of suspension of natural law, i.e., in the miracle. (Ibid.: 245-247)⁴.

In opposition to the «legal theology», Kelsen's own *Pure Theory of Law* can be understood as a

² See by contrast, Böckenförde (1983): 19, who conceives Schmitt's thesis merely as a sociological one.

³ See Kelsen's self-presentation written in 1927, where he retrospectively considers the reconstruction of those analogies to be one of the essential elements of his theoretical work (Kelsen [1927]: 35).

⁴ For a more detailed presentation of Kelsen's analogy model, see Neuman (2008): 164-174, and Baume (2009).

radical profanation of the law. For it leads to an understanding of the legal order as an autonomous and humanly constructed system of norms, within which authority is not a substance, but only a posited function of positive law. It leads to the understanding that authority does not create the normative order, but vice versa: the normative order gives authority its foundation.

Considering the above, it becomes intelligible what Schmitt's political theology is opposed to: his main target is the «negative ethico-political effect» that Kelsen's criticism of the «legal theology» has. For a legal theory born out of that kind of criticism, leaves no space for a legally unbound and unconditional state authority. As Kelsen put it at the end of his essay *God and the State*, such a theory «disposes of the idea that the state is an absolute reality»; by

teaching [...] to apprehend the state as simply the legal order, it makes the individual aware that this state is a human artefact, made by men for men [...]. If it has always been the rulers under the prevailing state order, who have met every attempt at changing this order with arguments drawn from the nature of the state [...] then the doctrine which declares the state to be the legal order prevailing at any time, whose content is changeable and can always be changed [...], is a doctrine which disposes of one of the most politically effective obstacles which at all times has been laid in the path of reforming the state in the interests of the ruled. (Kelsen [1922-1923]: 81)

Schmitt attempts to counteract the political implication of Kelsen's criticism of the «legal theology» by employing the secularization theorem. Like Kelsen, he also uses analogies between legal theory and theology. However, he reads them as an indication of the structural identity of legal and theological concepts expressing a political content worth to be preserved. In other words, by stating that modern legal thought remains dependent upon the theological mode of thinking, he suggests that it depends upon an authoritarian understanding of the state having its roots in the theological tradition. Even more than in *Political Theology*, this becomes evident in *Political Roman-*

ticism, where Schmitt elaborates on his secularization thesis for the first time. In the preface to the second edition of 1924, he defines the concept of secularization as follows:

Metaphysics is something that is unavoidable, and [...] we cannot escape it by relinquishing our awareness of it. What human beings regard as the ultimate, absolute authority, however, certainly can change, and God can be replaced by mundane and worldly factors. I call this secularization [...]. (Schmitt [1917-1924]: 17-18)

For Schmitt, the transformations of the mode of thinking lie in this deep metaphysical level. «Here, ever new factors appear as absolute authorities, even though the metaphysical structure and attitude remain» (Ibid.: 17). The quoted passage makes clear that the essence of Schmitt's concept of secularization is both the retaining of the «metaphysical structure» as well as its obscuring. In Schmitt's view metaphysics means above all the «idea [...] of an ultimate authority» (Ibid.: 17). Therefore, secularization means the process by which the inherently unavoidable place of an ultimate authority remains, but gets occupied by non-transcendent, i.e., worldly factors. Hence, secularization does not mean a radical revolution of the mode of thinking, but, firstly, the preservation of the structurally theological idea of an absolute and transcendent authority, and, secondly, the obscuring of this fact by means of the replacement of the transcendence by profane, non-transcendent factors.

As Werner points out (Werner [2011]: 128-130), Schmitt's secularization thesis does not reject every kind of secularization. It does not imply a return to pre-modernity. If «metaphysics» is for Schmitt inevitable, secularization is irreversible. Schmitt regards it legit if a worldly factor claims an absoluteness analogous to theology. «[A] certain objectivity and cohesion always remain possible whenever another objective authority, like the state, takes the place of God» (Schmitt [1917-1924]: 18).

Schmitt's secularization thesis thus bears the assertion that only absolute factors can and should occupy the place of the ultimate authority. It

serves mainly to delegitimize *modern* understanding of law and state, according to which authority should only be a posited one; i.e., only a function of a normative order made by men, either consciously or unconsciously.

The political content and intention of Schmitt's parallelism of theology and legal theory becomes clear in *Political Theology*. The secularization thesis there coheres with a strong plea for an authoritarian understanding of the concept of sovereignty. The main characteristic of the latter is the inseparability of sovereign and sovereignty, of office bearer and office: «the subject of sovereignty, that is, the whole question of sovereignty» (Schmitt [1922]: 6). And in Schmitt's view, theology provides the model for this inseparability.

Perhaps the most central parallel between legal theory and theology drawn by Schmitt in *Political Theology* is the one between the state of exception and the miracle. «The exception in jurisprudence is analogous to the miracle in theology» (Ibid.: 36). This analogy leads directly to the further claim that the modern concept of the state's sovereignty models itself on the theological notion of God. The presence of the state of emergency in modern constitutions, i.e., the provision of the suspension of the law in case of emergency, implies – as Schmitt argues – the possibility for the state of breaking the legal bonds; that is, analogous to the theological belief in a divine suspension of the natural laws, i.e., the miracle. This analogy, however, implies that modern law doctrines admitting such a possibility presuppose no less than a sovereign acting within legal order, like God within the world order (this is what the second chapter of *Political Theology* undertakes to suggest, Ibid.: 16-35; see also Neuman [2008]: 176-179). The decisive point of this line of thought is that sovereignty is not a function of the legal order – in the same way as God is not a function of the world order – but a quality bound to its subject. Sovereignty is inseparable from its bearer – i.e. the subject of sovereignty.

As Kelsen has illuminatingly emphasized, the assumption of a legal miracle is necessary only for a dualistic legal theory presupposing a higher

right of the state, apart from the positive legal system:

The act supposed to be an act of the state, although illegal, actually extra-legal, since it is not determined or determinable by any legal norm, [...] cannot be judicially perceived; determined by another super- or extra-legal order, i.e. the order of the state's will as a meta-legal phenomenon of power, this act is the legal miracle. (Kelsen [1922]: 246-247; my transl.)

Precisely because Schmitt presupposes such a meta-legal state standing above positive law, he consciously sees a «legal miracle» in the state of emergency; this is the reason why he considers the decision on the state of emergency to be the fundamental characteristic of sovereignty. Such a total decision is external to norms and depends solely on the person who decides. Precisely because this person represents a higher principal than all positive-legal norms, i.e., the state and «its right of self-preservation» (Schmitt [1922]: 12), he cannot be an authorized, but only an authoritarian person. «The existence of the state is undoubted proof of its superiority over the validity of the legal norm. The decision frees itself from all normative ties and becomes in the true sense absolute» (*Ibidem*). By referring to the decision, Schmitt always implies the person of the decision-maker and thus a non-positive order, represented or resembled by that person. Schmitt considers this legally unbound state action to be an eminent act of representation and, for this very reason, an act of sovereignty. His *Constitutional Theory* defines representation as follows: «To represent means to make an invisible being visible and present through a publicly present one. [...] In representation [...], a higher type of being comes into concrete appearance» (Schmitt [1928]: 243). This «higher type of being» transcends positive law. For that reason, it becomes visible within the immanence of legal life only by the sovereign's suspension of the positive legal order⁵. The sovereign is not authorized by a

⁵ For the relation between the decisionistic and personalistic elements in Schmitt's concept of sovereignty see the analysis of Jonas Heller (2018): 67-75.

positive legal norm; on the contrary, he establishes the norm by virtue of his decision; for this very reason, he can suspend it. Since he represents the state in toto, he is *legibus solutus*⁶. «[A]uthority proves that to produce law it need not be based on law» (Schmitt [1922]: 13). Suspending the positive law, this kind of sovereign authority renders visible the supreme order of the state.

It is precisely this theologically inspired notion of a substantial bond between sovereignty and the subject of sovereignty that Schmitt sees in the birth of the modern state in the 16th and 17th centuries. The modern theory of law and state begins by postulating «the sovereign as a personal unit and primeval creator» (Ibid.: 47). This becomes evident precisely by the fact that it grants the holder of sovereignty the power to suspend the law and derives from this ultimate power all other competencies (Ibid.: 9). Schmitt presents the personalistic conception of sovereignty (that is, the dogma of the inseparability of the state's sovereignty and the subject of sovereignty) as «the metaphysical kernel of all politics» (Ibid.: 51), which have been forgotten and repressed by the state theory of the 19th and 20th century: «All tendencies of modern constitutional development point toward eliminating the sovereign in this sense» (Ibid.: 7). Only the counter-revolutionary thinkers nurtured a vivid memory of the authoritarian and personalistic essence of the state's sovereignty. This is the reason why – according to Schmitt – they were still aware of the political content of the theological-political analogies (Ibid.: 43, 59); it is precisely that political content Schmitt wanted to reawaken by working out the juridico-political analogies.

So far, we have clarified what was the intention, as well as the methodological instrument of Schmitt in encountering the question concerning the relationship between theology and modern state law. He wanted to reintroduce an authoritarian understanding of state authority, whose model

he believed to find in the Christian theological tradition; by doing that, he countered the modern conception of state and law, currently expressed in Kelsen's legal positivism. The methodological instrument toward this end was the (re)construction of analogies between God and state or sovereign, i.e., between theology and law.

At this point, we can name the twofold problem of Schmitt's methodological position. First, the analogy model cannot explain the process Schmitt pretends to explain: that is the secularisation of political authority in modernity. By employing the juridico-political analogies, he only demonstrates the continuation of theological structure supposed to be substantial for the modern state and law, not a radical change. Second and more important: as we saw, the analogy model can serve opposite political ends. For analogy is both identity and difference. Two relations – like the relation between God and the world, and the one between state and the positive law – can be considered analogous because of their identity in some characteristics. However, this tacitly presupposes that they are indeed two different relations. Hence, one can either interpret an analogy as an indication of a difference worth being founded, like Kelsen attempted to; or, as an indication of substantial identity worth being preserved, as Schmitt did. Although one can justifiably claim – as Kelsen in his late writings noted (Kelsen [2012]: 17) – that the only scientific way to deal with the juridico-political analogies is to approach it from the perspective of difference, the opposite approach – the one that transforms analogy into identity – is by no means excluded; on the contrary, it becomes thereby possible, no matter how unscientific it may be.

3. THE PROFANATION OF AUTHORITY IN BENJAMIN'S THEORY OF TRAUERSPIEL

Benjamin's theory of the Trauerspiel contains elements of a methodologically different answer to the political-theological question going beyond the analogy model. Benjamin's Trauerspiel theory answers the political-theological question by pre-

⁶ See Schmitt's discussion of the notion of *legibus solutus* as essential to the modern concept of sovereignty (Schmitt [1926]: 96).

senting the crisis of the analogy model⁷. It may not be far-fetched to claim that the entire account of the material part of the *Trauerspiel-book* – i.e., the level of factual content⁸ – could be described as the deployment of the crisis the analogy between the theological and the juridical-political entered with the Reformation.

In the first part of his study, originally supposed to be titled as «the king in the Trauerspiel» (Benjamin [1989]: 877; letter to Scholem, 16.09.1924), Benjamin quotes Schmitt. Two aspects of the latter's work are of particular importance to him: firstly, the dogma of the «absolute inviolability of the sovereign» (Benjamin [1928]: 49), that is, the sovereign's quality as *legibus solutus*; and secondly, that he has the power to decide on the state of emergency. These two aspects are intimately connected. The sovereign is *legibus solutus* because he has the power to decide upon the state of emergency. He has the power to do so because the state theory – according to Schmitt – ascribes to him a position analogous to that theology ascribes to God. Viewed in this perspective, Benjamin seems to refer to Schmitt as a non-questionable authority in the history of legal and state theory. Although he seems to accept Schmitt's position by stating that the «theological- juridical mode of thought» was «characteristic of the century» (Ibid.: 50), he introduces a decisive difference rooted in the «theological situa-

⁷ As it became recently clear that Benjamin must have been familiar with some of the major works of Schmitt as well as those of Kelsen: in a note recently transcribed and published (Benjamin [2021]), Benjamin lists nearly all the central texts of the political-theological debate. Apart from Carl Schmitt's *Political Theology* (1922), Benjamin also includes *The Political Romanticism* (1919), the first edition of the *Dictatorship* (1921), as well as Kelsen's *Der soziologische und der juristische Staatsbegriff* (1922) and *Allgemeine Staatslehre* (1925).

⁸ In his classic study of Benjamin, Garber considers the determination of the factual content to be the basis of all aesthetic determinations of Baroque poetry, particularly of the allegorical (Garber [1987]: 94). Burkhardt Lindner has also pointed out the indispensability of the analysis of the factual-content for the elaboration of the aesthetic form-determinations of the Trauerspiel; the same view holds Poppe (Lindner [2000]: 55, 22-25).

tion of the epoch» (Ibid.: 67): the reformatory idea of separation of office and office bearer and, in turn, the separation of sovereignty and the subject of sovereignty⁹. Even though Schmitt seems to be one or perhaps the central, political-philosophical reference in Benjamin's work on baroque¹⁰, a careful reading of the *Trauerspiels-book* reveals that this is not the case. As Jennings has pointed out (Jennings [2012]: 114-115), far more fundamental than Schmitt's conception of sovereignty is the political thought of the Reformation, precisely because – as I will try to suggest below – it offers Benjamin the religious-historical basis for the re-purposing (*Umfunktionalisierung*) of Schmitt's concept of sovereignty and the secularization theorem inherent in it. By employing the Reformation's political thinking in his theory, Benjamin indirectly counters the analogy model in terms of which Schmitt (as well as Kelsen) tented to consider the relationship between theology and modern law.

3.1 The Political Thought of the Reformation

Benjamin emphasizes that the German dramatists were Lutherans (Benjamin [1928]: 140).

⁹ The sentence «In the theological- juridical mode of thought that is so characteristic of the century [...]» is followed by a reference to August Koberstein's book *Grundriss der Geschichte der deutschen Nationalliteratur vom Anfang des siebzehnten bis zum zweiten Viertel des achtzehnten Jahrhunderts* (1872), whose main claim was that the theological- juridical mode of thought prevailing in the 17th century, «was not a truthful and vital science developing and progressing in accordance with the spirit of the Reformation, but a rigid and dead literalism indulging in scholarly sophistry and a stubborn and tenacious adherence to the school tradition, through which neither a genuine Christian nor a truly civic spirit might be awakened» (Koberstein [1872]: 15). One can claim, that when the Trauerspiel employs the reformatory idea of radically separating the office from the person, it challenges the dogmatic and outdated ideas prevailing within the juridical and theological disciplines of the era.

¹⁰ The question of the relationship between Schmitt and Benjamin has been extensively discussed giving rise to various speculations. See my critique of the status of the debate (Tzanakis Papadakis [2019]: 45-46).

That indicates, firstly, that they held a worldview according to which the world is completely desacralized and one can only achieve salvation in the inward realm of faith. The radical internalization of faith expressed in its separation from confession, led consequently to a radical devaluation of the world and human actions. «Human actions were deprived of all value. Something new came into being: an empty world» (Ibid.: 141). This world is empty in the sense that it is devoid of all transcendence, i.e., it is godless¹¹.

«[T]he tension between world and transcendence» (Ibid.: 51), essential both to Luther's worldview and to Benjamin's theory of the Trauerspiel, has a political index. In order to understand this index, it needs a brief retrospective of Luther's political thinking. Only then one can answer the following question: how, following Benjamin, does the baroque Trauerspiel perceive the relationship between political authority and theological modes of thought?

Luther's political thought is marked by a profound contradiction expressed in his doctrine of the two kingdoms; the divine and the temporal. According to Luther, Christ is ruling over the true Christians in the divine kingdom. True Christians are those who act good voluntarily, i.e., without coercion. Therefore, the temporal law and the sword do not apply to them (Luther [1523]: 12-14). Unlike the divine kingdom, the political authorities rule in the temporal kingdom. Though instituted by God, these authorities apply to the imperfect Christians, who do not act good on their own accord, but must be forced to do so. The task of the temporal regiment is to prevent men from wrongdoing and to establish nothing but a temporal peace. The means towards this end is external, i.e., the implementation of law (*Ibidem*). In this way, Luther limited the role of temporal authorities to external actions. Moreover, temporal

authority itself belongs exclusively to the world of externality and evil.

Luther's doctrine of the two kingdoms and the resulting complete internalization of faith let the temporal authorities rule in an entirely desecrated and hence «evil» world. He preached unconditional obedience «for there is no authority except from God» (Ibid.: 11). However, since he attributed to it merely profane tasks, he indicated its structure to be completely profane. This contradiction created, according to Marcuse (Marcuse [1936]: 145) and Skinner (Skinner [1978]: 3-19), a politically impossible situation. For Luther's doctrine can justify both obedience and disobedience: Since temporal authority is instituted by God, no matter what it does, one must unconditionally obey it; for Luther rebellion is, after all, the worst of all sins (see Marcuse [1936]: 147). But because this authority is nothing but temporal, because it is not immanently related to the beyond, it belongs entirely to the world, the domain of sin. By virtue of this contradiction, Luther was able to assert both, that every authority is to be obeyed as well as that the princes were in general «the biggest fools or the worst scoundrels on earth» and that the people should not obey if their prince was «wrong [...]. [F]or it is no one's duty to do wrong» (Luther [1523]: 36, 48).

This perspective on political authority was reflected in the concept of person: «First of all, we must distinguish that office and person, or work and agent, are different things. For, an office or work can be good and right in itself, which is nevertheless evil and wrong, if the person or the agent is not good or right or is not doing it right» (Luther [1526]: 52). In order to preach unconditional obedience, Luther used this new concept of person: he called the princes God's persons or «representatives» (*Statthalter*; Luther [1518]: 376). The rebellion against them means therefore a rebellion against God. However, to discredit the princes he also used the characterization of God's person. Since the prince is God's representative on earth, he must act in accordance with the office divinely given to him; acting otherwise, he sets aside his divine «larva» – he unmasks himself

¹¹ For the question raised by Giorgio Agamben as to whether Benjamin asserts that the baroque tension between transcendence and immanence leaves place to eschatology (Agamben [2005]: 55-57), I refer to Thomas Mayer (2007).

– and his subjects have no duty of obedience (see Skinner [1978]: 16-17). Like his political thinking in general, Luther's concept of the person is ambiguous: it allows both total submissiveness and radical hostility to authority. What is decisive here is the political tendency emerging out of this ambiguity. By separating the office from the person, Luther reached the threshold of modern political thought. For, as Marcuse put it, in this way he rendered an idea of authority impossible, according to which the office was bound to its holder as an immanent property (Marcuse [1936]: 145)¹². It was precisely such a conception of authority that Schmitt wanted to rehabilitate for the 20th century by means of his secularization thesis. Considering the office, not as the property of its bearer, but; instead, as a function of temporal order, implies a normative circumscription of the office, and thus a profound gap between office and person in office. The office thus shifts from the sacral to the profane sphere.

3.2 *The Separation of Office and Person in Benjamin's Material Analysis of the Baroque Trauerspiel*

The drama of the German Protestants, whose theory Benjamin's *Trauerspielbuch* develops, corresponds precisely to this Reformation tendency towards profanation of political authority. Now, I will proceed to consider how this tendency is interwoven into Benjamin's theory of baroque drama.

¹² The separation of office and person stated by Luther should not be confused with the dogma of the King's two bodies, investigated by Ernst Kantorowicz. Kantorowicz himself distinguishes clearly the reformationian separation of person and role from the English fiction of the double body of the king: «the distinction between the king as King and as private person [...] was well established also on the Continent» and it does not «matches» exactly to the *physiological* fiction of the King's Two Bodies. Moreover, English custom apparently tried to reduce the king's *privacy* so far as possible (Kantorowicz [1957]: 20). The latter was a «purely English device», while in the German speaking world, at the end of this large historical development «it was the abstract State with which a German Prince had to accommodate himself» (*Ibid.*: 446 ff.).

Firstly, it is important to draw attention to Benjamin's thesis that one of the most typical motifs of baroque *Trauerspiele* is «[t]he antithesis between the power of the ruler and his ability to rule» (Benjamin [1928]: 56). The account of the «material part» of the *Trauerspielbuch*, dealing with the basic motifs and obligatory themes of the Trauerspiel, centers around this antithesis which is based on the Lutheran separation of office and person. Like every office, the sovereignty (*Herrschermacht*) is divine; the office bearer (the person of sovereign) is not. Assigning this divine, or divinely given office, to a principally non-divine bearer implies that the latter's actions may be morally disreputable. The German Trauerspiel turns this possibility inherent to the Reformation's political thought into a certainty rendering it to an obligatory dramatic motif. It does so by presenting the sovereign as a melancholic, who in his madness destroys himself and the state. «The prince is the paradigm of the melancholic» (*Ibid.*: 145)¹³. According to the ancient humoral-pathological and astrological doctrines (*Ibid.*: 148-156), from which Benjamin draws the baroque image of the melancholic prince, melancholy is considered to be a «severe mental disturbance» (*Ibid.*: 148). The sovereign of the German baroque drama does not downfall because someone else – for instance, the counter-king – overthrows him, even less because the «common people» (*Ibid.*: 182) storm into the palaces. The prince downfalls because of his inner melancholy; he ruins himself. That is the reason why «[t]he prince, with whom rests the decision concerning the state of exception, shows that, as soon as the situation arises, a decision is nearly impossible for him» (*Ibid.*: 56). In the theatrical figures of the era, Benjamin continues, «is expressed not so much the sovereignty [...] as the sudden caprices of a continually changing storm of emotions» (*Ibid.*: 56). The same also applies for the so-called martyr drama. For the sovereign being a martyr gains stoically control over his affectional inner life and at the same time loses control over

¹³ For further reading on Benjamin's uses of the notion of melancholy, see Ferber (2013).

his sovereign office, so that at the end «torture and death await him» (Ibid.: 59). If the «concern of the tyrant is the restoration of order in the state of exception», then the stoic technique aims also to empower a corresponding stabilization for a state of exception of the soul, the realm of affects» (*Ibidem*). If the martyr remains sovereign, he does so only in the inner realm at the price of loosing the power of his sovereign office. Again, the figure of the baroque martyr underlines the separation of sovereign's person and sovereignty.

By locating the drama of the seventeenth century upon the antithesis of sovereign power and the sovereign's (in)capacity to rule, Benjamin implicitly invokes the Reformation's understanding of authority; in doing so, he prepares the ground for a reflection on the political function of the baroque drama. For when the drama portrays the sovereign as a raging ruler ruining himself in his madness, it depicts him as not being adequate to his sacral office; in this way, however, it highlights the separation of office and person, and consequently, the principal difference between sovereignty and the subject of sovereignty. According to Benjamin, it was the dramatic performance of this difference or separation, that this era found so fascinating in the downfall of the sovereign: «What continues to fascinate in the downfall of the tyrant is the conflict the epoch feels between the impotence and depravity of his *person* and its belief in the sacrosanct power of his *role*» (Ibid.: 57; my emphasis). Therefore, what elevated the downfall of the sovereign to one of the most typical motifs of German *Trauerspiele* was the contrast between the sovereign office ordained by God and its morally disreputable holding by its bearer. Benjamin's well-known claim of the affinity between the drama of the tyrant and the drama of the martyr also lies in the radical separation of office and the person in the office, which became a general conviction with the Reformation: «The *sublime status* of the emperor, on one hand, and the despicable feebleness of *his actions*, on the other, make it difficult to decide, at bottom, whether one is witnessing the drama of a tyrant or the history of a martyr» (Ibid.: 58-59; my emphasis). What structures

the factual content (*Sachgehalt*) of Baroque drama, then, is the reformatory conception of the sovereign *bearing* sovereignty as a function, instead of *possessing* it as a property.

Let us now compare Benjamin's account of the relationship between the theological and the secular-political realm, with the analogy model Schmitt employed. As it has been pointed out, Schmitt refers to analogies between legal and theological modes of thought, interpreting them as symptomatic of their structural identity. As a result of the structural identity between theology and modern law, Schmitt argues for the eminently political assertion that the modern concept of sovereignty is modelled on the Christian concept of God. Like God the Son incarnates God the Father, the sovereign embodies sovereignty. He represents the state by holding the ultimate power of deciding on the state of exception; that is, the decision on the suspension of his legal bonds. By suspending the law, he proves himself to be transcendent to the state, like God transcends the world order. Benjamin refers to Schmitt's remarks, especially to the decision on the state of exception, as an essential characteristic of sovereignty and to the sovereign's inalienability (i.e., being *legibus solutus*); in other words, Benjamin refers to both aspects Schmitt deduces from the analogy between theology and modern state law. The decisive change in Benjamin's argument is the employment of the Reformatory interpretation of the relationship between the divine and the profane, between transcendence and immanence. By considering the sovereign office to be divinely given, and by heightening the profanity of its bearer to the point of melancholic madness, the *Trauerspiel* brings the analogy model into crisis. For, the divinely instituted nature of the sovereign office does not reverse the profanity of the person bearing it, but rather emphasizes it. Here, the theological transcendence does not serve as a model for the immanence of the political realm. It has an other function: it demonstrates the non-divinity of the sovereign's person, and in this way, it performs the fundamental separation of (in itself divinely instituted) office and (merely profane) person.

Following Benjamin's interpretation, by separating office and office bearer, the Trauerspiel renders impossible a concept of sovereignty in the sense of Schmitt's secularization thesis. And that is the case precisely because the reformatory thought strived to glorify the sovereign power by defining it as a sacrosanct office.

This dialectical deployment of the Reformation for the interpretation of the modern concept of sovereignty is the decisive difference between Schmitt's sovereignty concept and Benjamin's own dealing with it. The difference between the two is not to be found – as Agamben suggests – in respect to the fact that Schmitt sees the sovereign as the one who, by his decision, *includes* the state of exception into the legal order, while the sovereign in Benjamin's view attempts to *exclude* the state of exception out of the legal realm. The «substituting “to exclude” for “to decide”» in the definition of sovereignty is not, as Agamben claims, a «substantial modification» (Agamben [2003]: 56); it is more likely a mere reformulation. As I have already argued above, when Schmitt defines sovereignty through the decision upon the state of emergency, he means the regression of positive law up to the point of elimination on behalf of the extralegal value of the state. What Schmitt's theory attempts to include into the legal realm is, if anything, this extralegal value of the state, rather than the «pure violence – that is, a violence absolutely outside the law» (Ibid.: 54). What the main target of Benjamin's critical reception of Schmitt's sovereignty definition and his secularization theorem is, is mainly the dogma the inseparability of sovereignty and subject of sovereignty, which came into crisis with the baroque «collapse of all eschatology» (Benjamin [1928]: 67)¹⁴. The crisis of that very dogma is deployed in Benjamin's view in the baroque drama.

The crisis of the dogma of «inviolability of the sovereign» (that is, in Schmitt's terms: the insepa-

rability of sovereignty and sovereign person) lurking in the trauerspiel is also underlined by the dialectics of fidelity and infidelity, being both an element of Trauerspiel's factual content and an element of its allegoric form. This very dialectic expresses itself in the behavior of the secondary theatrical characters of baroque dramas, the intriguers.

The intriguer's behavior corresponds to the downfallen sovereign. Benjamin describes this behavior in terms of the dialectics of fidelity and infidelity. On the one hand, it is «treachery [...] his element» (Benjamin [1928]: 161). The intriguer is ready to abandon his «sovereign and join the opposite camp» (*Ibidem*). On the other hand, his infidelity and «lack of principle» (*Ibidem*) expresses a stark fidelity to «crown, royal purple, and scepter», i.e., the insignia of power. «His infidelity toward human beings corresponds to a fidelity toward these objects» (*Ibidem*). Detached from the sovereign person, sovereignty assumes a reified character; it becomes depersonalized. The fidelity toward the thingly of power which the intriguer displays is a sign of fidelity toward the impersonalized sovereign power, the impersonal power of the state; by virtue of that paradoxical fidelity, the intriguer underlines the separation of sovereign and sovereignty, person and office and any attempt to model sovereign power to the theological notion of God.

Out of Benjamin's elaboration of the crisis of the analogy model within the Baroque drama, we can deduce one further political consequence. It concerns the person of the prince and is related to the principal of human equality leading beyond the 17th century's absolutistic concept of sovereignty Schmitt has attempted to rehabilitate.

What becomes manifest with the theatrical downfall of the sovereign is not just the separation of office and person; it becomes apparent not only that the sovereign does not possess sovereignty, but he merely bears it. Performing ostentatiously the separation of the sovereign from his role, the baroque theatre exposes him in his creatureliness. «As highly enthroned as he is over his subjects and his state, his status is circumscribed by

¹⁴ This does not mean necessarily that Benjamin rejects any kind of eschatology. As Martel suggests, Benjamin presents in other works a different kind of *έσχατον* (Martel [2009]: 187-190).

the world of creation; he is the lord of creatures, but he remains a creature» (Ibid.: 72). As often pointed out in secondary literature, the creature motif is ambiguous and difficult to exploit¹⁵. However, it is indisputable that one of its more distinct semantic dimensions is humanness. The downfall of the sovereign reveals his humanness; i.e., the truth that he is subject to the same passions and afflictions as any other human being:

For if in the ruler, and precisely at the point where he unfolds power most deliriously, there is recognized the revelation of history and, at the same time, the authority that calls a halt to its vicissitudes, then this one thing speaks for the Caesar who loses himself in the intoxication of power: he falls victim to a misrelation between the unlimited hierarchical dignity with which God has invested him and the state of his poor human nature. (Ibid.: 55-56; my emphasis)

The truth stated here is that the sovereign remains a human being, despite the dignity of his office. The theatrical performance of the separation of sovereignty and sovereign leads to the insight into the creatureliness, alias the humanness of the office bearer.

This idea can also be found in the passage from Pascal's *Pensées* quoted in the Melancholia section – a passage Benjamin considers as «a more exact commentary on the trauerspiel than the various poetics could provide» (Ibid.: 144):

Put it to the test; leave a king entirely alone, with nothing to satisfy his senses, no care to occupy his mind, with no one to keep him company and no diversion, with complete leisure to think about himself, and you will see that a king who sees himself is a very wretched man and that he feels his miseries like any other. (Ibid.: 145)

¹⁵ Santner reconstructs the creature motif in terms of its biopolitical implications in order to reinterpret it as the «flip side of the political theology of absolute sovereignty» (Santner [2006]: 29). In contrast, see Beatrice Hanssen (1998). Regarding the multiple aspects of the notion in Benjamin's works see Weigel (2008) and Weidner (2010).

Pascal's reflection corresponds to the basic material motifs of the Trauerspiel, because it divests the sovereign – certainly not dramatically – from his role as sovereign. Like the prince in the Trauerspiel, whose falling from his status reveals his humanness, Pascal's thought experiment reflects on the sovereign who, in his contemplation, divests himself of the insignia of the sovereign power. A king left alone, thinking of himself, a king divesting himself of the dignity of his office, will inevitably discover – as Pascal points out – that he is nothing more than a common man full of «misères». The dignity he may emanate does not derive from his person but from the external signs of his sacrosanct power; internally, he remains a man like any other. That is why – as Pascal ironically recommends – one should never let him contemplate himself by means of amusement and play. Otherwise, he would become aware of the sad truth that his sublime position rests on the ground of pure humanness, by reason of which he does not distinguish himself from his subject. This indicates a primary experience of equality. The spectator of the Trauerspiel learns that the political ruler is a role and its bearer a human being like himself, like «[t]he simple subject, man» (Ibid.: 73). When Benjamin, then, writes that «[n]othing attests so drastically to the frailty of the creature as the fact that even the prince must submit to this condition» (Ibid.: 145), he is referring to this very experience of equality that Trauerspiel performs by means of the downfall of its hero. The removal of the office dignity makes the person appear in the light of an admittedly gloomy experience of equality, and the spectator recognizes in the deposed sovereign of the stage the mere human being. No matter how divine it may be, no matter how embedded in a hierarchical order full of superiors and inferiors, the sovereign office in the Trauerspiel confronts itself with the idea of human equality.

The baroque staging of the sovereign unsettles a concept of sovereignty, which attributes absolute power to its holder. Generalizing what Fabrizio Desideri writes in respect to Shakespeare's *Hamlet*, we can say that the baroque Trauerspiel «ends

without king, bringing to completion the aporias immanent to the creatural character of sovereignty» (Desideri [2019]: 121). In the light of confronting the hierarchical political order with an experience of equality, the modelling of political power in analogy to the notion of the divine omnipotence becomes nearly impossible. If the Trauerspiel of the Germans combines absolutist sovereignty with the insight into the humanness of the person bearing it, it exposes that form of sovereignty as unbearable. As Sam Weber puts it: «The naturalistic destiny of the prince does not merely imply the rise and fall of an individual figure, but more significantly, the dislocation of sovereignty as such» (Weber [1998]: 9). For if sovereignty is depersonalized into a mere role, it is not only the humanness of the prince's person that is presented as the unworthy matter of the political. At the same time, the absolutist conception of sovereignty, assigning to a human being a god-like position within the state, falls into disrepute; it is not made for human beings – this is the political experience of the Trauerspiel.

4. CONCLUSION

I have examined how the relationship between theology and modern law has been pursued within the Weimar legal debate, especially by Carl Schmitt, who deployed the analogy model with the intention to (re)introduce an authoritarian and personalistic concept of sovereignty, which he believed to trace at the beginning of the modern legal and political thought of the 16th and 17th centuries. In his theory of baroque drama, Benjamin approached the same question via a differentiated model. By invoking the political thought of the Reformation, he deployed the crisis of the analogy model throughout the baroque drama's factual-content. Moreover, he situated this crisis at the mournful sunrise of modernity. Theological and legal modes of thought do not interrelate in terms of analogy, but dialectically: The theological foundation of the sacrality of political authority (sovereignty) during the Counter-reformation serves to radicalize the profanity of its bearer, and

thus indirectly institutes the separation of office and person. Therefore, the theological mode of thought provides no model for the political realm. It rather renders any attempt to model the realm of state law analogously to the theological paradigm obsolete and impossible. Furthermore, the dialectical model employed by Benjamin reveals one major political content the analogy model cannot make visible, let alone conceive: the principle of equality as the basis for any post-reformation, *modern*, political order.

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