



BIROn - Birkbeck Institutional Research Online

Guardiola-Rivera, Oscar (2010) What comes after sovereignty? *Law, Culture and the Humanities* 6 (2), pp. 185-207. ISSN 1743-8721.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/2859/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html>
contact lib-eprints@bbk.ac.uk.

or alternatively

**Birkbeck ePrints: an open access repository of the
research output of Birkbeck College**

<http://eprints.bbk.ac.uk>

Guardiola-Rivera, O.

What comes after sovereignty?

Law, Culture and the Humanities - 6(2), pp.185-207
(2010)

This is an exact copy of an article published in *Law, Culture & the Humanities*, (ISSN: 1743-8721) made available here with kind permission of: © 2010 Sage Publications. All rights reserved.

All articles available through Birkbeck ePrints are protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law.

Citation for this version:

Guardiola-Rivera, O.

What comes after sovereignty?

London: Birkbeck ePrints. Available at: <http://eprints.bbk.ac.uk/2859>

Citation for publisher's version:

Guardiola-Rivera, O.

What comes after sovereignty?

Law, Culture and the Humanities - 6(2), pp.185-207 (2010)

<http://eprints.bbk.ac.uk>

Contact Birkbeck ePrints at lib-eprints@bbk.ac.uk

Why Sovereignty? What Comes After Sovereignty?

By Oscar Guardiola-Rivera

University of London, Birkbeck College

Forget Sovereignty.

Does sovereignty matter any more? In the days before globalisation nothing seemed to matter more. Back then, all sides took for granted a ‘Westphalian’ framework that sharply distinguished between inside and outside, between a ‘domestic’ and an ‘international’ space, and sought to subsume that division within the alleged unity of the civilized world as fact, world-order, and historical project.

The latter entailed the often unacknowledged assumption of universality and cultural superiority that allowed ‘the West’ (an ensemble of western cultural forces, including particular views of law and the economy) to define the identity of others (Escobar, 2008: 3). Within that framework, the world was seen ‘as a system of mutually recognizing sovereign territorial states’ (Fraser, 2005: 69), production was concentrated on fixed spaces with conceptions of property, value and other relations being developed on the basis of that fixation, arguments about the justice of such social connections ‘were assumed to concern relations among fellow citizens’ ruled by law (ibid.), while arguments about law presumed the ‘well-ordered’ legal system of civilized nation-states as the standard or definitive case (Hart, 1997: 3-5). As for the beyond of nation-states, the barbarous realm of strangers, it was thought to belong to war and to the few gentle souls that saw themselves as ‘the juridical consciousness of the civilised world’ (Koskenniemi, 2009).

Three main points characterise this account: first, in standard legal systems state officials represent fellow citizens, process and solve competing claims to justice. Second, their choices should be taken as final under the assumption that representation entails the transcendence of state officials in relation to the citizenry whose will or ‘spirit’ they embody. Third, notions like ‘will’ or ‘spirit’ (but also ‘tradition’ or ‘original intent’, and even a pragmatic attitude) link the operation of state officials, and hence sovereignty, to the overarching goal of group survival and conflict-resolution (its management, containment, or avoidance). In this respect, transcendence appears, on this account, to be associated with such metaphysical terms as ‘permanence’, ‘necessity’, ‘presence’, ‘order’ and, in general, a certain idea of the invariance over time (and space) of what is and what is possible. In colloquial language this is expressed in the pair ‘law and order’. The underlying idea, which stems from a deep-seated metaphysical orientation towards transcendence, seems to be that group survival is necessarily desirable and conflict necessarily undesirable.

Transcendence is the ontological premise of Westphalian sovereignty. At first, it was borrowed by politics from Christian theology and embodied in various ways through the legitimating practices of political representation, legal integrity at home, and the geo-politics of Christendom abroad (Mignolo, 2000: 721-48). After secularization made difficult a direct appeal to such an external transcendence, politics borrowed from the practical ethics of passion and sentiment a new form of transcendence, this time internal or immanent, and yet, still married to the metaphysics of order and to the premise that Frantz Fanon aptly termed ‘the principle of exclusivity’.¹

In a sense, Fanon's conception of 'the principle of exclusivity' is the sub-verse of the Benevolentist ethics of ordering through sense and sensibility (and its remnants in the Romantic theatre of recognition), and thus, of the civilizing impulse towards transcendence which informs 'Westphalian' sovereignty as both a 'theory' of what is worth counting and a 'meta-theory' about the direction of world-history. The seemingly unending reciprocity of mutual visibility, gaze and feeling, passion and sentiment, which is said to connect a 'well-ordered' society to the general historical movement of mankind (Eagleton, 2009: 15-16), is subverted by the 'real' invisibility of the colonized black person -overdetermined, invisible, anonymous- inhabiting a zone of non-being coterminous with chaos. Crucially, as Lewis Gordon has explained in relation to the work of Fanon and Alfred Schutz (Gordon, 1997: 74 ff.), 'anonymity' is at the heart of exchangeability, and thus, of the way of counting and measuring that lies at the basis of law, world-ordering, and economics today (statistics, standards, futures, and so on). Building upon this, it could be argued that mimesis, reciprocity, and recognition –the circuit of belief, credit and debt; the realm of reciprocal visibility and order- turns out to be utterly dependent upon a 'blindspot': the place occupied by Fanon's colonized black person. Put otherwise, the overdetermination as absence of the disposable person, at one level, makes possible the interplay between the normal and the exceptional that makes up, at another and more superficial level, the internal dynamic of modern sovereignty (see Cornell, 2008: 113-7).

This point will hopefully become clearer by the end of this essay. For now, let us say that at least in this respect, modern sovereignty is profoundly ideological.² The premise according to which group survival is necessarily desirable and conflict undesirable serves as a screen that blinds us from the truth: that the security and survival of the group (defined in terms of reciprocal visibility and compassion, of the circuit of credit and debt, and thus, also, on the deferral of future events construed as risks or threats –the very task of the sovereign)³ depends upon the sacrifice of the absent person –Fanon's anonymous colonised black person- whose undesirable and unexpected return marks the end of the present order of count, some sort of final judgment, or the end of days. To say that modern sovereignty is ideological, because it is premised upon the idea that group survival is necessarily desirable and conflict necessarily undesirable, means that a certain configuration of power has brought about that some variable features of a way of life –in fact maintained only by the constant exercise of that power- appear to be 'necessary', or 'natural', and can thus be presented as universal (Geuss, 2008: 53). If it is the case that modern sovereignty is ideological because it presents some particular experience of law and politics as universal (in such terms as 'group survival', 'necessary sacrifices', 'security' and so on), then analysing and criticising it is a reputable task for legal and political theory (Geuss, 2008: 54-5).

Recent explorations of the implications of globalisation for understanding law acknowledge this point; they take into account what I have called, following Fanon and others, 'overdetermination as absence'. For instance, in his recent *General Jurisprudence: Understanding Law from a Global Perspective*, legal theorist William Twining argues thus:

The aim of this book is to present a coherent vision of the discipline of law and of jurisprudence as its theoretical part in response to the challenges of globalisation. Western traditions of academic law have a rich heritage, but from a global perspective they appear to be generally parochial, narrowly focused, and unempirical, tending towards ethnocentrism. (Twining, 2009: xi)

Twining's point is that 'nearly all Western modern normative jurisprudence is either secular or explicitly Christian. Post-Enlightenment secularism has deep historical roots in the intellectual traditions of Western Christianity. Even those theories that claim universality have proceeded with only tangential reference to, and in almost complete ignorance of, the religious and moral beliefs, values, and traditions of the rest of humankind' (2009: 125). Let us clarify from the outset that this isn't a simple case of supplementing mainstream legal and political theory with a 'multicultural' or liberal/pluralist patina, since, as Twining puts it, 'when differing cultural values are discussed, even the agenda of issues tends to have a stereotypically Western bias' (ibid.). In fact, as we now know, that sort of pluralism 'is no longer a matter of tolerance, but of "our right to intervention": legal, international, and if necessary, military intervention' (Badiou, 2006: 10-11; 2005; 21). If so, if the multicultural supplement of 'our' liberal attitude rapidly translates into aggressive actions that serve to justify 'our' universalistic claims, then a genuine cosmopolitan general jurisprudence (and political theory) not only needs to do better, but actually needs to be overtly critical of modern and post-modern insistence upon war, borderless violence, and the theatrics of self-transcendence endlessly deferring the coming of the new.

This paper will argue that insofar as sovereignty depends on some form of transcendence, external or internal, it is and has been 'impotent' from the very outset. However, contrary to the idea expressed in the well-known tale about the emperor's new clothes, it is not the case that acknowledgment of this impotence brings about the end of sovereignty. Faced with the truth of its ultimate impotence, the sovereign supplements its role as decider with that of the intrigant. This new figure of sovereignty is embodied in the expert politician who announces the coming catastrophe in order to avert it or contain it through the use of 'limited' but ultimately borderless violence (*Gewalt*).

This move is imaginary, dramaturgical, or theatrical, in the sense in which in accordance to the legacy of Greek tragedy the action leads to catastrophe for its protagonists and produces catharsis in its spectators, after a phase of euphoric, transgressive violence. However, if in Greek tragedy this sense of the theatrical was associated with a conception of nature and the cosmos as harmonious, featuring organizing principles of their own, in the case of the modern politician the sense of the theatrical has become completely reflexive. Modern politicians and legislators behave more like extreme Nominalists, or more precisely like Benevolentists and Romantics, who abandon all hope in a rational or intelligible world and argue that thinking individuals are 'the building blocks of the cosmos, their relations external' and mutually reflexive, without independent existence (just as such abstract conceptions as justice or the city), which come to life because we name them and set such names in unending movement, in endless circularity (Douzinas, 2009: 2), or as a pure thinking of the thought of the I that 'leads only to eternal self-mirroring, to an

infinite series of mirror images that contains only the same and never anything new' (Benjamin, 1980: 35).

This move leads to the denial of sociality, the radically new, and ultimately, of the independent existence of a common world. It entails, on the one hand, what shall be called later in this paper 'public secrecy', that is, the spectacle of error and revelation that feed into each other in a way without end or value, and yet, turns out to be crucial for the making of the ultimate sovereign decision: the determination of value (in public). On the other hand, sovereign decision becomes formless, always expansive, 'directed at the absolute' (Benjamin, 1980: 31) anchored in and supported by a practical network of mutual exchanges. In this sense at least, if sovereign decision arises out of a 'fact' (the announced catastrophe, a future-commodity, a presence or an image of what must be averted, embodied perhaps in a work of art or a photography relayed by the media circuit, for instance), then the work or fact in turn depends on an idea of absolute reflection or 'belief' that it restricts 'and dissimulates by giving it finite shape' (Weber, 2008: 25). Building on this insight, it can be argued that the restriction is raised and the process of endless reflection reinstated, precisely, through the process of decision.

Globalisation, Sovereignty and Value: A Materialist Amendment.

Although globalization challenges forms of sovereignty more attached to the alleged fixity of territory and the rule of law within nation-states (and international law between states), it does little to undermine the sovereign decision concerning the use of violence and the determination of value in endless reflection. If anything, the opposite seems to be the case: impotent before hurricanes and tsunamis, counter-violence in the Middle East or Latin America, and credit crises at home and elsewhere, the intrigant and the plotter respond with military 'surges' that 'work', the flattening of space, the governance of 'disposable' peoples, and the economic kitchen sink. Another form of sovereignty seems to be born from the ashes of the old regime and the black letter of the law, one premised upon immanence, calculation, and the direction of history, with the sovereign as master of calculus and projective or reflective anticipation.

For him (it is often a him), the verification of such catastrophic announcements and the 'plans' to avert or contain them (by all means necessary) seem to take place within the heads of those who gather around in order to avert, contain, or defer the coming catastrophe, projected into the future as a possibility. The language of the new sovereign (it is a language) is both pragmatic and rational, but no less legalistic: it is the language of risk and risk-analysis and management, of facts and data mapped onto graphs and images, of what is worth counting, correlating, and mapping, supported by that quasi-theodicy of incorporeals known as probabilistic reasoning, and a correspondent meta-theory of progress in linear time. By definition, crucially, that language seems to abhor any talk of truth or the radically new.

Some representative examples of that language can be found among the 1905 US Supreme Court decisions *Fullerton v. Texas* 196 U. S. 192 (1905) and *Board of Trade v. Christie* 198 U. S. 236 (1905), and the legal doctrine that such decisions helped to usher in, commonly known as the doctrine of 'contemplating delivery'. As Ira Levy observes (2006: 307 ff.) the courts concluded that future traders could deal on

conceptual (or ‘possible’) entities so long as they contemplated corporeal goods in their minds while doing so. The crucial problem was that of incorporeal exchange (of futures) and as Robin Blackburn has pointed out (2009: 131-2) the link between this purely legal doctrinal problem and the prospective standpoint developed by William James, O. W. Holmes, and others, can tell us much about fictions, futures, and the world we live in.

In accordance to William James’s pragmatic epistemology, ‘truth lives, for the most part, on a credit system (...) you accept my verification of one theory, I yours of another. We trade on each other’s truth. But beliefs verified concretely by somebody are the posts of the whole superstructure’ (1907: 30, cited by Blackburn, 2009: 131). ‘Truth’ and ‘error’ become in this framework a matter of shared beliefs anchored in/by a practical setting of exchanges, which are seemingly self-sustaining and are, for the most part, imaginary. Put otherwise, James’s onto-epistemology takes the empiricist description of a purely relational entity without substance (mirrored, shared or traded sentiment and experience), fuses it with the idealist notion of self-reflexivity directed towards the absolute, in one and the same moment, and unilaterally elevates the moment of the production of truth (as belief, or co-relation between facts and the community that shares such facts) as a self-sustaining and seemingly unending process. Truth-as-credit will hold for as long as nobody refuses it, but only if we contemplate in our minds a future when its corporeal equivalent may be delivered. The latter, in turn, can be conceived as the result of the immanent (or absolute) self-development of the former. Informed by a similar attitude, the pragmatic sovereign of our times deals in futures and beliefs: he ‘decides’ and his decisions are supported by a practical setting of exchanges composed, for the most part, by the imaginary theatre of tele-technologies –from the stock exchange to newsrooms around the world- which allow us to contemplate future delivery, in our heads and on T.V. screens, as the result of some immanent development.

The materialist amendment proposed in this paper to the James/Holmes schema of immanent sovereign decision points out that (1) posited in that way, as the (corporeal) result of the realization of the possibilities contained already in the (credit/debt-like) present situation, the future remains always/already possible or probable, it may or may not become actual, an in that sense it is quite unreal, always deferred; in short, we should ask: what if the future, conceived in this way, never delivers? And (2) that something like a corporeal entity must at some point be delivered, for we cannot accept that the verification process takes place entirely in the heads of those involved (or in the prosthetic extension of their heads into T.V. and computer screens) without doing away entirely with value, decision, and critique. Building upon and going beyond the observations made by Žižek, Blackburn and others in this respect, this essay proposes that it is crucial to explore (1) the centrality of tele-technologies in contemporary sovereignty and the determination of value, as the ‘concrete’ support mechanism of incorporeal exchange, but also the way in which ‘the future’, inscribed in images and circulated, mirrored, shared or traded throughout the network of tele-technologies remains always/already ‘possible’ (or deferred) rather than real, and (2) the libidinal economy that is attached to this pragmatic circuit of exchanges; put otherwise, the fictitious or theatrical character of sovereignty.⁴

As Walter Benjamin observed, the role of the intrigant becomes more prominent as external transcendence withdraws in the wake of secularization, mechanical

reproduction, and ‘effective’ decision. Decision as command, backed by heavenly presence, is replaced by decision as rule, program, and project, or ‘policy’, in the absence of anything quite so heavenly. And although it is true that error and plotting have always been identified as consubstantial with politics and law, particularly by Platonists and other anti-democratic theorists, it is only after the fictitious character of sovereignty becomes firmly rooted in more earthly hopes and anticipations that intrigue and image (we shall say, the ‘imaginary’ ethics of passion, sentiment, and visions of future profit/rent or common good) will become the decisive activities of the sovereign.

Following Benjamin, on the one hand, and the results of the MCD research program,⁵ on the other, we can conceive this momentous transformation as more or less parallel to the long history of the becoming religion of capitalism and with the avatars of the modern/colonial world system. The crucial point is the way in which sovereignty becomes rooted in the earthly hopes and anticipations associated with a vision of future profit or rent and comes to imagine itself as self-sufficient, that is, as moved by purely immanent causes. Therefore, it is not the case that political sovereignty might have disappeared with the ‘death of God’ (as both Benjamin and Carl Schmitt sufficiently pointed out), or that impotence puts the very notion of sovereignty into question. Rather, as this essay argues, we should constantly bear in mind that sovereign decision is determined by the double optic of projection and reception -as in spectator reception or ‘transitivity’, but also, crucially, in consumption (Boal, 1998: 3-5; Žižek, 2006: 50-8). If, in the first instance, the theatrics of sovereign decision and consumption aim at catharsis, its objective being to pacify its audiences, to tranquilize them, to return them to a state of equilibrium and acceptance of the situation,⁶ then, in a second move, the materialist amendment proposed in this paper seeks, to put it in the terms of Augusto Boal’s ‘Legislative Theatre’, to ‘develop their desire for change’ and to transform that desire into law, against law as the desire of the powerful (Boal, 1998: 20).

The Desire for Change v. The Desire of the Powerful: On Taking Time.

The desire of the powerful is to maximize their profit. Such desire is associated with a certain vision of the future and rooted in hopes, forecasts, and other preventive anticipations. Therefore, sovereign desire has a fictitious or theatrical character, quite unreal but not entirely spurious. In fact, it is from the standpoint of the unreal future and the totalizing gaze over time considered as a whole that it allows, that all costs and sacrifices make sense (or become calculable). In a very precise sense, everything takes place as if the totality of time were accessible to the gaze of an impartial and benevolent theatre spectator/director. His benevolent impartiality concedes equal weight to anyone, for he contemplates society and history, suffering and happiness, as one and whole.

Let there be this *mise-en-scène*: a totality that can be of a mathematical or logical kind as much as it is aesthetic, in which all elements are perfectly symmetrical, equal or identical. From the point of view of the totality, the only rule that justifies itself is impartiality in the treatment of the different elements. Thus for instance, applied to the value of a life considered in its totality, the rule that imposes itself would suggest that one cannot give to the future a superior or inferior value if and when compared to the present. This point has nothing to do with the absence of specific reasons that

might lead us to prefer this good now to the same good in the future. Rather, the point is that in considering only linear temporal succession, the rule that imposes itself to the reasonable person is that he or she should not prefer a small good today in comparison to a greater good tomorrow. The corollary of such rationality is that today's pleasure and happiness must be sacrificed, with reason, for the increase of pleasure or happiness tomorrow (Dupuy, 1992: 132 ff.; Sidgwick, 1973: 222-3).

Furthermore, what applies to the well-being of an individual's life in its totality also applies to that other totality which is 'the common good', or the well-being and freedom of the 'Free World' or mankind, concepts obtained, as Dupuy points out, by comparison and addition of the well-being of all human beings. The self-evident principle of impartiality and universal (juridical) equality that is obtained through this procedure reads thus: from the standpoint of universality, *ceteris paribus*, the well-being of an individual has no more importance than the well-being of another individual; in short, they are all exchangeable. And since according to reason we must point towards universal well-being and not towards the well-being of one of its elements, an axiom of abstract benevolence follows; but so does an axiom of sacrifice, in the same way as in the case of the individual's life.

Thus, the standpoint of the unreal future allows for the transformation of the desire of the powerful into law: what has been termed before 'sovereign desire'. It makes exchangeability possible insofar as each and every element of the whole can be replaced for each another, re-presented while being made absent. This phenomenon was called 'overdetermination as absence' in the first section above, in relation to the anonymity and invisibility of the slave and the colonized. In that context, it also referred to a blindspot in the anticipatory vision of capitalists and the powerful, but also, crucially, to a location (and a vision): the place of the exploited, the situation of the black colonized person, the view from below. It will suffice for the moment, to understand 'the view from below' as one that instead of contemplating and celebrating a constellation of cultures and commodities stresses the political natures of tenacious inequalities and thinks through the bottom.⁷ Now we also know that the subtraction, exclusion or sacrifice of the exploited, the anonymity and invisibility of the black colonized person, gives us the 'minus-one' upon which all unanimity is built, and in particular, the unanimity that defines the relationship between the powerful (but impotent) sovereign and the people in our secular, democratic times.

As Rousseau recognized long ago, in the chapter 'Des Suffrages' of his *Du Contrat Social, Book IV*, unanimity designates the ambivalent point where the consensus of deliberative assemblies signals the dominance of the General Will, but also, the decline of the state. 'At the other extremity of the circle', he wrote, 'unanimity recurs; this is the case when the citizens, having fallen into servitude, have lost both liberty and will. Fear and flattery then change votes into acclamation; deliberation ceases, and only worship or malediction is left' (Rousseau, 1968: IV, 2). Rousseau is referring to common (nearly unanimous) hatred and violence, internal to the group, being harnessed and channelled outwards, against the anonymous 'minus-one', thereby providing both the imaginary foundation of the unity of the demos and its practical, or shall we say Real (in the psychoanalytic sense) anchor in the form of conflict-management and the outward turn of civil war.

Implicit in such a reference is a determination of ‘the political’ as the successful containment of a group’s aggression, and of ‘the legal’ as the ordering of/against conflict in lieu of the necessity of group survival. As Brazilian playwright Augusto Boal has observed this was precisely the point of Greek tragedy (1998: 20); the circular recurrence of moments of transgressive violence followed by catharsis point towards a staging of time as the eternal repetition of the same in the exceptional and the cathartic unity of the people, a *mise-en-scène* made possible by the sacrificial subtraction of the ‘minus-one’ people. This manner of speaking is appropriate since in fact the sacrificially excluded is so radically other that it is as if it did not count, and retroactively, were never worth counting from the perspective of the well-ordered community. In this sense, Rousseau correctly refers to the peculiar coincidence of the greatest dominance of the General Will and the decline of the state as a circular recurrence, an imaginary arresting of time subtended by the harnessing of destructive energies focused upon a sacrificial scapegoat. Today, however, this *homo sacer* is reintegrated rather than excluded, not to the community strictly speaking, since in abstract (juridical) terms she is no more an ‘other’ but fundamentally equal, but rather, to its way of counting: her disgrace becomes the basis for the deduction of the common good. It is because she is anonymous and exchangeable, a replaceable element of the social whole, that she can be disposed of in the name of the necessity of the group’s survival or the common good to come, that is, to the whole, all the while her fundamental human right to equality remains intact (Dupuy, 1982: 137; Kirwan, 2008: 21-2). In short, sovereign desire, and the total gaze it projects upon the future, has the production and governance of ‘disposable’ peoples as its task and object.⁸

The proposition is that in today’s world, a stage set up in accordance to the law of general equivalence, so-called ‘disposable’ peoples (bodies) are the object of (sovereign) desire. This means (1) that sovereign power aims to turn peoples into meritorious bodies, i. e. objects qualified for universal traffic and self-reliance (meaning the ability to place themselves on the market at the best price); (2) that it must protect and insure (*asegurar*, in Spanish) such meritorious bodies (at risk) against the conjoined threats of exposed/marked bodies (the infamous ‘hooded youth’) and, strictly speaking, sacrificed/martyred bodies (the terrorist/martyr in the Islamic world, the US or Europe, the human rights activist/terrorist in such places as Colombia), both of them taken as risks themselves, counted as such, and submitted to the rule of the police and the military; (3) that the power with which the sovereign seeks to realize its desire (to govern the world of peoples) is not its own but belongs to another: the sovereign is impotent in the sense that the law is exterior to him and cannot be identified with a symbolic paternal figure or his excessive enjoyment (for it is the law of the marketplace); (4) that, in a similar sense, the sovereign is not the authoritarian paternal figure but its semblance, in the sense that (4.1.) it dreams of the mastery of the body of the ‘disposable’ person, (4.2.) in that sense the sovereign-master is a dream (of the slave-disposable body) and (4.3) then its claim to knowledge (the purported mastery of the sovereign over the anticipated future, his turn as intrigant and risk-manager) is false, for he knows nothing, he’s an idiot; (5) put otherwise, the body of the sovereign is a spectral symbol of the decay of the state rather than of its strength -mirrored by the anonymous bodies of its ‘disposable’ peoples, marked and distributed under the sign of at risk/ risks themselves and/or utility maximizers; (6) If so –if the relation of the sovereign and its desired peoples is but a symptom of state decay vis-à-vis the ‘bad choice’ of fictitious value and the

unreal future- then the 'good choice' is between two forms of real decay: nihilist (total war with no end and no value) or organized, disciplined around an anticipatory vision that, starting from below, is projected into a virtual but nonetheless real future that becomes powerful on its own right, as having the allure of the unexpected (Guardiola-Rivera, 2009: 236-242).⁹

Put otherwise, this is to say that the semblances of the intrigant, the assumptions that we are all utility maximizers, and we can be no toher way in this world, or we are all risk managers, and therefore incapable of anything like true discipline and courage, these masks, should be seen for what they are: 'myths propping up what we are fated to be in this unjust world'.¹⁰ However disposable, masked, invisible, and anonymous, it is crucial to understand that these peoples do not lack vision. Because of this, as in a counterpoint, we shall imaginatively enhance¹¹ and oppose this view from below – and the radical politics of anticipatory projection it founds-¹² to the timeless, preventive-anticipatory vision and desire of the powerful. The point is that the view from below, and the political organization it founds is not timeless; it takes time. But, in accordance to our materialist amendment, so does a political decision. The time expended upon the production of a specific policy is not valorized as 'socially useful' until it is effectively 'sold' to the people, the electorate, or, in an increasingly global environment, the peoples of the world. This is to say that the 'confirmation' of a rule/policy decision has nothing to do with whether it actually works or not, whether it is correct or erroneous, whether it achieves its self-posed aims or not; this is only a part, in any case a minimal part, of what can be called the verification-process of sovereign decision. Rather, the moment of verification of a specific policy or a set of policies is election time, poll time, referendum time, T.V. time before the electorate and global viewers, that is, the moment when people's sentiment and sensibility can be checked, by whatever means necessary.

To acknowledge this, we are required not to imagine the point of production of policies and rules (sovereignty and the sovereign) as some self-sufficient, timeless realm. The point is also to emphasize that the formation of a bond between the sovereign and the people, let us call it 'political subjectification', i. e. the formation of the political bond as a species of desire, whether democratic or authoritarian, in which the people find some form of unity in the figure of the sovereign, takes time and that some political agents (the politicians) seek to anticipate the results. We have suggested that this anticipatory knowledge is quite unreal and can be opposed by the political organization of the people gathered around the view from below, and disciplined towards the alluring unexpected and the radically new (Guardiola-Rivera, 2009: 254-6).

Thus, sovereign (libidinal) investment has a necessarily fictitious character, associated with forecasts and preventive anticipations. It is ridden by the dream of the mastery of the (slave) body at risk/a risk itself, revealed impotent by the externality of the means at its disposal (the law of the marketplace, the always mercenary army and police), and rendered idiotic (catastrophically idiotic, leading to endless and valueless war) by its own attempts to map out and survey the future. This relation between political sovereignty and the projective legality of the marketplace may not be merely analogical: insofar as capitalism replaces (and displaces) religion, the only sovereign decision that counts is the determination of value; and as we know very well, value

has a futural dimension. It is no more than ‘the discounted present value of future profits’ (Blackburn, 2008: 129).

This is to say that the libidinal economy of sovereign decision is not alien to the profit and rent economy of capital. This was already apparent in the days of mercantilism/coloniality and it has become increasingly clear during the process of consolidation of global finance capitalism. Since the latter –capitalist profit-rent economy- has traditionally received the almost exclusive attention of theorists and social scientists, let us call for a more concentrated focus on the libidinal economy of sovereign decision. Not only because it is a worthy subject of study on its own right, but also because there seems to be a link between the global expansion of capitalism as such and a specific political dimension, in need of further clarification. In short, the point is that the territorial reach of capitalism, its becoming global, has ultimately depended on a political dimension of sacrifice and war (Arrighi, 2007: 211-274; Maldonado-Torres, 2008: 2-19).

Sacrifice and War: On Legislative Theatre.

The logic of political reproduction and expansion, just as the logic of capitalist investment, depends on a vision of future profit –or some other maximizing function such as the common good, the interests and sensibilities of civilized nations, the happiness of society or mankind- in which gains outweigh losses and ‘necessary’ sacrifices at some ultimate point in finite time. From the perspective of such an ultimate point in time, every specific element can be seen as an element of the whole, a part of it that is equal to any other part within the whole. To this abstract and universal equality (juridical equality, human rights, democracy, and so on) corresponds the exchangeability of peoples, their anonymous and ‘disposable’ character. The narrative that expresses this logic speaks of necessary costs and sacrifices in the name of some maximizing function defined by state officials attentive to the exterior but immanent law of the marketplace and duped by a sense of history. This does not imply that citizens –and in this framework the discussion always pertains to citizens, and soldiers- obey or follow the choices made by state officials out of habit, since it could be said that citizens display a ‘critical reflective attitude’ towards the law (Hart, 1997: 57 ff.).

In the more refined and liberal forms of such account, the point is to take as a given that once citizens choose their representatives in one way or another, hopefully by electoral vote (although forms of choice other than electoral vote might be acceptable, as Rawls suggests in *The Law of Peoples*), in accordance to the rules established in written or non-written national constitutions, the former could not or should not reasonably process their claims to justice in any other way than that determined by such rules and the established frame of representation, incarnated in the representatives. Put otherwise, the aim is to maintain consistency with a constitutional a priori that consists of a definitive set of self-evident maxims that impose themselves to each and every reasonable person, and which could be described either as an initial democratic will, the spirit of constitutional (written or unwritten) origins, or in any case, the ultimate set of our most fundamental moral intuitions.

Here, it is important not to forget two things: first, whatever their differences, most ‘Westphalian’ accounts –from Hart to Rawls, but also those developed by Jürgen

Habermas in the ‘global North’ or Enrique Dussel in the ‘global South’ - commonly accept the idea that to think politics and law is to think about our most basic normative intuitions. Against this injunction to forget sovereignty by focusing on some fundamentally self-evident ‘applied ethics’, one must firmly establish and maintain an opposite injunction: that we remember sovereignty by focusing on power –the very important question of war and sacrifice, i. e. on the limited function of the state in relationship to what it distinguishes as civil society; then contextualize it by focusing on the often impotent history of power (its becoming a never-fulfilled promise, the fact that the state today has no means, that ‘it cannot do everything’ as politicians say), and then, in a third movement, de-contextualize it by focusing on the way in which demands for ‘sovereignty’, ‘development’, ‘justice’ and so on are often not so much about justice and development per se, as if the state could do everything, but rather, ‘a subversive appropriation of a never-fulfilled promise’, geared towards the truth of sociality and the common, in the terms used by the anthropologist and social movements’ theorist Arturo Escobar (2008: 176).

This means two things: Firstly, that such ‘local talk’ about justice is not so much about justice per se (our innermost basic normative intuitions imposed upon the state as normative ideals to be weighed against ‘practice’) as it is about a situated history and culture, a vision and a choice,¹³ more specifically the view from the position of the so-called ‘disposable’ peoples of the world ‘within the modern colonial world system’ (Escobar, 2008: 176-177) or peoples in need of governance (aid and police). From that standpoint, which we have called before ‘the view from below’, the site of power appears empty: hegemony has unravelled in the international context (Arrighi, 2007: 175-276) while at home power is camouflaged and anarchical (Taussig). The field appears open and a choice is called for: either the return of ancient law (the return of the sacrificial racialized body, the service of the good, war and sacrifice) or the coming of a new law, the transformation of the desire and the vision from below into law, the disciplined organization of the collective, as suggested by the case of Augusto Boal’s ‘Legislative Theatre’ (1998: 19-23). Second, rather than being based upon self-evident maxims or conformity with the group’s consensus, the question of power and sovereignty must be answered from a more realist, perhaps even materialist standpoint. To put it in terms of the materialist examination of sovereign decision and value, we must insist that verification cannot take place entirely within the heads of different types of traders, the military, humanitarians and the politicians, nor it can be left to the global hegemony of their ‘common language’ (Kennedy, 2004: 277). At some point dignity, freedom from poverty, and justice must cease to be a target or a promise, become the genuine article and find a purchaser.

In that sense, the challenge for ‘post-Westphalian’ accounts of law and politics is to account for ‘situated talk’ about justice, development, sovereignty, and so on, as part and parcel of the political (as political activity, conflict and struggle) rather than in terms of an appeal to the given set of our ultimate ethical intuitions, geared towards the necessary desirability of group survival and conflict-resolution. To put it otherwise, if it is true that viewed from below the tragedy of sovereignty has also been revealed as comedy –as public secrecy and anarchical division, as baroque drama and soap-opera- then something like Boal’s ‘legislative theatre’ must take place. Its premise is simple: there is no choice between different forms of pragmatism submitted to the law of the marketplace. The market judges according to the criteria of what is available, ‘it sees the new with the same tired eyes it saw the old. And it

does not understand. It misunderstands' (Boal, 1998: 183). Hence, what is required is a form of politics which is transitive, not only in the sense that it proposes interaction, change, and the improbable assembly of subjects from all over, rather than benevolent empathy, the delegation of our ability to act, and the object-subject relationship between meritorious bodies and the body of the sovereign as protector (Boal, 2008: 84), but also, in the sense of its commitment to the truth of sociality and the common.

At stake are understanding and hope for a redeemed world beyond what is available (Boal, 1998: 183) but also the opening up of options that were never before available: the opening up of a space, real and imaginary, and a position (Cornell, 2008: 123, 128). Understood in this sense, truth and hope are not incompatible with 'good empathy', and thus with the projective and reflective capacities of beings human and non-human. Let us call this 'vicarious communication', or 'aesthetics' for short. From the perspective of this aesthetics it is no coincidence that 'history' is best told in images, as Benjamin might have put it.

Drucilla Cornell explains this Benjaminian insight via a photograph taken during the Soweto uprising in which a young man and a young woman carrying the dying body of Hector Petersen. From the standpoint of those who had to endure apartheid such a lived brutality could be nothing other than senseless suffering. As Benjamin put it, 'a dialectical image flashes up at a moment of danger' (Benjamin, 1968:255, cited by Cornell, 2008:139) but it also illuminates a beyond in which we hear the call to justice of those young men and women who had the courage 'to shout out at their oppressors what their humanity demanded: Justice! Nothing more and nothing less' (ibid.). The call that Cornell talks about is strictly speaking an 'enunciation without statement', a voice split from its quality; this notion conveys the idea of law's inherent otherness or necessary contingency, and therefore, permits a distinction between an excessive dimension without meaning (which both Benjamin and Cornell locate temporally and spatially as 'beyond', a position and a momentary glimpse of the future) that compels us to take a stance, to act and provide new meaning out of nothing, and the positing of fully meaningful commands that exclude our engagement and appear as the static meta-level that supports our more or less blind, idiotic, actions.¹⁴

The latter describes normative commands issued by a sovereign that seeks to interpellate us –the intrigant- and to whom we delegate our power. The former describes a voice and nothing more, but also nothing less! The space marked by these different but related modalities of voice and sound entails the possibility to refrain from following a straight line by randomly rearranging the constituent elements (in a text, an image, and so on) or providing an unexpected meaning or content to a call out of nothing. This is also the power of a dialectical image such as that described by Benjamin and Cornell, or the cut-up practice in art. All of them refer to choice and responsibility in a more radical way, by placing them in the virtual but real domain of true anticipation against the availability of the possible and the analysis of risk.¹⁵

'But we do not see a "risk manager" in this photograph', says Cornell in relation to the Soweto image. She means that we see a boy and a girl who, even in their terror, show to us in their act of refusing to abandon Hector Petersen the depths of a humanity that would not bow down before the bullets and simply free. This is, she would say, a moral image of freedom. 'They will never be gone to history, in Benjamin's sense, if we remember them. But, we can only remember them if we

allow ourselves to see them. It is up to us to do it' (Cornell, 2008: 140). In a sense, the theatre of risk and sovereignty –of 'public secrecy'- counts on our distraction with the spectacle of distant suffering, our empathy. Can we tease out of that scenario 'good empathy' and 'virtual anticipation' as a method for political organization and radical choice?

Experience: the Intrigant.

As the previous question suggests, Boal's experience of 'legislative theatre' is not altogether different from a Benjaminian notion of passageway and his use of the term *Erfahrung*. The point is that although we are critical of the theatrics of the intrigant, of myth, when it temporalizes the self as 'inevitably teaching a lesson that things will always be as they are now, this rebellion against historical compulsion still seeks to keep alive a horizon that does not relinquish the potential of myth to point to a different form of knowledge of the world around us' (Cornell, 2008: 140). This is the Benjaminian passageway that brakes apart myth by its own means and teases from within it a virtual (rather than merely possible) 'redeemed world' in spite of our nightmarish surroundings (ibid.). This is also the point of Boal's legislative theatre: to maintain fidelity before the threshold of another world (very different from fidelity to a dogmatic truth). In both cases the re-definition of sovereignty as 'public secrecy' is taken into account. But the ultimate point is to show that the passageway is open before us if we make the 'good choice' away from nihilism and move through mythical constraints with discipline and fidelity so as to find the future 'under the ultimate truth of advanced capitalism, claiming that there is no truly different future but only the forever new that displaces one commodity for another commodity that is new only insofar as it is the same: a commodity' (Cornell, 2008: 141).

This is a very important suggestion, since it entails something about the connection between place and polity: that a certain kind of space, some sort of endless field associated with the effectiveness of planetary technology, world capitalism, and a legal system subservient to unfettered, self-revolutionising production, is under construction. This would be in the words of one of its architects, Milton Friedmann, a 'flattened world' or a system with no end and no value.¹⁶ If war returns in such a value-less, pragmatic, materialist scenario, as the very activity of flattening the space or eliminating all obstacles, and in that precise sense, as the return of sovereignty, then such 'sovereignty' would be one devoid of its ability to determine end and value in its very claim to be able to do so. It is a bit like British PM Gordon Brown flying around trying to save the (capitalist) world from itself, all the while it becomes increasingly clear that redemption is not near. If everything, to judge from the headlines in the British newspapers on the eve of the protests against the G20 summit, it is the end, revolution, what seems nearer.

Thus, we are confronted by a paradoxical sovereignty, insofar as the very notion has been associated with the ontological question of determination qua definitive act. As we have seen before, 'sovereign' is in the Westphalian frame the one who has the power to determine, to make the distinction, to establish or decide the end and the exception. However, in the new scenario of instability and 'endless war' this very power not only becomes questionable, but it's clearly not there. This is the comedy of power, as it's been nicely called, or rather, it's soap-operatic version, with the intrigant as Protagonist. Michael Taussing speaks of 'public secrecy'.

To repeat: in a value-less or ‘flattened’ world that leaves no place for heterogeneity the radical suspension of its ‘endemic and perennial interruptions’ becomes more and more difficult. Hence, the Sovereign finds himself in a situation ‘in which decision is as imperative as it is impossible’ (Weber, 2008: 188). The result is the incapacity of the tyrant to decide. As Benjamin put it, ‘the Prince, in whose hands the decision on the state of exception reposes, shows himself at the earliest opportunity to be unequal to his task: a decision is practically impossible for him (...) He falls victim to the disproportion between the unlimited hierarchical dignity, with which he is divinely invested and the humble estate of his humanity’ (Benjamin, 1998: 70-71).

Endless war is in this respect nothing else but the mirror-image of a system with no other end than endless aggrandisement and no other value than impotent credit-as-value. This is why war is carried out nowadays in the name of humanity, postulated as the highest, and, yet, unachievable value. As explained before, humanity, like rights and so on, carries no intrinsic value and only borrows one from the future. ‘Humanity’, thus understood, is itself no more than the discounted present value of future rent. The connection with a capitalism that has moved from profit to rent at a global scale, is that humanity (this time ‘the common world of humanity’) is the object of expropriation. We now know this to be strictly true: the cost of the present bail-outs to save the bankrupt banking system will be born by generation after generation. Their time has been expropriated and expended already. The result is time and space posited as if they were an endless field, always relativised, or more precisely, one in which the end is always in state of deferral.

The subject who pretends to rule over such a space is also infinitely split, a sovereign divided into an ultimately ineffective if bloody tyrant, a no less ineffective martyr, a bad joker, and all the variations in between (Weber, 2008: 189). This sovereign rules over a system of wills that represent concretely, individually, the justifiable ethical values (the available options) and which come into conflict because one of the characters possesses a tragic flaw or commits a dramatic error (as is the case of politicians, for instance King Lear dividing his kingdom). After the catastrophe, when the flaw is purged, equilibrium is restored necessarily. In the soap-operatic variation there’s no need for the actual catastrophe to take place. It is sufficient that the politician announces it as a possibility in order to avert it. His failure will be purged by the revelation of the error and the acknowledgment that, nevertheless, the occurrence of the announced catastrophe remains a possibility. Then, equilibrium is restored. The sovereign presents himself as tyrant and martyr. The claim is that there is no truly different future but only the forever new that displaces one promise of good or catastrophe for another that is new only insofar as it is the same: an option.

As Weber puts it (ibid.) the effect of this bad infinity, this disproportion, ‘does not come to rest at any of the compromises possible between these two poles [tyrant and martyr]’. This means, firstly, that in terms of the appearance of the sovereign in this new situation, in a public sphere dominated by the spectacle of the media, the tragedy of politics is superseded by the drama of political action and its soap-operatic version, as Benjamin more or less predicted. Secondly, in this new scenario the character of the sovereign appears as the epitome of stoic ostentation: immensely powerful yet impotent, omnipresent and yet unplaceable, overconfident and yet falling pray to unchecked affects and emotions, exceptional, and yet just one of us.

And yet, what characterizes the passage from the Westphalian frame of external transcendence to immanent spectacle, from the tragedy that ends up in the final showdown between the tyrant and the martyr (or its resolution in front of a panel of judges) to the drama of political soap-opera is the emergence of a third figure that accompanies the splitting of the sovereign and stands in radical dissymmetry to the other two (Weber, 2008; 189-191). This third figure, displaced or unplaceable, is the bad joker, the plotter, the intrigant.

‘To understand what distinguishes the plotter from the two other figures in the baroque political triad, it must be understood that the incapacity of the sovereign to decide involves the transformation not merely of an individual character-type, but also the manner in which history itself is represented (...) And this in turn determines the way in which representation takes place. With the split of the sovereign into tyrant and martyr, what is dislocated is not just the unity of a character, but the unity of character as such’ (ibid.). Put otherwise, if the political is the plane of *representation* in which decision-making rules are established and the procedures for staging and resolving contests in the economic and cultural dimension are set, as Fraser argues (2005: 75) then the dislocation of the unity of character as such entails the disaggregation of the political and of *representation* as such. The discontinuous temporality of exception, before associated with the other-worldly space of tragedy, is replaced now ‘within a spatial continuum in which exceptional interruptions are no longer possible because they have become the rule. The regular nature of the interruption paradoxically becomes programmable and the programmer (...) is the intriguer’ (Weber, 2008: 191). Put otherwise, sovereign power is anarchical and divided against itself. This is the spectacle that produces, in effect, liberal power, since one must have at least two sides in order for it to work. This is true, also, of the anti-liberal version of sovereignty made up by Schmitt: one must have at least ‘friends’ and ‘enemies’ for it to work; ‘which is to say that it doesn’t work, and so the division of power is exhibited’ (Miller, 2008: 44). In any case, we have a power that is not one, of which the frictions, the dysfunctions, the gaffes and the affairs (better yet if they are of a sexual nature) ‘make up the daily accounting that feeds us’ (ibid.). And there you have it, public secrecy, the comedy of sovereignty.

If this is the case then, contrary to Fraser’s intuitions (2005: 73-75), not only there is no unity of the political as such, but also, it is the case that the boundary-setting aspect and the procedure-setting aspect of the political become a matter of what could be termed ‘organized entanglement’ (Weber, 2008: 191), ‘public secrecy’ (Taussig, 2003: 457) or more simply soap-opera. Put simply, the role of the sovereign in the immanent (catastrophic) situation is to manage public secrecy and to create apparently lawless, in fact hyper-legislated, spaces such as Guantánamo or the Diego García Island, and to call for re-regulation of the market-space that he himself emptied. This is a play of the eternal, circular recurrence of the dream of terra nullius and anima nullius, the anonymity of the black colonised person.

Representing citizenry, a task that nowadays overflows the boundaries of one’s nation-state, has thus become equivalent to the establishment of boundaries and procedures condensed into the formula ‘knowing what not to know’ (ibid.). In other words, the mastery of the plotter (which has replaced the absolute sovereignty of the tyrant) is to use revelation so as to conceal further, to con-found and confuse. This

makes the question of truth and justice in the political realm all the more complicated, and, yet, it is precisely to the question of truth that we must attend.

True Experience: The Joker.

Perhaps the political division that matters nowadays is that between those who know and those who know what not to know. Those who are ‘in the know’ are the rulers, who administer knowledge (from intelligence and torture to statistics and economic graphs). If one must distinguish this knowledge, let us add now the interplay between error and truth, and put it on the side of administration of knowledge, one must say ‘debility of truth’ (Miller, 2008: 44). And as he (and Lacan) would say: we are now at the heart of the subject; ‘the truth that speaks (...) but which does not speak the truth’ (ibid.). The truth is in speech, but it is in speech to be deciphered, and this means exactly that it can only disclose itself and rejoin power in the form of a lie. Around every truth that pretends to speak as such, around every truth that is not half-speak, but which pretends to speak by telling (the whole) truth, or, this is the same, the truth of the whole, ‘a clergyman who is an obligatory liar prospers’ (Miller, 2008: 45, citing Lacan, 2006: 173).

Crucially, at this point, Lacan introduces ‘the weak of spirit’, the mentally deficient. They are not ‘at the level of power’, they remain ‘in a very singular relationship with truth which does not join up with power’, there is, so to speak, ‘a complicity of the weak of spirit with truth’ (ibid.). To me, this is the point where Fanon, the analyst, takes over and continues where Lacan left. For who were Fanon’s patients in the Caribbean and in Algeria, if not the ‘mentally deficient’ colonised person as she undergoes the denial of her sociality on a day-to-day basis? It is not the case that she has some privileged access to truth, but rather, as it occurs in Liberation Theology with the poor, that ‘truth has much more affinity with debility and weakness than with power’ (ibid.). The point of this riddles is that, in contrast to the sovereign who wants to purge society of its obstacles in order to bring back peace and equilibrium, the poor and the colonised purge themselves of non-action.

Those who ‘know what not to know’ are at least decent, while the rest of us, who complain about being deemed ignorant or made into ignoramus who must trust those ‘supposed to know’, become ungovernable and, potentially, the enemy. If on the one hand our lack of knowledge prevented us from acting on behalf of a good cause, so that we desired neutrality and abstinence, as Boal says (2008: 87), on the other hand, the purge of non-action passes through camouflage and seeks a ‘true dream’. This is the point of Benjamin’s passageway and *Wahrtraum*, and of Boal’s ‘Joker’. Let us then oppose the weakness of spirit of the Joker –who knows what not to know, or knows that the truth can only be half-said- to the camouflaged power of the Intrigant –who knows and functions within the remit of the churches which preserve the truth, but which lie and misrepresent since they pretend to tell the whole truth.

It is not the case that misrepresentation occurs solely when political boundaries or procedures deny some people, wrongly, the possibility of participating/representing on a par with others in social interaction (Fraser, 2005: 76), since, in fact, in the new political scenario nobody is denied such a possibility, or, to be more precise, everybody, men and women, white, brown, yellow or black, are invited to participate in the abstract, or remain always potentially included in the system of

participation/representation. The all-inclusiveness of the post-sovereign scenario is condensed in the formula 'everyone can see it, but nobody can say it', or in the axiom of universal juridical equality in which 'everyone's view is exchangeable for everyone's alternative view'. Put otherwise, everyone is displaced since every place is potentially exchangeable: we are left with a given set of options and a given set of positions. The injunction is to enjoy (and join in) the 'emotional orgy' of position-less option tasting.

This is also why nowadays resistance and rebellion tends to be positioned. The 'Joker' system in Boal's legislative theatre works through camouflage by establishing herself as a neighbour and contemporary of the spectator (Boal, 2008: 152). Rather than engaging on explanations (the management of knowledge) she is removed from the other characters in order to bring her closer to the spectators. She is not a representative of 'humanity' or this or that 'value', but rather, a position. A position suggests that we are indeed within a density of determination (hierarchies throughout advanced capitalist and racist society) but, crucially, that we can enhance the sphere of options by posing (imaginatively, in projective relation with the real future and with the counterfactual consequences of our actions) ways of presenting ourselves in the world not yet marred by the hierarchies that 'ensnare us as sunk into a density of determination that we cannot seemingly escape' (Cornell, 2008: 131). Lewis Gordon speaks of 'incantative forces; that 'need to be renewed and expanded in our humanistic search for our humanity' (2000: 179). Thus, the position of the Joker is that of the 'true dream' in Benjaminian parlance, true to what humanity can be when it is salvaged from the sameness of advanced capitalism. Similarly, rebellion today occurs through the renewal of incantative forces, not in the name of nation or humanity, but rather, as in the case of Bolivia, in the name of blacks, indigenous and peasants, who do not count as human, cannot have a place, or are construed and named as a residue and a remainder, but remain true to what humanity can be. To sociality and the common.

More controversial and more ominous is the case of the November attacks in India: the perpetrators are nameless, their demands unknown or non-existent, their place of origin undetermined, loosely linked to Kashmir but also potentially British, or in any case connected to the history of British colonialism. Interestingly enough, as soon as there was a suggestion of the Britishness of the terrorists, the British government moved to deny the place-ness and nature of these people. They remain to this day, for all intents and purposes, inhuman.

One should resist the temptation to put cases such as Bolivia and India in the same sack: the anti-modern and the inhuman. Careful attention to difference and detail is required. Common branding might serve the interests of those who seek to gather all enemies together in order to get rid of them once and for all. And yet, the one thing that subtends all of these cases is the liminality of the places or non-places where we seek to locate them. They are at the threshold. If this is the case, yet another connection with the old Aristotelian tradition (the link between tragedy, place and human nature) surfaces: that which places certain peoples in Utopia, meaning both 'there is no such place' and 'there is no such man'; neither an Edenic creature nor the vision of the nightmarish Cannibal.¹⁷

Resistance and rebellion, in the form of pure violence, violence without means, as opposed to the violence without end of the state and the dominant power without hegemony, is also carried out nowadays by the named and discounted themselves. In this sense, to go back to the Bolivian case, the triumph of MAS-IPSP (Marcha al Socialismo –Instrumento Politico por la Soberania de los Pueblos) is a shattering event. It reminds us that we do not have to wait for that truth because, as Cornell says also in respect of South Africa, ‘we have already glimpsed what it means to be a true human being’ (Cornell, 2008: 141). The Bolivian event disrupts the flatness and smoothness of the endless space that characterises the emerging sovereignty of *faux* empire and intrigant sovereignty, based on infinite relativism and the invocation of the name ‘humanity’. It ushers in a more relevant, determinate infinity. To the conception of deferred time (the time of exception, to which it corresponds a politics of prevention, decontamination and elimination) that dominates the reconstruction of *faux* imperial sovereignty under way, the indigenous and peasants of Bolivia have opposed a situated struggle, in geopolitical (liminal) space, for auto-transcendence in time. The meaning of this ‘auto-transcendence’ is that of the Benjaminian ‘tireless leap of action’, the being-together in action that marks true experience in Benjamin’s sense of the word *Erfahrung* (2004: 1-5). His point is that any attempt to fully describe experience –the purported knowledge of the sovereign- is doomed to fail because it always points beyond itself to its own limit and to how that limit opens up the space, the position and the vision of the beyond.

If for the first conception, that of the intrigant, time and the future remain always a set of given and non-actualized options or possibilities, and therefore always open-ended, for the second, that of the rebellious joker, the future, in contrast, is real and therefore a matter of closure. As a result, in the second case politics is not about prevention, but rather, about prediction. The joker is a magical reality; ‘he creates it’ (Boal, 2008: 159). The term ‘sovereignty of peoples’ which appears in the name of the Bolivian movement, is precisely a reference to the power of the elements of a collective to project themselves into the future and, from that vantage point, look at the past and give it determinate form.

This is a form of self-determination that has nothing to do with the de-materialization of the objects of the world or the limits of human knowledge that characterises the critical space of modernity. And in that specific sense, it is an instance of politics beyond critique. It refers not to subjective uncertainty, as is the case with the politics of prevention and elimination that aims at the establishment and continuous redrawing of limits and the announcement of catastrophes for the purposes of averting their occurrence. Rather, its point of reference is objective uncertainty and complexity. It acknowledges that to deal with objective uncertainty is not a matter of subjective belief or faith, and/ or the capacity to survey, from an ultimately theological sovereign point of view, the given set of all possible cases or options and choose the one that maximises some relative principle (perfection, enjoyment, efficacy). Uncertainty and complexity call for the capacity to project ‘fixed points’ in the future, predictions, speculative visions of hope or catastrophe, and reduce them to practice.

Indigenous people in struggle in Bolivia call this ‘the internal way’. Boal speaks of the joker as a magical reality. Gordon refers to the renewal of incantative forces, and Benjamin talks about the true dream. We tend to believe that this sort of power is archaic, a superstitious thing of the past, as it would be expected from indigenous

practices or Latin American fancies. That would be a mistake: first, given that the objects that are most common in our post-modern life, from nanotechnology and climate change to the car-bomb and financial instruments, feature increasing levels of complexity, the collective power to predict the future and make it happen is actually the most relevant form of action in our time.¹⁸ Second, evidence of the recognition and use of this sort of power may be found in non-indigenous, post-colonial and enlightened situations. A crucial one, for the purposes of a historical reappraisal of modern law, from the standpoint of resistance and struggle, is the description of revolutionary constitutionalism in 18th century America by St. George Tucker in the appendix to his 1803 edition of Blackstone's *Commentaries*.¹⁹ Third, it would be an error to recognize the importance of the Bolivian indigenous struggle against global capitalism, but to associate their political action against the paradigms of modern politics and knowledge with words like romantic, traditional, or *indigenista*.

Let us conclude with a distinction between two competing understandings of sovereignty: First, the modern conception of sovereignty, associated from the very outset with the practice of flattening the world and eliminating 'thick' practices. It relies upon something akin to the instruments of magic, a sort of sorcery that allows for the illusion that the process of expansion is infinite and totally self-referential, having in itself the cause of its own endless movement.

From the very outset this machinery has combined optical illusion and mathematics (first geometry, nowadays economics) with forms of mimesis (theatrics, reproduction and representation) in an attempt to announce the coming catastrophe, in order to avert it, by representing it as the consequence of the deed done by some arch-enemy. The magical trick operates when, following the expulsion or sacrifice of the chosen enemy, the announced catastrophe remains a non-actualised possibility. In fact, this sleight of hand gives the machinery its own principle of movement; it becomes an automaton.

The prime example of this machinery can be seen in the frontispiece of Thomas Hobbes' *Leviathan*. As Peter Fitzpatrick, Horst Bredekamp and Dario Gamboni have observed, the image should be understood in the context of 16th and 17th century controversies around the religious function and ontology of images, and the increased capacity to manipulate response by an 'illusionistic' depiction of visual appearances. The latter implies a self-referential mode of representation, as seen for instance in composite portraiture. In the frontispiece, attributed to the engraver and theoretician of perspective Abraham Bosse, only the upper part of the personification is seen, with open arms and extended shadow suggesting movement forward. The scene corresponds to Chapter 17, § 13, on 'the generation of the Leviathan'. It is the moment when all men agree to give up their right of self-government to one man or one assembly authorized to act in their name, thereby becoming 'united in one person', in order to avert the catastrophic results of the war 'of every man, against every man'.

This representative unity can be a real person, and Hobbes combines the notion of a 'compact' with that of absolute power, since the authorization is irrevocable and unlimited: 'And he that carrieth this person, is called SOVEREIGN, and said to have sovereign power; and everyone besides, his SUBJECT.' The key proposition here is that one can be equal to many. This proposition effectively silences, in the name of

order and reason, in the name of averting catastrophe, the alleged irrationality of the people gathered around their powerful visions and objects.

It is also a recipe for sacrifice and the elimination of 'residual' practices. Insofar as it is preventive and, as such, a form of risk-management; it is profoundly nihilistic in that it either accepts the necessity of or actively seeks to eliminate every practice that cannot be aligned with a certain (sovereign) definition of the future. The form of immanent sovereignty that has been one of the subjects of this paper partake on this proposition: it sacrifices visions, objects and individuals to some maximizing function directed towards the future of humanity; a future that is, paradoxically, non-real but always/already merely possible. Thus, objects and individuals count only as ciphers of a (suffering, destructive but creative) humanity, pieces of engineering that can be modified at will. Put otherwise, they do not matter and are effectively de-materialised.

This proposition of sovereignty must be opposed to a second proposition according to which 'one' and 'many' are not interchangeable. But the focus here is not on the old question 'the One or the Many?' Such dilemma expresses, as it often occurs with this sort of choices, the empirical-transcendent power attributed to restricted abstraction. The point is not to choose between these set options, but to escape the given set of options. The latter is the position of revolt, fidelity before the threshold of another world that can be, as exemplified in the ancient story of Orestes or in the contemporary struggle of Bolivia's indigenous. It is also the basis for a renewed form of materialism, in which elements are powerful enough to escape all relational totalities of the kind that results in complete subsumption. From that position, political struggle is not about the clash of contradictory practices, which invariably results in the complete subsumption of one of the parties, but rather, about the linking together of divergent practices into a collective (sociality and the common).

This gathering cannot take place on the basis of some common name or ground (humanity, the multitude as fountainhead of creativity, and so on) but rather, through the gathering power of the call of justice and the dialectical image, of sounds and common visions. The point is to make these objects, their places, and their associated practices, matter. This is a plea for a more relevant form of political composition, materialist and non-eliminativist, and since music and the visual arts are also forms of composition in which what matters are the powerful objects and their associated practices, let me finish by opposing an image of the South to the powerful image of Leviathan.

This image comes from a political tract written in 1616 by an early Peruvian critic named Waman Puma (titled *Nueva Corónica y Buen Gobierno*) addressed to King Felipe II of Spain. In this tract the visual part is no less important than the written one (written in a double language: Quechua and Spanish). It mobilises, visually, a conception of objects and space organized into a fourfold. I do not have time to develop here the importance of this notion in ontology; it would suffice to remember Aristotle's four-sided account of causation, and also that 'the fourfold' is precisely one of the strangest and most important conceptualisations of post-Heideggerian ontology. It refers to an infinity with closure, as opposed to the infinity of the merely possible. It implies a more relevant metaphysics of time and space (loops, virtuous circles) and a principle of collective self-organization. This political tract should be read together with those written by former Afro-Caribbean slaves, for instance, by

people like Olaudah Equiano (*The Interesting Narrative of the Life of Olaudah Equiano*, 1790) and Quobna Ottobah Cugoana (*Thoughts and Sentiments on the Evil of Slavery*, 1787). Put together, these works form a trans-modern and trans-national genealogy of anti-sovereign and materialist thought that is more relevant for the purposes of today's struggle.

BIBLIOGRAPHY

Badiou, A. (2006) *Logiques Des Mondes: L'être et L'événement*, 2. Paris: Seuil.

___. (2008) 'The Son's Aleatory Identity', in *Lacanian Ink* 32, Fall issue. New York: Lacink.

Benjamin, W. (1968) 'Theses on the Philosophy of History', in *Illuminations: Essays and Reflections*. Edited by Hannah Arendt. New York: Schocken Books.

___. (1980) *Gesammelte Schriften-Werkausgabe*, vols. 1-4. Frankfurt am Main: Suhrkamp.

___. (1998) *Origin of the German Tragic Drama*. Translated by J. Osborne. London: Verso.

Boal, A. (2008) [1974] *Theatre of the Oppressed*. London: Pluto Press.

___. (1998) *Legislative Theatre*. London & New York: Routledge.

Cornell, D. (2008) *Moral Images of Freedom: A Future for Critical Theory*. Lanham, Boulder & New York: Rowman & Littlefield.

De Sousa Santos, B. (1995) *Towards a New Common Sense: Law, Science and Politics in Paradigmatic Transition*. London: Routledge.

___. (2007) 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledge'. Available online at: <http://www.eurozine.com/pdf/2007-06-29-santos-en.pdf> . Last accessed: March 24th, 2009.

Douzinas, C. (2007) *Human Rights and Empire. The Political Philosophy of Cosmopolitanism*. Oxford and New York: Routledge/Cavendish, 2007.

___. (2009) 'Are Rights Universal?'. Available online at www.guardian.co.uk , posted on March 11, 2009. Last accessed: March 19th, 2009.

Duffield, M. (2007) *Development, Security and Unending War. Governing the World of Peoples*. London: Polity.

Dupuy, J-P (2005) *Petite métaphysique des tsunamis*. Paris: Seuil.

- ___ (1997) *Le Sacrifice et L'Envie: Le Liberalism Aux Prises Avec la Justice Sociale*. Paris: Calmann-Levy.
- Eagleton, T. (2009) *Trouble With Strangers: A Study of Ethics*. Oxford: Wiley-Blackwell.
- Escobar, E. (2008) *Territories of Difference: Place, Movements, Life, Redes*. Durham: Duke University Press.
- Fraser, N (2005) 'Reframing Justice in a Globalizing World', in *New Left Review* 36, November-December, pp. 69-88, London and Oxford: New Left Review Ltd.
- Fernández Retamar, R. (2005) [1989] *Caliban and Other Essays*. Translated by E. Baker with a Foreword by F. Jameson. Minneapolis: University of Minnesota Press.
- Foucault, M. (2002) 'The Risks of Security', in *Essential Works of Foucault 1954-1984: Power*. London: Penguin.
- García-Linera, A. (2007) 'Catastrophic Equilibrium and Point of Bifurcation'. Available at <http://boliviarising.blogspot.com/2008/06/alvaro-garcia-linera-catastrophic.html> . Posted on December 2007. Last accessed: March 19th, 2009.
- Geuss, R. (2008) *Philosophy and Real Politics*. New Jersey: Princeton University Press.
- Gordon, J. (2006) 'Creolizing Rousseau'. Paper presented at the meeting of the annual meeting of the American Political Science Association, Philadelphia, PA. August 31-September 5, 2006.
- Gordon, L. R. (1995) *Fanon and the Crisis of European Man: An essay on Philosophy and the Human Sciences*. New York: Routledge.
- ___ (2000) *Existencia Africana: Understanding Africana Existential Thought*. New York: Routledge.
- Guardiola-Rivera, O. (2009) *Being Against the World: Rebellion and Constitution*. London: Routledge/Birkbeck Law Press.
- Hart, H. L. A. (1997) *The Concept of Law*. 2nd edition. Oxford: Oxford University Press.
- Jonas, H. (1985) *The Imperative of Responsibility. In Search of an Ethics for the Technological Age*. Chicago: University of Chicago Press.
- Koskenniemi, M. (2009) Intervention at the 'Cosmopolitanism and Empire' Workshop, 6-7 March 2009. London: Birkbeck College, University of London.
- Lacan, J. (2006) *Le Séminaire, livre XVI, d'un Autre à l'autre* [1968-69]. Paris: Seuil.

- Mendieta, E. (2007) *Global Fragments: Globalizations, Latinamericanisms, and Critical Theory*. New York: State University of New York Press.
- Miller, J - A. (2008) 'A Reading from the Seminar *From an Other to the other*', in *Lacanian Ink* 32, Fall issue, New York: Lacink.
- Rousseau, J. J. (1969) *Social Contract*. London: Penguin.
- Schmitt, C. (1996) *The Concept of the Political*. Translated by G. Schwab. Chicago: Chicago University Press.
- . (2004) *Legality and Legitimacy*. Translated and edited by J. Seitzer with an introduction by J. P. McCormick. Durham: Duke University Press.
- Sidgwick, H. (1973) *Economic Justice*. Edited by E. Phelps. London: Penguin.
- Stiegler, B. (2001). *La technique et le temps, 3. Le temps du cinema et la question du mal-être*. Paris: Galilée.
- Tucker, St. G. (1999) [1803] 'On Sovereignty and Legislature' in *Blackstone's Commentaries*, Appendix A, Philadelphia, 1803, repr. In St. G. Tucker, *A View of the Constitution of the United States with Selected Writings*, vol. 19, Indianapolis: Liberty Fund.
- Twining, W. (2003) 'A Post-Westphalian Conception of Law', in *Law & Society Review*, volume 37, issue 1, pp. 199-258. Oxford: Blackwell/Law & Society Association.
- Waterman, P. (2001) 'Emancipating Labour Internationalism (From the C20th Working Class, unions and Socialism)'. Available online at: <http://www.antenna.nl/~waterman/ELIlong%20281101.doc> . Last accessed: March 24, 2009.
- Weber, S. (2008) *Benjamin's –abilities*. Cambridge, Ma.: Harvard University Press.
- Wey Gómez, N. (2008) *The Tropics of Empire: Why Columbus Sailed South to the Indies*. Cambridge, Ma.: MIT Press.

¹ On Fanon's 'principle of exclusivity', see Cornell (2008: 105-6). On the ethics of mimesis, sense and sensibility, particularly on the work of Adam Smith and Francis Hutcheson, see Eagleton (2009: 12-83). On the connection between such an ethics and colonial hegemony see Eagleton (2009: 62-82). On 'the collapse of the ethical' brought about by colonialism, see Cornell (2008: 105-9) and Gordon (2000: 35). On the link between such ethics and sovereignty in liberalism, see Dupuy (1992

² For my use of the term 'ideology', see Geuss, 2008: 50-5.

³ On the task of the sovereign as *katēchon* or 'restrainer', and its link with the 'myth' that conceives of the political as determined by the management and limitation of violence, see Kirwan, 2008: 23-25. For the connections between this political myth and the work of Hobbes and Carl Schmitt, see Kirwan, 2008: 25-29, based on the work of Jürgen Moltmann and Liberation Theology, and for the link between the doctrine of the *katēchon*, law as *nomos*, and the fixity of territory or the division of the world along 'global lines', see pp. 29-33. On 'global lines', see also De Sousa Santos, 2007. Michael Kirwan, speaking from the standpoint of political theology against what he qualifies as 'political mythology',

makes the interesting point that some see Schmitt's project as a thoroughly 'immanent project with no trace of the transcendence of Christian faith', while others see it as 'more polemical and "dramaturgical" than substantive' (2008: 31). This essay takes seriously the qualification of Schmitt's theory of sovereignty (and his conception of faithfulness) as 'dramaturgical' or theatrical –blending aspects of the legacy of Greek tragedy with the Baroque drama of the *conquista* and the rise of the modern/colonial/capitalist world system. The point is that in the shadowy background of Schmitt's theory of sovereignty one should see the unfinished project of decolonisation. Put otherwise, to the mythical view of the world as divided and settled along global lines, this essay will oppose 'the view from below' as understood through the work of Walter Benjamin, Boaventura de Sousa Santos, Augusto Boal's 'theatre of the oppressed', Lewis Gordon's reworking of Phenomenology through Fanon and Sartre (in relation to the so-called MCD perspective) and its linking with the tradition of Critical Theory via the work of Drucilla Cornell and Eduardo Mendieta. For my use of the term 'myth' see Kirwan, 2008: 21 and Cornell, 2008: 137, the latter in relation to Benjamin's use of the term *Erfahrung*.

⁴ See on this my book *Being Against the World: Rebellion and Constitution* (2009). See also Ira Levy (2006: 307-335), Blackburn (2008: 128-135), and Žižek (2006: 50-67). For precedents in U. S. law see, *Pickering v. Cease*, Ill. 328 (1875), *Pixley v. Boynton* 79, Ill. 351, the opinion of the Wisconsin Supreme Court in *Barnard v. Blackhaus*, Wisc. 53 (1881), and *Irwin v. Willar*.

⁵ The modernity/coloniality/decoloniality perspective is interested 'not only in alternative worlds and knowledges' arising 'from the epistemic borders of the modern-colonial world system' but also 'in worlds and knowledges otherwise' (Escobar, 2008: 12) that is to say, not just in the alternatives that might exist within the realm of the possible but also in expanding the realm of the possible itself. Its chief ontological/epistemological category is not 'the possible' but rather 'the improbable' and radically new.

⁶ This is a reference to the notion of 'catastrophic equilibrium' developed upon Gramscian grounds, with a nod to complexity theory, by sociologist Alvaro García-Linera in the context of an analysis of the transformations of sovereignty brought about by the rise of the socio-political movement known as MAS-IPSP in Bolivia. See on this García-Linera, 2007.

⁷ This paraphrases Jane Gordon's understanding of 'creolization' and trans-culturation, building also on the work of Fernández-Retamar (2005) and de Sousa Santos (1998, 2007). See Gordon (2006: 5) and Cornell, who cites her (2008: 133).

⁸ See on this Foucault, 2002: 365 ff., Duffield, 2007: 1-31, and Cornell, 2008: 39-74.

⁹ See also Guardiola-Rivera, 2009: 242-257, Miller, 2008: 6-71 a7 53, and Badiou, 2008: 73-85..

¹⁰ The quote continues: 'And, yet, we know that millions upon millions of people in the twentieth century alone showed the falsity of such characterizations of fated nature by giving their lives for the fight for socialism. South Africa has become both a symbol and an allegory for many in the world today because the victorious struggle against apartheid ultimately took place in negotiations rather than through armed revolution that would have led to some system of government and law capitulating to the other in annihilation. (...) But the negotiations of course were only made feasible by wave after wave of rebellion and resistance as each next generation took on its own struggle against apartheid long after the leaders of the ANC were in jail and the Party in exile. Certainly, the ANC has wavered in its commitment, and some critics would argue capitulated to the demands of advanced capitalism. But, Benjamin and Derrida are suggesting to us that there is no end to what South Africa can become because of some metanarrative that dooms it in advance' (Cornell, 2008: 148).

¹¹ The reference here is to the question posited by Lenin 'what is to be done?', and to its answer, posited by social theorist Boaventura de Sousa Santos in the following terms: 'What is to be done, then? The only route, it seems to me, is utopia. By utopia I mean the exploration by imagination of *new modes of human possibility and styles of will*, and the confrontation by imagination of the necessity of whatever exists – just because it exists – on behalf of something radically better that is worth fighting for, and to which humanity is fully entitled.' See Boaventura de Sousa Santos 1995:479 (emphasis mine). It is worth clarifying that the opposition proposed here is not intended as a simple binary, but rather, as complex co-existence in tension. The argument is largely but not solely drawn from Santos (1995; 2007), concerning modernity and emancipation, and from a certain reading of the term 'responsibility' inspired by Ellacuría, Zubiri, Levinas, and others, in relation to the philosophical 'problem of communication'. See on this Guardiola-Rivera, 2009: 133-41. See also Waterman, 2001.

¹² See on this Guardiola-Rivera, 2009: 148-152.

¹³ Here, we are reminded of the distinction that black philosophers of existence make between 'choice' and 'option'. There is a sense in which we always are in the process of choosing and we are responsible

for our choices. But, ‘to make it clear that not all of us are able to choose equally in the sense of having the same sphere of options, black philosophers of existence, particularly Lewis Gordon, insist that the struggle is itself meant to open up options that were never before available and, in the space so opened, create the ability to reflect on how our seeming choices were formerly the result of having no other option’ (Cornell, 2008: 123, in reference to Gordon, 1995: 79, Sylvia Wynter and Franz Fanon).

¹⁴ See on this Guardiola-Rivera, 2009: 220-22.

¹⁵ For an account of virtual or counterfactual choice vis-à-vis the ‘risk’ structure of the law issued by today’s sovereign, see ‘Law, Radical Choice & Rock ‘n Roll’, in Guardiola-Rivera, 2009: 228-234.

¹⁶ The reference is to an anecdote according to which economist Milton Friedman produced a pencil in order to demonstrate the power of capitalism to bring together materials from all corners of the world, to compose them, flattening them into a commodity-object. The anecdote is taken up by Thomas L. Friedman (no relation) in his book *The World is Flat: A Brief History of the 20th Century*. New York: Penguin, 2005.

¹⁷ See on this Fernández Retamar, 2005: 7.

¹⁸ For the development of such arguments, see Jonas, 1985; Dupuy, 2005; and Stiegler, 2001.

¹⁹ See St. George Tucker, 1999 [1803].