

The Two-State Solution: Providence and Catastrophe

*Adi Ophir**

One of the most significant, incontestable, and relatively ignored aspects of modernity is the new role states play as generators and facilitators of disasters, on the one hand, and as authors — or at least facilitators, sponsors, and coordinators — of survival and relief operations, on the other hand. The relation of the modern state to disaster has played an important role in the emergence of the state as a "totalizing totality" (of spaces, people, groups, associations, and institutions) and in the constitution of its image as a historical subject. This Article argues that state's relation to disaster and its unfolding consequences has developed in two opposite directions that should be distinguished carefully. In line with these two opposite relations to disaster, I suggest a theoretical distinction between two state formations: a providential state and a catastrophic state. This distinction is based on Agamben's concept of "bare life," which a sovereign may forsake by declaring an exception but which it may also save by taking extraordinary measures of protection or relief.

The Article examines two aspects of the difference between the two state formations. From a formal point of view, it distinguishes and discusses two different notions of sovereignty, its authority,

* Cohn Institute for the History and Philosophy of Science and Ideas, Tel Aviv University. This paper was originally presented at the conference "Critical Modernities: Politics and Law beyond the Liberal Imagination," at Tel Aviv University, December 2005. The present version has benefited from the critical comments of many: the conference participants, my friends and colleagues at the Van Leer group for continental political philosophy, my attentive audience at the Colloquium for Critical Theory at the University of California, Berkeley, where part of the paper was later presented, and my patient and speediest readers, Michal Givoni and Yehuda Shenhav. I am thankful to all my critics. Special thanks are due to Galit Greenberg for her efficient technical and editorial assistance.

foundation, and legitimacy, along with two different understandings of the subjectivity of the state. These two conceptions involve and are intimately related to two distinct sets of theological presuppositions and two different conceptions of the political. From a chronological point of view, the Article sketches two diverging genealogies that go back to distinct, even if related, moments in the history of the modern West. Recognizing the fact that in certain historical moments these two genealogies were intertwined and that in our time this intertwining has yielded a rapid process of hybridization, the Article claims that this process is not dialectical, and that the difference between the two genealogies should be maintained for theoretical and political reasons alike.

I. THE DIALECTICS OF DESTRUCTION AND RELIEF

In a famous passage in the chapter entitled "The Ultimate End of Nature as a Teleological System" in the *Critique of Judgment*, Kant says, almost as a matter of course, that war,

a thoughtless undertaking . . . stirred up by unbridled passions . . . is nevertheless a deep-seated, maybe far-seeing, attempt on the part of supreme wisdom, if not to found, yet to prepare the way for a rule of law governing the freedom of states, and thus bring about their unity in a system established on a moral basis. And, in spite of the *terrible calamities* which it inflicts on the of human race, and the hardships, perhaps even greater, imposed by the constant preparation for it in time of peace, yet . . . it is one further spur for developing to the highest pitch all talents that minister to culture.¹

Certainly this was not the first time that war had been praised by philosophers; the novel aspect of this passage is the recognition of war's disastrous consequences as an inevitable part of its benefits. Kant captured what has become a common conception of the dialectics of progress of mankind in modern times. A certain accentuated and inverted version of this conception is my point of departure here. According to this version, man's capacity to destroy human lives has been drastically augmented. At the same time, man's capacity to foresee disasters, prevent some, and bring relief to the survivors

¹ IMMANUEL KANT, *THE CRITIQUE OF JUDGMENT* 96 (James Creed Meredith trans., Oxford Univ. Press 1969) (1790).

of those that do occur has also been augmented in an unprecedented way, although lagging behind human destructiveness in both scope and magnitude. As man has become ever more capable of both destruction and relief, the faith that ascribes disasters (natural and man-made alike) to Divine Providence has been replaced by a faith in the state as an imperfect agent of providence whose failure to take proper and timely action accounts for the damage inflicted by disasters, if not for their very occurrence. These two corresponding changes are the seemingly inevitable consequences of more fundamental processes, such as the advance of science and technology, the formation of new kinds of knowledge related to the government of populations and individuals, the industrial and communications revolutions, and the emergence and consolidation of powerful, centralized state apparatuses.

The techniques, practices, and institutions involved in destruction and those involved in relief are often understood to be two antithetical results of the same dialectic process. This process can be described in different terms, within different conceptual schemes. Thus, for example, Foucault speaks of disciplines and the emergence of a disciplinary society from which broader networks of bio-power and governmentalization have come about;² Habermas speaks of the colonization of the life-world by systems of administrative and economic power;³ and Agamben, following Arendt and Foucault, speaks of the introduction of "bare life" into the administrative spheres of the state in a process that strips the governed of their political status and sets them as potentially or actually forsaken victims of a power that has blurred the distinction between fact and norm, the exception and the rule.⁴ According to a view shared by all of these thinkers, modernity is a double-edged process in which the same or very similar and overlapping instruments, technologies, legal systems, coercive and ideological state apparatuses, relations of production, division of labor, and forms of exchange contribute at one and the same time to men's capabilities to destroy life and to protect it, to spread diseases and to cure them, to make people very wealthy and very poor, very powerful and completely helpless. Foucault gave this

2 *E.g.*, MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977); MICHEL FOUCAULT, *Truth and Power, in POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977* (Colin Gordon ed., 1980).

3 JÜRGEN HABERMAS, *LIFE WORLD AND SYSTEM: A CRITIQUE OF FUNCTIONAL REASON* (Thomas McCarthy trans., Beacon Press 1987) (1981).

4 GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans., Stanford Univ. Press 1998) (1995).

double-edged process a succinct formulation, turning Kant's optimism and trust in progress on its head:

Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital. It is as managers of life and survival, of bodies and race, that so many regimes have been able to wage so many wars, causing so many men to be killed.⁵

Thus, contrary to what Kant and other believers in progress held, it is not war that has civilizing effects as its unintended consequences but the other way around: the capacity to govern, the placing of entire populations under the close inspective gaze and protective shield of the "managers of life," which the civilizing process has brought to perfection, has enabled a new kind of warfare and led to wars of survival — the most horrendous, devastating wars man has ever known.

The scene of war has changed quite significantly since Foucault wrote these words, and the dialectics of destruction and protection have assumed new forms, but their basic logic still holds sway. In a process that crosses national boundaries and reduces their significance, the gated communities of those who can destroy and protect at will are increasingly separated from the multitudes whose lives have been forsaken and who are now in dire need of the care and protection of those who have forsaken them. So close have been the development and augmentation of the capacity to destroy and the capacity to bring relief that today they are stored within the same apparatuses, often using the same techniques of domination, control, regulation and legislation, production and distribution.

Two notions exemplify this tendency very clearly. The more general notion is "security." In today's parlance it means the provision of relative safety and freedom of movement to some, i.e., to those who live in protected environments in which the elimination of disastrous interruptions of everyday life and the routinization of action have been made possible again. At the same time, this relative safety that allows for normal coordination and routinization of action is made possible by so-called security measures that involve the placing of entire populations outside the law, in the twilight zone of exceptions and emergencies, where lives may be ruined and life-worlds dismantled without legal and political sanction or

⁵ 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 117 (Robert Hurley trans., Vintage Books 1980) (1976).

even a moral outcry. A more particular and peculiar notion is "humanitarian war," which has been used to designate recent military interventions in Bosnia, Kosovo, and Afghanistan, and, to a lesser extent, even in Iraq and is called for in other places where "rogue" states seem to endanger the very survival of the people they govern. The same mechanisms, sometimes the same vehicles, carry both the bombs and the food packages to the same regions, sometimes to the same people.⁶ Humanitarian war, the ultimate fusion of disaster and relief, is the dialectical result of one totalizing process of modernization that has perfected man's capacity not only to create his own historical conditions but also to tear the world apart and, at one and the same time, to mend it. Or so it seems. In what follows I would like to question and complicate the story I have just told.⁷

II. TWO STATE FORMATIONS

A simple but necessary qualification of the above account must be made first: It is neither man in the abstract nor men in the plural who have become such mighty agents of disaster and relief. The truly modern phenomenon is the new role of *states* (only vaguely implied in the passage taken from Foucault) as generators and facilitators of disasters and as authors or at least facilitators, sponsors, and coordinators of survival and relief operations. Moreover — and this is a subtler qualification and a bolder claim — the modern state's relation to disaster⁸ is an important element in the constitution of the state's imagined subjectivity, i.e., in creating the totalizing effects of its

6 The literature on military humanitarian intervention abounds. Two recent and prominent examples are DAVID RIEFF, *A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS* (2002), and HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS (J.L. Holzgrefe & Robert O. Keohane eds., 2003).

7 This is the story on which I relied uncritically in ADI OPHIR, *THE ORDER OF EVILS* (2005) (especially chapter 9.3–9.5).

8 Throughout this paper I assume a concept of disaster that I can neither explicate nor argue for in the present context. I limit myself to large-scale disasters in which numerous lives are lost and the damage to property and the environment is enormous enough in amount and size to create an interruption, if not a total break, in the life-world of an entire community. I distinguish between disastrous conditions and the event of disaster, but I give little weight to the distinction between natural and man-made disasters, for in modernity — and this is one of its characteristics — disasters become a social and political event at the very moment of their occurrence, even if they have been entirely unpredictable. This concept was partially presented in Adi Ophir, *Moral Technologies: The Administration of Disaster and the Abandonment of Life*, 22 *THEORY & CRITIQUE* 67, 67-103

power and providing the principle of its integration into a totality. The state's relation to disaster plays an important role in the way the state is conceived and represented (by its agents, by its more or less obedient subjects, and by its critics) as an imaginary singular person and an imaginary integrated totality (of spaces, people, groups, associations, and institutions). Contrary to views that may be ascribed to or drawn (directly and indirectly) from Foucault, Agamben, or Negri and Hardt,⁹ I would like to contend that the processes these thinkers describe involve two distinct state formations or models (ideal types) of states and that the two must be carefully distinguished. Despite a certain overlap in the genealogies of these formations and their current fusion into what appears as a new, contiguous, rhizomatic form of power, the distinctions between these two state formations have not been entirely erased, and they should be respected for historical, methodological, theological, as well as political reasons. According to what seems to me a crucial difference in the *formal* relation to disaster, I henceforth call the first state formation "the providential state" and the second — "the catastrophic state."

Let me explain very briefly what I mean by a state formation. Imagine a group of metal pieces spread randomly across a surface. If a magnet is placed at some point underneath the surface, it will draw the pieces together and galvanize them into a certain form. If the magnet is moved to a different spot beneath the surface, the form will change. The metal pieces in the metaphor are state apparatuses; the magnet is a speculative device to explain their changing formations. In reality the magnet is never external to the surface on which it operates. Who plays the role of this magnet is a big question that I will not deal with here. For my purposes, it is sufficient to note the existence of such formations, their contingency, and plurality. The two formations I am about to discuss here certainly do not exhaust the possible range of such configurations. In both cases disaster appears as that external magnet. However, this is a projection of a formation already heading for disaster, geared to generate it or cope with its consequences.

My use of the term "state formation" is somewhat reminiscent of Schmitt's "state types" or "state forms." Schmitt distinguished between several such types: the legislative state, the judiciary, the administrative, and

(2003) (Hebrew); *see also* E.L. QUARANTELLI, WHAT IS A DISASTER (1998) (various attempts to define disaster).

9 MICHEL FOUCAULT ET AL., *SECURITE, TERRITOIRE, POPULATION: COURS AU COLLEGE DE FRANCE, 1977-1978* (2004); GIORGIO AGAMBEN, *STATE OF EXCEPTION* (Kevin Attell trans., Univ. Of Chi. Press 2005) (2003); MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* (2000); MICHAEL HARDT & ANTONIO NEGRI, *MULTITUDE* (2004).

the governmental.¹⁰ "State formation" should be distinguished from the more traditional typology of regimes. Thus, for example, a legislative state may be a parliamentary republic or a constitutional monarchy. The crucial question for Schmitt was not how the rulers are elected and replaced, but how decisions are made by the highest authority and obedience to this authority is generated, represented, and legitimized. The crucial question for us would be *how life and death are inscribed in the system of power*. In both state formations it is "bare life" (to use Agamben's term¹¹) that is at stake; but they are at stake in two distinct, in fact opposing, ways. The catastrophic state governs an already-abandoned population; the body and living conditions of any individual or of many at once may be hurt, damaged, or destroyed altogether without changing anything in the state's *modus operandi*. The providential state governs — or may sometimes simply reach without governing — people whose right to live, sometimes even to live well, it has recognized; its protective apparatuses are set to work when the life and living conditions of many or even of one are seriously endangered.

No matter how closely integrated these two formations have become and how intertwined they appear, they are still distinct and incompatible models of the state and its governance. The difference is both formal and chronological. *Formally speaking*, the two formations reflect two different notions of sovereignty, its authority, foundation, and legitimacy, two different understandings of the subjectivity of the state, which imply distinct forms of relations between government and the governed and distinct conceptions of the political. Moreover, because a different secularized concept of God may be traced in both models, the two point to distinct political theologies and exemplify distinct aspects (or understandings) of secularization.

Chronologically speaking, the two formations have diverging genealogies that go back to distinct, even if related, moments in the history of the modern West. The fact that at certain historical moments these two genealogies were entwined and that in our time this intertwining has yielded a rapid process of hybridization does not necessarily mean that the two formations have become one, let alone that they have always been part of the same dialectical and totalizing process. Therefore the fact that today these genealogies tend to merge and form a single geo-political phenomenon should be carefully examined.

In what follows I will reconstruct, sketchily, given the scope of this

10 CARL SCHMITT, *LEGALITY AND LEGITIMACY* 3-14 (Jeffrey Seitzer trans., Duke Univ. Press 2004) (1932).

11 AGAMBEN, *supra* note 4, at 4 *passim*.

Article, each of the state formations, analyze their formal structures, and relate these structures to certain moments in their genealogies. Respecting the difference between the two, I will then reconsider the claim about their fusion in the contemporary world order and mention some relevant consequences for understanding the role of law in this process.

III. THE PROVIDENTIAL STATE FORMATION

An obvious model of the providential state is the welfare state, as its French name *l'Etat providence* indicates. The welfare state is based not only on rights but also on the needs of those who have rights. Some of those needs are (supposed to be) provided universally and regularly — e.g., education or preventive medicine; other needs are meant to be provided to particular groups of citizens, such as the poor, the elderly, and the new and welcome immigrants. It is often claimed that people even have rights to the provision of these needs (right to education, to health, etc.), in distinction from and in addition to freedom-based rights (right to free speech, movement, property), but those rights can only be justified on the basis of the recognition of needs. To argue that that these needs-based rights are respected only because the provision of certain needs is a precondition of the effective use of one's freedom is to miss the basic logic of needs. The first needs to be provided are those that enable people to survive, since it is survival, not freedom, that is basically at stake here. The state is said, for example, to have an obligation to provide for the basic needs of the wounded soldier or of the worker who has been injured in an accident at the workplace (and these two contexts were the paradigmatic sites of the initiation of the welfare state in the second half of the nineteenth century).¹² This obligation is not an expression of respect for everyone's freedom but a form of solidarity, an expression of a debt combined with a certain concern for the misery of the other. The state acts in these cases as a framework for fostering solidarity. Social insurance or national health insurance is a contract that embodies and gives tangible form to this kind of solidarity, as its formal, rationalized concretization.¹³ The logic of providential solidarity is universalistic despite its impediments. More accurately, one can point out these impediments, criticize them, and demand their elimination only on the basis of certain universal presuppositions. In this sense, citizenship is a

12 FRONÇOIS EWALD, *L'ETAT PROVIDENCE* (1986).

13 "Le contrat social prend donc la forme d'un contrat d'assurance." ("The social contract, takes therefore the form of an insurance contract.") *Id.* at 217.

principle of universal solidarity that is constantly challenged by the difference between citizens and other subjects of the same governing power (immigrants, refugees, tourists, etc.). The universalistic logic of providence goes against the particularist logic of the nation-state and the particular bounds it sets on universal rights. By providing for the needs of children of immigrants, sick tourists, or devastated refugees, the providential state constantly crosses the boundaries of the nation and questions them, even when this is done halfheartedly, belatedly, and in a very partial and ineffective manner.

The difference between the rights of citizens and the duty of the state to make possible the survival of all its governed subjects is usually expressed in terms of the distinction between human rights and the rights of citizens.¹⁴ Critics of the human rights discourse argue that human rights advocacy exposes bare life to the direct act of power and that it thus assumes and reproduces the exclusion of those in need of care and seals their fate to be governed without enjoying political status.¹⁵ However, this argument is easily turned on its head. By insisting on the state's obligation to provide the basic needs of non-citizens,¹⁶ human rights advocacy implies, even if it does not always explicitly admit, a recognition of these non-citizens as subjects of the power that governs them and enables their survival. In theory, at least, the door is open for the restoration of the political rights of these non-citizens as much as it is open for their total abandonment: neither option is necessarily implied or necessarily precluded by the providential contract. From the perspective of this contract, the rights of non-citizens are merely an auxiliary mechanism of inclusion. But the basic reason for the inclusion of non-citizens (or of impaired or marginalized citizens¹⁷) is not their recognized rights but rather their needs and their very presence within the state or at its gates. By insisting on the rights discourse as the only way to contend with this situation, one misses once again the crucial point at stake: the appearance and troubling presence of urgent,

14 Any systematic discussion of this question must go back to Arendt. 2 HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 170 *passim* (1951).

15 The most prominent critic in the context of our discussion is Agamben, *supra* note 4, ch. 2; see also my critique of this position in Ophir, *supra* note 8, at 84-92.

16 The term "non-citizen" is meant here to designate a mode of belonging to a state. Non-citizens are those governed without representation and political rights. Thus, for example, the illegal immigrants in Europe, North America, and Australia are non-citizens of their respective states of residence; the Palestinians living in the Occupied Territories are non-citizens of the Israeli state, while Israeli Palestinians are mostly "impaired citizens." See Adi Ophir & Ariella Azoulay, *The Monster's Tail*, in *AGAINST THE WALL* 2-27 (Michael Sorkin ed., 2005).

17 On impaired citizens, see ARIELLA AZOULAY, *THE CIVIL CONTRACT OF PHOTOGRAPHY* (forthcoming).

unmet needs of tormented lives within the scope of the state's rule or even merely on its horizon. These needs, not a universal concept of human rights, are what determines the state's duty and directs its attention beyond the realm of citizenry (and, recently, also beyond its territorial boundaries). In other words, the rights discourse provides a pretext, justification, and rhetorical means for those already committed to alleviating the suffering of others. The state that puts its protective apparatus to work in order to rescue or bring relief to non-citizens or impaired citizens may do so on other — theological, moral, or utilitarian — grounds as well, using the same means to achieve the same end.

The difference between the needs discourse and the rights discourse becomes clearest in the context of large-scale disasters.¹⁸ Today few would deny that the state bears the duty to prevent disasters, protect its subjects when disasters take place, and bring relief to the survivors. As much as this duty is based on the rights of citizens, or on the rights of men and women to be protected and saved, it reflects the role of the state as the ultimate provider of minimal conditions of existence. This duty is usually activated not by an appeal to rights but by the prospect of an impending disaster and the very presence of populations exposed to that danger or already affected by it. Rights are invoked only when the state fails to fulfill its duty or when its discrimination among sectors of the population seems especially cruel and unjust. But it is cruelty, not rights, that comes first.¹⁹ It is this universalistic duty one has in mind when criticizing the U.S. Administration for its failure to protect the lives and property of the poor, the black, and the illegal immigrants in the wake of Hurricane Katrina. Recognizing the same duty, the Israel Supreme Court ordered the government to distribute gas masks to the Palestinians in the Occupied Territories on the eve of the Gulf War. It is a duty to act in very particular circumstances, when the state can anticipate the eruption of a catastrophe or recognize the unfolding of a chronic, but no less devastating, disaster. This duty of the modern state is usually acknowledged even when the state is no longer, or has never been, a welfare state. In other words, the welfare state is a particular, unfortunately short-lived, and quite rare historical configuration of the providential state. The universalistic duty to bring relief in cases of disaster is a thinner, but more general principle than the duty to

18 Restricting my inquiry to disasters, I will not tell the history of the welfare state nor the story of the transition from the philanthropic structure of caring for the poor to the economic — and national — question of poverty.

19 RICHARD RORTY, *CONTINGENCY, IRONY, SOLIDARITY*, pt. 3 (1989).

provide minimum conditions for "respectful life," and it is this principle that concerns us here.²⁰

The state's universalistic duty to protect its inhabitants (and not only its citizens) in times of disaster and to bring relief to its victims may be interpreted as a transformation and rationalization of Divine Providence. The state is not supposed to calculate sins of the past but to predict the probability of events in the future; its promises are not directed at another world to come but at the future, in and of this world; its actions are intended to save not only the pious and not out of grace, but rather everyone in distress, out of a universalistic *moral* duty. This duty includes the assessment of risks and the calculation of chance, which replace the blind date with *fortuna*, and investment in preventive measures of all kinds, which replaces old forms of investment in Providence and redemption (through sacrifices to the gods, donations to the priests, etc.).²¹ The state does expect political and economic benefits from its providential interventions; these benefits form at least part of the rationale to invest in a far-reaching providential apparatus in the first place. Yet putting the providential apparatus to work in specific cases is determined, at least in part and always in unexpected ways, not by the prospect of gain but by the victims' needs. This is usually the case when the victims are citizens whose rights are fully respected, for most often these are the people whose needs are more readily recognized.

God has never been providential in the absolute sense that the modern state is — i.e., without tallying sins, without making care contingent on past deeds, and without discriminating between the faithful and the infidels. The providential state is truly secular in that it knows no other world and neither seeks nor promises any redemption in which the sins of the past are balanced by future punishment or reward. It seeks to provide whatever care it

20 It is one of the symptoms and indicators of "weak states" that they constantly fail at this task and require help from other states or from international organizations. It is one of the indicators of strong states that they can provide some of the needed aid. Often, states demonstrate their ability to provide aid to non-citizens in times of disaster as a sign and proof of their strength. Recent IDF delegations to disaster sites in Turkey, Armenia, and Kenya are cases in point.

21 Both kinds of investment may be presented as clear cases of waste from the point of view of an economy that addresses the present and near future only. However, in the theological model, the investment is a gamble that may yield infinite gains, while failure to invest in the game may result in total and no less infinite loss. In the political, secularized model, in contrast, failure to invest may result in minor losses only (bad reputation, bad public opinion, etc.), while no gain is promised to those who invest generously, i.e., spend on relief resources that could have been spent on one's own wellbeing, infrastructure, etc.

provides to each and every one of its citizens, among whom it discriminates — when it discriminates — according to who *they are* and *what they have*, not according to what they have done. Discriminatory legislation and regulation are present everywhere. But this discrimination does not belong to the technologies of prediction, prevention, and relief; rather it is a contingent and changing aspect of their administration since it is demanded of them from the outside. Ideally, these technologies are colorblind; they recognize no difference in race, faith, ethnicity, or social stratum.²² Their regulative idea is one of private providence, i.e., of providence directed at any single individual. In some cases this ideal has been stretched to include, even if not *every* living being, pets, domestic animals, and endangered species. Failure of the state apparatuses is evaluated and criticized in light of this regulative idea, which implies absolute control over territory and *people*, each individual and the population as a whole. The tacit assumption is that, in disaster, everyone (or almost everyone or many more — it does not really matter) could have been saved had the authorities only known better, foreseen, taken the appropriate preventive measures, used the proper equipment, employed it on time, etc. The state is ascribed *potentially* absolute power, and the disaster is conceived as a moment in which the gap between this perfect potentiality and the impaired and partial reality is exposed. The state's failure to protect or save its subjects is usually interpreted as an incentive to strive towards developing and implementing more costly preventive measures and to organize a more sophisticated relief apparatus, to bring the state closer to the ideal of absolute control in order to achieve absolute prevention. The regulative idea of the providential state is a state of providence.

In order to demonstrate how modern and unusual this idea of the state is, I would like to consider two of the earliest episodes in its genealogy. In 1722, Daniel Defoe, author of *Robinson Crusoe* and one of the first English novelists, published a strange text entitled *Due Preparations for the Plague*.²³ It was a combination of a manual, an essay, and a collection of parables and true stories inspired by the author's vivid impressions from the devastating plague that had hit southern France between 1720 and 1721 and memories from another plague that England had endured in 1655. As a journalist of sorts, Defoe chronicled the unfolding of the French calamity in

²² I made this argument at length in Ophir, *supra* note 8, at 22.

²³ DANIEL DEFOE, *DUE PREPARATIONS FOR THE PLAGUE, AS WELL FOR SOUL AS BODY* (George A. Aitken ed., 1895) (1722).

his journals and followed it closely.²⁴ Defoe's fascination with the plagues, both past and contemporary, was most famously expressed in his *Journal of the Plague Year*,²⁵ a historical novel *avant la lettre* that portrays very accurately, insightfully, and in great detail life in plague-stricken London in 1655. But *Due Preparations* was not an account of what was happening in France at the time of its writing nor of what had happened some sixty years earlier in London; rather, it was a recipe for a possible recurrence of the plague in England. This future-oriented text was divided into two parts, "Preparations against the Plague" and "Preparations for the Plague," for Defoe had two very different futures in mind.

The first part of the book is extremely practical, utilitarian, and individualistic, devoting much attention to how an individual should best act in order to survive the epidemic. Alongside the concern with private survival, Defoe proposed a comprehensive welfare policy for a plague-stricken city. He brought into consideration different segments of the population, their differential needs, environmental issues, hygienic conditions, dietary practices, consequences of poverty and impoverishment, and more. He thought about both how to prevent the disease and how to best cope with an outbreak. Yet he was careful to note that taking such measures held no danger of "invading . . . the agency of Providence . . . impeaching the wisdom of Heaven in the directing of things."²⁶ "Turkish predestinarianism," as Defoe called the belief that preached for inaction in the face of a great Visitation, was still an option to be argued against. Unlike preparations for war or the attempt to prevent it, the preparation for a natural disaster still required justification. The former was clearly conceived as the business of the sovereign; the latter was still thought of as the business of Providence.

Some thirty years later, in his famous letter to Voltaire written in 1756 in response to the latter's poem about the Lisbon earthquake, Rousseau reproached Voltaire for not taking into account human responsibility for the disaster:

Nature did not construct twenty thousand houses of six to seven stories there, and . . . if the inhabitants of this great city had been more equally spread out and more lightly lodged, the damage would have been much less, and perhaps of no account. All of them would have fled at the first disturbance, and the next day they would have been seen twenty leagues from there, as gay as if nothing had happened.²⁷

24 2 WILLIAM LEE, DANIEL DEFOE: HIS LIFE AND RECENTLY DISCOVERED WRITINGS (1969) (1869).

25 DANIEL DEFOE, A JOURNAL OF THE PLAGUE YEAR (Oxford Univ. Press 1990) (1722).

26 DEFOE, *supra* note 23, at 81.

27 3 JEAN JACQUES ROUSSEAU, Letter to Voltaire on Optimism (The Leningrad

Pombal, the acting governor and de-facto dictator of Portugal at the time, shared Rousseau's view of the disaster. He understood how human actions had been responsible for the *unfolding* of the disaster and cared little about the human sins that were deemed responsible for its *outbreak*. Taking firm control over the capital Lisbon (and the entire country) he ensured that the city would be rebuilt in a way that would ensure minimal damage in the event of another earthquake. Seizing the occasion, he expelled the Jesuits, thereby silencing their theological preaching that attributed the disaster to the sins of the people of Lisbon.²⁸ Indeed, it is Pombal's, and not Voltaire's, response to the earthquake that marks the modern, *political* approach to disaster: the advance of preventive and protective measures made possible by new methods of control.

Defoe had neither Pombal's authority nor his means to contend with the threat of a recurring disaster or to cope with what seemed to him problematic about the theological approach to calamity. His way out of the conflict between a pragmatic or rational approach to disaster that encourages people to reshape their natural and social environment and a theological approach that calls for inner, spiritual preparations, was a textual, not a political, separation and reorganization. He divided his text into two, dedicating the first part to all kinds of practical preparations one should take with the first signs of a coming plague, and consigning his theological reflections to the second part, which he entitled "Preparations *for* the Plague." These preparations are nothing more than preparations *for death*. "[There is] nothing we can do but learn to die at the feet of Christ as miserable penitents."²⁹ The best preparation *for* the plague is "a firm resignation to the will of God, and a comfortable hope that it shall be well with us beyond life."³⁰ The theological dilemma, the seeming interference in Providence's affairs that threatened the tacit division of labor between the earthly sovereign and the divine sovereign, was resolved through another division, namely, between material and spiritual preparations. This latter division reserved a place for pious resignation in a domain where the will of God reigns without challenge and, at the same time, allowed for a planned course of action in the public domain.

Manuscript), in THE COLLECTED WRITINGS OF ROUSSEAU 110 (Roger D. Masters & Christopher Kelly eds., 1992).

28 C.R. Boxer, *Pombal Dictatorship and the Great Lisbon Earthquake 1755*, 5 HIST. TODAY 729 (1955); KENNETH MAXWELL, POMBAL: PARADOX OF THE ENLIGHTENMENT (1995).

29 MAXWELL, *supra* note 28, at 129.

30 *Id.* at 98.

Defoe needed this textual and discursive separation between the practical and the theological because he took seriously the view that saw God as the sole author of disaster and understood practical preparations as a vain human intervention in the divine design and conduct of the world. This division allowed Defoe to be entirely pragmatic without impairing his devoted faith in the Almighty. In the last analysis, he contends in the second part, it is preparations for the plague, i.e., faith, not preparations against the plague, i.e., action, that remain most important for one's fate. Providence's role in determining the outcome of disaster, for Defoe, was highly meaningful; the role of earthly sovereign, on the other hand, was rather marginal.

The spatial nature of the epidemic, which Defoe and his contemporaries knew all too well, and the pattern of its advance warranted administrative initiatives by the central authority that would extend its responsibilities over the entirety of its territory and population. But at the beginning of the eighteenth century, when Defoe's was writing, this extension of the state's responsibility had not yet occurred. In *Due Preparations* Defoe's hero and real subject of the plague is the family; in the more elaborate *Journal* it is the city of London. The city authorities are also addressees of the discussion, in both texts, of pragmatic measures to be taken. There was nothing unusual about this, for since the time of the Black Death, a plague had been considered something that happened first and foremost to a city.³¹ Individuals "got the distemper," but they were not the subjects of the plague. Other collective entities like the nation, the royal court, the clergy, or any specific congregation might have been addressed by philanthropic calls to help the victims of the plague, but they could not become its real subjects. Even when entire families were annihilated, they were still only accidents of the plague. The city, not the individual or the state, was the true subject of the calamity and the proper space of its manifestation. In Defoe's accounts — and in this he does not differ from many other authors on the plague — the "distemper" reveals its true nature only when the city is conceived as a whole, as a subject that undergoes tremendous transformation.

When the plague hit London in 1655, the court, the royal family, and most of the nobility abandoned the city and moved away from the stricken regions to the northern parts of England. They had both alternative places of residence to escape to as well as the means to afford the journey and the long sojourn in remote places. Thus, the state's role in coping with the plague was relatively negligible. In contradistinction, when the plague hit

31 See, e.g., FRANÇOISE HILDESHEIMER, *LA TERREUR ET LA PITIE: L'ANCIEN REGIME A L'EPREUVE DE LA PESTE* (1990).

France in 1720, the state played an enormous role in contending with the outbreak, but it did not act to bring relief to plague-stricken Provence — quite the contrary. By violently forcing the closure of the southern parts of France, the state forsook the entire population in those regions in order to protect the court, the ruling elite, and, consequently, the rest of the country. Survival for Paris and Versailles meant death for Marseilles and Montpellier. But this equation was not a strategy of power; it was power's last resort in the face of an awesome catastrophe. In London and in Paris, in the mid-seventeenth century and beginning of the eighteenth century, the state regarded the plague as a completely external agent of doom and assumed no responsibility for the doomed population. At least, this was usually the case. Large-scale disasters often forced the state to retreat for a while. The state would then later resume more or less intact control over the evacuated territories and forsaken populations. Meddling with disasters was none of its business; it was the old business of God Almighty.

It took almost two centuries of modernization for this state of affairs to be transformed. I will not delve into all the details of this change. Suffice it to note that only at the end of the nineteenth century did the practice of saving lives become a profession, an art, and a science, as it was developed on the margins, and as an extension, of medicine, public health, the police, and the army,³² and it took a few more decades before this growing body of knowledge, techniques, and practices was integrated into the state apparatuses. It was only in the 1920s that Western states assumed full responsibility for preventing and planning for large-scale disasters and bringing relief to their victims. As late as 1900, for example, when a hurricane of the kind and scale that recently destroyed New Orleans hit the port city of Galveston, Texas, the state was yet to step in and undertake the duty of contending with the disaster and its repercussions. Contemporaries conceived this disaster as colossal in terms of casualties and material losses. Aid was sent to the stricken city from all over the country, and public committees were established everywhere to mobilize resources and bring help to the city and its survivors. The President of the United States commissioned, by way of an ad hoc decision, a generous sum of money that was added to the pile. However, he acted as merely one of the donors, not as a sovereign coordinating relief efforts.³³

When the state finally did become, and perceived itself to be, what Schmitt

32 John F. Hutchinson, *Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project*, 22 INT'L HIST. REV. 1 (2000).

33 PATRICIA BELLIS BIXEL & ELIZABETH HAYES TURNER, GALVESTON AND THE 1900 STORM (2000).

called a total state³⁴ (a state whose apparatuses penetrate every sphere of life, and no aspect of human affairs is immune of it ever expanding mechanism of normalization, regulation, and legislation), disaster could not remain a foreign agent anymore and coping with it could not remain simply an option. It was the just option, of course, but it had also become the politically inevitable option. The change in the state's relation to disaster happened slowly, hesitantly, and at a different pace in different countries. The introduction and development of preventive, bureaucratic, medical, and political apparatuses for dealing with an unfolding disaster preceded the development of "early warning systems."³⁵ Civil associations and international bodies had preceded the state in developing professional tools,³⁶ kinds of knowledge, and principles of action aimed at preparing for and administrating disasters, but these institutions were quickly incorporated into existing and newly-established state apparatuses. Before the end of the First World War, the outline of a new contract between the state and its citizens became apparent: the universal draft and readiness for total war in exchange for a universal safety net that would cover future hazards and not only the most pressing needs of the present.³⁷ First individual accidents and then catastrophic events of a larger scale were

34 SCHMITT, *supra* note 10, at 6, 35, 92-93; John P. McCormick, *Introduction to id.* at xiii, xxvi-xxvii.

35 See, e.g., JOCHEN ZSCHAU & ANDREAS KÜPPERS, *EARLY WARNING SYSTEMS FOR NATURAL DISASTER REDUCTION* (2003).

36 The Red Cross was first established as a civic and international association. Very quickly it was nationalized by the different states and "swallowed" into their military and public health apparatuses and became a national enterprise, ready to be mobilized for national objectives. See Hutchinson, *supra* note 32. Another telling example is the failure of the Ciraolo Project in the 1930s to globalize the administration of disaster by establishing an international organization of mutual assistance among states that would have coordinated globalized disaster relief. The failure left each state with its own apparatuses for dealing with large-scale disasters; even the attempt to achieve a certain degree of coordination among states without an international body failed. See John F. Hutchinson, *Disasters and the International Order — II: The International Relief Union*, 23 INT'L HIST. REV. 253 (2001).

37 One can already see the outlines of this contract earlier. For example, in England during the Crimean war (1855-1856), governmental committees of inquiry were established under public pressure to find out why soldiers were dying in the thousands from epidemics and not war. The failure to protect the soldiers' lives before the battles or after they had survived them ultimately led to a change in government and to hygienic reform in the British army, led by Florence Nightingale. E.g., HUGH SMALL, *FLORENCE NIGHTINGALE: AVENGING ANGEL* 20-55 (1998). The political turmoil was the first of its kind and was closely associated with two new factors: the mobilization of the middle class and the dispatches from the battlefields that appeared in the daily press, accompanied by pictures and photographs.

included as moments of exception that must be foreseen and prevented by various acts of government. The occurrence of a large-scale disaster when these acts fail has come to be conceived of as an act of war that should be contended with by mobilizing the entire state apparatus, as if disaster were the enemy. A matrix of spatial segregation, ongoing inspection, individualization, and control over movement of living and dead bodies, objects, and signs that formerly characterized a plague-stricken city has become a potential mode of operation for a myriad of government branches that may be set in motion at any moment, in accordance with the prospect or actual occurrence of a large-scale disaster. For a growing and rapidly disseminated network of biopolitical apparatuses, sites of disaster have come to provide, at one and the same time, retroactive justification, pretext and rationale for further growth and development, free laboratory space, and an ultimate test.

Disaster is no longer a silent moment in the documented experience of the state, a mysterious event whose origin is always elsewhere, beyond the state's borders and horizon of expectations. In our time, disaster takes place within the realm of the state's expectations, as one of the most crucial moments in which the state in its entirety is tested, put on trial. For despite the state's preparedness and sophisticated warning systems and safety networks, disasters do occur, and there is always something unexpected, even unpredictable about them. In the catastrophic event (which might have been predictable and even actually predicted, but happened nevertheless), the sovereign himself is taken by surprise. This is the true state of exception. It is not declared by the sovereign but, rather, forced upon him, as though from the outside, even when it comes from within. Unlike the sovereign exception that includes by way of exclusion,³⁸ the catastrophic event turns something completely internal — a landscape, a seashore, a form of life, a group of bodies, ordinary means of transportation, a chemical factory, a power station — into an external, almost extraterritorial and devastating force that throws the inside outside. Disaster swallows up the state's interior, its cultivated land and civilized space, and turns them into desolated no-man's-land. In other words, if sovereignty is defined by the authority or actual power to declare a state of exception,³⁹ the catastrophic event certainly competes with the sovereign on initiating and establishing the exception.

When a catastrophe occurs, the state itself appears vulnerable, its order severely destabilized, its borders penetrated. A variety of foreign agents rush

³⁸ AGAMBEN, *supra* note 4, pt. I, ch. 1.

³⁹ CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5-7 (George Schwab trans., Univ. of Chi. Press 1985) (1922).

to the scene, no doubt in an effort to help, but also to reap the rewards for helping. In the new age of globalization, this scenario has become a common one, indeed one of the hallmarks of contemporary catastrophes: delegations from neighboring and far-away states, international organizations, the media, private groups and individuals all find their way to the disaster zone, thus eroding, intentionally or not, the stricken state's sovereignty, interrupting the continuity of its power, and spoiling the coherency of its reign. It is against this threat, not only against the disaster itself, that the state must act quickly and firmly and mobilize all of its resources. Therefore it is absolutely necessary to naturalize the disaster, to anticipate it, to re-interiorize its exteriorizing forces, and when it occurs, to prevent as much as possible its association with transcendent powers (disaster is not a message from the gods, it is not an expression of divine justice).⁴⁰ It is the sovereign's primary task to turn the calamity, as soon as possible, into an event that is perceived and treated as just another incident in a series of regular mishaps or accidents whose patterns and probabilities should have been assessed beforehand and will soon be recalculated so as to prevent future repetition of the failure. Safety networks (in the form of means of evacuation, preset insurance plans, ad-hoc budgets, etc.) that should have operated to minimize the effects of these accidents should now be rebuilt or improved.

Sites of disasters have, hence, become one of the most conspicuous manifestations of the state's totalizing power, the most proper arena for its reassertion and reaffirmation. This has become the case regardless of whether the state succeeds or fails in prevention or excels or falls short in its relief efforts, for in all cases when the state apparatuses face an extreme situation of emergency they reveal, in what they achieve and in what they fail to achieve, the state's claim to totality as well as its regulative idea — to perfect providential care, the state's protective shield. The only other alternative is for the state to retreat in a way that would impair, if not endanger, its claim to totality in every possible sense. In order to avoid such a retreat, the administrative state must be both omniscient and omnipresent, both within and outside its borders; nothing should escape its paternalistic gaze; nothing should occur unless it has been allowed to happen by the state and in a space designated for things of its kind. Any failure to achieve this perfect degree of control reproduces its simulation — a simulation of

⁴⁰ Another strategy could be to politicize disaster by relating it to the secret work of foreign agents, who would then have to be identified and fought against as the enemy from within.

perfect control by a total, totalizing state — and drives the state apparatuses to close the gap between the two.

The safety nets, ad hoc plans, systems of early warning, and preparatory work of different institutions in anticipation of coming disasters do not necessarily adhere to the rule of the state's universalistic duty to care for everyone and to ensure equal distribution of this care. Like other state apparatuses, these too certainly reproduce and often enhance social, economic, and ethnic differences, structures of inequality, and modes of discrimination. And yet, the institutions, technologies, and practices designed for preparing for disasters and for the management of life when they strike will fail to function if they follow existing lines of inequality, for the disastrous processes and catastrophic events likely will not conform to those patterns either. Indeed, although the poor, marginalized, and non-citizens are generally more exposed, more vulnerable, and less sheltered by the different protective shields provided by the state, epidemics, floods, earthquakes, and the like are hardly confined to poor ghettos or to the faraway, neglected countryside, or more accurately, they can be so confined only when the entire territory and entire spectrum of life of the population are being administered. The abandonment of designated individuals or groups in times of disaster is either the consequence of a failure on the part of the state (e.g., a poor warning system or a malfunctioning technology of relief) or the result of a decision made by a *potentially* providential state to withdraw its protection from some for the sake of others. In order to be cruel towards some of its subjects in times of disaster, the state must first be total and therefore *potentially* providential. In fact, as far as its structure or form goes, the total state is *potentially* providential as much as it is *potentially* catastrophic. Becoming catastrophic or becoming providential are two opposite results of the same moment of decision — the decision on the exception, which now means the decision on the state's relation to disaster; on the constitution of disaster as a site for the inscription of life and death in the system of power. For the providential state formation, the abandonment of a designated population is always an aberration of the system; for the catastrophic state formation, it is the fundamental rule upon which the system rests.

IV. THE CATASTROPHIC STATE FORMATION

We may begin our discussion of the catastrophic state by describing it as the mirror image of the providential state. Instead of care for and protection of lives, it is guided by indifference to the fate of the living; instead of conceiving itself as capable of reaching out to anyone in dire

distress and under duty to do so, the catastrophic state formation prides itself on its capacity and readiness to wipe out, when it deems necessary, any particular individual, or a multitude of anonymous ones; instead of anticipating the exception in order to preempt it, the catastrophic state is intimately involved with the production of emergencies. In the catastrophic state, the administration of disaster is a form of governance and a way of ruling, whether by directly generating disastrous conditions or by exercising clear and conscious discriminatory policies when coping with a disaster already underway. Whether the subjects of such a state are citizens and the extent of their vulnerability to disaster mediated in accordance with their political status (fully recognized citizens, impaired citizens, or non-citizens) is of marginal importance. For in the catastrophic state, citizenship, just like the system of law and the constitution itself, is always at risk of being suspended or ignored and the shield that protects some of the governed from the disastrous effects of their government's policies may be removed at any moment.

As explained, disaster compels the providential state to manifest its inclusive forces, to reassert its claim to be total and totalizing, only in order to leave disaster itself outside. For the catastrophic state, however, "inclusion" includes disaster itself and exclusion is aimed at the governed, those abandoned to the forces of nature or the rage of violent neighbors or targeted by state forces and their organized terror. The generation of disaster and distribution of its devastating effects in a planned and controlled manner mark the moment in which the state's totalizing claim and integrating mechanism are brought to perfection.

But spreading disaster may also be the state's means of conquering, colonizing, and expelling, of expanding beyond its borders or reaching overseas, thus erasing boundaries, blurring the distinction between territorial and extra-territorial grounds, the inner and the outer, the lands where the state laws apply and those in which the law has not yet been established. This might seem like a familiar mode of existence of nomadic tribes and expanding empires alike ever since antiquity. However, in the modern catastrophic state, boisterous expansion accompanied by mass destruction and the systematic use of violence do not constitute a mere form of warfare but rather a form of governing as yet ungoverned (or rebellious) populations. These destructive forces are not disposed of once submission has been achieved; rather, they are stored and suspended, ready to be unleashed anew in ever-more organized, precise, and sophisticated ways. The expanding state may constantly blur its borders, and its totalizing power may work like an exploding whirlwind, but it never forsakes its holistic aspirations. It spreads outward in order to consume the outside and to appropriate everything out

there — territory, people, and even the future. Ideally, the disasters this state generates are to function as the engines of its expanding whirlwind, the hole into which everything on its outskirts implodes.

This state formation is fairly new. The absolute power of destruction stored in the state did not appear on the historical scene and was not actualized until the nineteenth century. Moreover, this absolute power, of which no absolute monarchy could dream, did not make its way into the legal, theoretical, and ideological constructs of the state and did not become part of the popular political imagination prior to the 1920s.⁴¹ The temporal gap between theory and practice is much wider in this case than in the case of the providential state discussed above. Of course, human destructiveness has been manifest since the beginning of human history. Ancient empires left behind huge wastelands wherever their armies trod on their expeditions of conquest and punishment. Wars often culminated in the complete destruction of cities, city-states, and entire regions and in the annihilation of all their inhabitants. The nomad tribes that swept through cultivated lands and fortified towns wiped out entire civilizations, and sixteenth-century Spanish imperialism destroyed almost completely the native population and civilizations of Central and South America — the list may go on and on. However, in all of these cases, destruction was a means of warfare and a consequence of war and conquest, not a form of governance. Destruction preceded governance or substituted for it when governance was found impossible or undesirable. Only means of direct, spectacular violence could spread destruction vast enough to produce large-scale disasters, and these means did not necessarily constitute a state apparatus in the modern sense of the term: they were used by warrior tribes and private armies of princes and kings, but were never part of the ongoing art of government.⁴²

In order to fully comprehend the notion of the catastrophic state, it is not enough to think about cases of enormous human destructiveness. Two aspects of the state apparatus should be considered in relation to each

⁴¹ See *infra* Part V.

⁴² Seventeenth- and eighteenth-century critics of war, like Hobbes, Leibniz, and Voltaire, who clearly understood its destructive power, related the disaster of war to the absence of a properly centralized state (Hobbes), to corrupted human nature (Leibniz), or to human folly and the lust for power of a small group of princes who acted as warlords rather than statesmen (Voltaire). Kant, whom I have quoted above, clearly connected war to the constitution of the state, but he was far from ascribing to the state the destructive nature of war. Quite the contrary — when war is fought while respecting the rights of civilians, it may produce a sublime-like effect. KANT, *supra* note 1, at 110-11.

other: on the one hand, the state as a set of closely related apparatuses of domination and control with their imaginary unity and, on the other hand, the production of disaster as a form of governance. The paradigmatic case, that which brings to perfection the logic of the state as author and administrator of disaster, would then no doubt be the totalitarian states of the twentieth century. Anyone may be targeted — designated individuals as well as an anonymous mass of people who happen to belong to a certain group. The particular grouping of those doomed may be based on ideological categories (race, class, ethnic group, etc.), or on arbitrary bureaucratic categories, or on both at once. Violence is but one necessary, yet mostly marginal, means for the production of destruction. Other means involved are those used by different state apparatuses, bureaucratic systems for exercising the ongoing work of government: surveillance and discipline, classification, head-counting, and statistical calculation; the management of space and time; control of transportation and communication; intervention in the production and exchange of goods. The production and discriminatory administration of disaster have grown out of the state's expansion of biopolitical mechanisms and its constituting their continuation by other means or by the very same means but employed in different proportions. War itself has become one of these means through which biopolitics preserves and expands. However, the development of biopolitical apparatuses has never been a sufficient condition in itself for the emergence of totalitarianism; an ideological component that differentiates between those who could be abandoned in war or disaster and those whose rights should be respected is also necessary.

This differentiation between the two groups — those to be saved and those to be abandoned — is of crucial importance. On the one hand, the state's disastrous policies are usually justified and become legitimized by a providential promise directed at one sector of the governed population only. It is for the sake of the survival or redemption of the Aryan race, the workers, the revolutionaries, or the nation that so many people are sent to their doom. Only when the very survival of the nation or race or other chosen group is at stake or when redemption is delayed by sinners and the ignorant can the state's destructive forces be thus unleashed. On the other hand, the whirling nature of these forces puts everyone at risk, for the differentiation between the lives not worth living and the lives for whose sake so many are sent to their death is never stable. Hitler went from Jews to Gypsies to Communists to Slavs — only the ending of the war stopped his catastrophic machine. Stalin had to constantly reproduce those elements dangerous to the

revolution of which the revolutionary forces should be purified.⁴³ Nobody could be really safe before the final solution had been fully completed or the revolution fully consummated.

Totalitarian regimes set the perfect example of the catastrophic state, no doubt, but the unstable differentiation between those who should be saved or redeemed and those who can be forsaken, along with the capacity and willingness to use mass destruction as a way of governance and method of progress, cannot be limited to totalitarianism. Despite their tremendous impact, totalitarianism (at least as Arendt defined it⁴⁴) and systematic genocide have been relatively rare since their first appearance in the twentieth century; neither the regime nor the politics of death exhaust the possibilities of the catastrophic state formation. A perpetual cycle of exclusion, abandonment, and destruction and the protection of the well-governed from the rage, revenge, pollution, or viral infections of the ill-governed are not uncommon in today's world. Scattered slaughter, political production of famine, negligence, and inaction in the face of epidemic or ecological hazard, policies of early evacuation of endangered populations, systematic deconstruction and fragmentation of what used to be an integrated social space — all are cases in point. A continuum should be reconstructed here, not between totalitarian and liberal-democratic states, as Agamben suggests,⁴⁵ but between more and less powerful disaster-producing apparatuses and more and less explicit and purposeful use of these apparatuses.

Agamben's claim that the camp, which the totalitarian regimes of the twentieth century developed and used as their main instrument for the management of life and death, has become the "biopolitical paradigm of the modern"⁴⁶ should be reinterpreted in light of this continuum of catastrophic state formations. Agamben conceives the camp as paradigmatic because in and through this enclosed and spatially segregated space the very distinction between law and life has collapsed, exceptions have become the rule, and abandonment has become an orchestrated mode of existence, while power is exercised on bare lives with no mediation, inscribing its rules in the inhabitants' bodies, property, and space. Under these conditions, biopolitics may turn at any moment into tanato-politics, i.e., the administration of life becomes the administration of death, as the Nazi and Soviet camps clearly demonstrated. From our perspective, however, the camp is but one form of the

43 ARENDT, *supra* note 14, at 121-35; IGAL HALFIN, FROM DARKNESS TO LIGHT: CLASS, CONSCIOUSNESS, AND SALVATION IN REVOLUTIONARY RUSSIA (2000).

44 ARENDT, *supra* note 14.

45 AGAMBEN, *supra* note 4, at 131-33.

46 *Id.* at 117 (title of pt. III).

state's involvement in the production of disaster.⁴⁷ It is not the particular form of the camp that has become the hallmark of the catastrophic state, but rather the capacity and readiness to inflict wholesale disasters on designated parts of the governed population.

The reconstructed continuum I have in mind between more and less devastating disaster-producing apparatuses would be both chronological (for states appeared as authors and agents of disasters long before they had achieved the might that would allow them to destroy everything) and typological (for the readiness to use means of destruction along some ideological lines may always be mitigated by restraints imposed by remnants of other state formations — the providential state or the liberal-constitutional state). The totalitarian regime certainly occupies the extreme end of such a typological continuum. It is fully equipped and prepared to destroy everything and annihilate anyone and uses its destructive forces knowingly, intentionally, on targeted populations, according to a scheme of action whose discursive articulation is an essential element of that regime's ideology. Catastrophic states of lesser coercive power would be more limited in their destructive power, more inhibited in its use, and less explicit and articulate about it. In Rwanda, a planned and systematic genocide was interrupted by the fall of the catastrophic regime; in Congo, Sudan, and Angola, the state was too weak to employ its destructive means systematically; in Iraq, Saddam's regime targeted smaller groups and was more timid about its destructive policies. A state would stop being catastrophic not simply due to the diminishing power of its destructive apparatuses — sometimes the weakness of the state may also play a role in the generation of disaster — but only when the legal and ideological categories used to call for, direct, or justify the abandonment of a designated segment of its governed population become meaningless.⁴⁸

47 The camp is also one of the main forms of alleviation of disaster, when it is designated as a means of helping a population of victims — refugees, survivors of earthquakes, etc. The camp illustrates most vividly the fusion of the two state formations that have served as my point of departure. *See also infra* pp. 157-58.

48 Agamben claims that such categories must always be meaningful, that their activation is the *sine qua non* of political sovereignty, and that today, their activation, which was formerly applied to exceptional individuals, applies to very large groups and is witnessed everywhere, including in liberal-democratic states. I suggest turning this qualitative, ontological, and a-historical claim into a quantitative and historical one. The production of large-scale disaster is a matter of numbers and quantity, of bodies, space, and property, and the question of the total abandonment of the non-citizens is a matter of a certain contingent ideology and is not imminent to the very nature of political power. In this respect, the transition Agamben makes from the single *homo sacer* forsaken by the ancient sovereign and the masses abandoned

A more nuanced typology of catastrophic state formations exceeds the purpose and scope of this Article, but at least one type bears mention: it is the new, contemporary form of military occupation in places like Iraq, Chechnya, and Palestine (since the beginning of the second *Intifada*). In each of these cases and in Palestine first and foremost, destruction proceeds through a systematic fragmentation of space and through classification of the population that can legally inhabit each cell of the dissected space. This method may have already brought the Palestinians to "the verge of humanitarian catastrophe," whose suspension, without eliminating its threat, has become a main strategy of the ruling apparatus. The governed are targeted not for what they have done and not simply for what they are, but for being in the wrong place.⁴⁹ The clearest examples of less extreme catastrophic state formations, however, are those that preceded the totalitarian regimes of the twentieth century and co-existed along with them outside of Europe, in Europe's colonies across the globe.⁵⁰ At an early point in its development, colonialism took an aggressive form and turned from an adventure of private entrepreneurs into an undertaking of the state.⁵¹ It was then that the state's destructive power took a course of its own. The conquered lands, which soon became vast zones of exception for the conquering sovereigns, turned into a space for experimenting with and developing apparatuses of destruction. These apparatuses did, of course, include warfare, from night raids to massacres in broad daylight, but they also entailed much more: the entire slave industry, spatial organization of control, bureaucratization of the native life-world, trade regulations, ethnography, demography, and various types of bureaucratic knowledge, barbed wire and concentration camps. All of these have been integrated at one point or another into the technologies of destruction.

Some of the new techniques were developed by economic actors and their private armies and some by religious missionaries, but regardless they were gradually incorporated into the consolidating state apparatuses. As these apparatuses grew and developed, the fusion with the apparatuses

today is careless. The distinction between one who is singled out and the many that are turned into an anonymous mass is crucial and cannot be overlooked.

⁴⁹ See Ophir & Azoulay, *supra* note 16, at 17-19.

⁵⁰ This understanding of colonialism as a typological (and not necessarily causal) prelude to totalitarianism is one of Arendt's main contributions in her *Origins of Totalitarianism*, ARENDT, *supra* note 14, especially in its second volume dedicated to Imperialism.

⁵¹ This happened at different moments in the history of different colonialist states.

of relief and protection found new forums and was driven by new incentives, first, in relation to the colonizers and, later and partially, but very significantly for the ideology of colonialism, in relation to the native populations.⁵² The main point was that with the emergence of colonialism, the modern Western state became involved for the first time and on a massive scale with the administration of the lives of subjects it had no obligation to protect and whom it could forsake even without proclaiming an emergency, for the exceptional status of the native was inscribed on his skin and lands from the outset. Colonialism became a bureaucracy of the exception and, hence, potentially an administration of disaster for the native populations.⁵³ The shift from domination and control, which could involve exploitation and oppression but also development and education, to mass killings or a socio-economic production of "natural" disasters did not have to occur through war, legislation, civic consent, or any form of sovereign decision. Rather, it was the "natural" continuation of domination by other means. Although the colonizers' discourse hardly went so far as to declare the colonized population to be superfluous (as the Nazis treated the Jews, some other "inferior races," and, finally, the Germans themselves),⁵⁴ colonialism often acted as though the colonized were just that. The justifying ideologies have changed several times since the beginning of colonialism and took new forms when the destructive apparatuses migrated back to Europe and spread to the Near and Far East. But the principle that kept this entire technology together has remained the same: the state administers the lives of non-citizens who may be killed without anyone being punished, and, if necessary, may be eliminated as nothing more than waste. The state's *raison d'être* is the perpetual exclusion of these non-citizens and the protection of the others from their rage, revenge, or contagious pollution.

The emergence of totalitarian regimes in Europe proved that once the apparatuses of destruction operate, they may be turned inward as well and that Europe, too, may be colonized and systematically destroyed. The same

52 One paradigmatic and telling example is the story of Florence Nightingale. Back in London after her Crimean expedition (whose aim had been to cure sick soldiers and care for the wounded, but ended up in disaster) and equipped with knowledge gained in the context of the "hygienization" of London led by Chadwick, Nightingale extended her activity to the British Army in India and proposed a full set of spatial, organizational, and paramedical reforms. SMALL, *supra* note 37.

53 I owe the interpretation of colonialism as a bureaucracy of the exception and the link between Arendt's "imperialism" and Agamben's "state of exception" to my friend, Yehuda Shenhav, whose published work on the subject is forthcoming.

54 Cf. 3 ARENDT, *supra* note 14, at 157.

lesson was later repeated in China and East Asia. In all of these cases, the state devoured its subjects, usually those whom it governed as or had made into non-citizens, and presented this process as a necessary condition for its very survival. Something like the divine violence that Benjamin described as that which is totally separated from the political order has been set in relation to the law, in the form of its total negation or perpetual suspension, and has become a necessary condition for the existence of that order.

V. THE POLITICAL THEOLOGY OF THE CATASTROPHIC STATE

A. Back to the Bible

Much like the providential state, the catastrophic state has implied (but rarely openly acknowledged) its own theological model. It is easy to exploit here an obvious Faustian element manifested in the catastrophic formation and reflect on the predicament of Man who dared to kill God and take his place only to find himself taking the role of Satan. But it is with the state, not with the abstract figure of modern man, that we are concerned here. The figure that may take God's place is the sovereign — i.e., the ultimate authority that is authorized to author or orchestrate a disaster and who has some specific attributes worthy of consideration.

First, however, we should explore the attributes of the God that the sovereign replaces, as it is not immediately clear who this God of total destruction is and where he originates. Christian visions of apocalyptic calamities and the last judgment do not easily conform to the image of the catastrophic state we have just portrayed. The Christian apocalyptic model is hardly applicable here, if only because of the ongoing, routine-like, and often perpetual nature of the production of disaster in the catastrophic state, which cannot be conceived of with the same finality as that of the last judgment.⁵⁵ Apocalypse is meant to bring history to an end and free those who survive that end from the realm of power relations, whereas for the catastrophic state, disaster is a form of governance imbued with

⁵⁵ Even if the "Final Solution" had been intended as an end to the "Jewish problem" alone, the disastrous Nazi policies had a logic and dynamic of their own. For the "population policy," see Suzanne Heim & Götz Aly, *The Holocaust and Population Policy: Remarks on the Decision on the "Final Solution,"* 24 YAD VASHEM STUD. 45 (1994). For perpetual destruction as an immanent aspect of Nazi ideology, see URIEL TAL, POLITICAL THEOLOGY AND THE THIRD REICH 197-200 (1991); Philippe Lacoue-Labarthe & Jean Luc Nancy, *The Nazi Myth*, 16 CRITICAL INQUIRY 291 (1990).

power relations. Christian theological interpretations of natural disasters in the Middle Ages and early modern period cannot be of much assistance either. Under these interpretations, disasters were often explained in terms of signs, anticipation of, or the actual advent of the apocalypse, not as means of the divine government of the world. We must thus look elsewhere for the God that was replaced by the sovereign in the catastrophic state — though not far away.

One of the first and certainly clearest theological models of the catastrophic state is to be found in the Hebrew Bible: the figure of God we are looking for is the God of the Ancient Hebrews, whose story is unfolded and persona delineated in the *Pentateuch*. After all, the Biblical God⁵⁶ presents one of the earliest and most extreme cases of ruling by generating disasters, and the effective history of the model this set has been very long indeed. When Christians interpreted calamities not as signs of a coming apocalypse but as expressions of divine justice that could be attributed to various actual sins and as evidence of God's ongoing interest and intervention in daily human affairs, they were resorting to precisely that figure of deity, a God who avenges the sins of the flood generation and of all the idolaters, corrupted, and licentious people who later reemerged in the Biblical world. In other words, the first and long-lasting model that describes the sovereign's distinction between the pure and the impure, the included and the excluded, and that accounts for his devastating relation to the excluded, abandoned life that results from this distinction is not to be found in the Roman law of *homo sacer* on which Agamben bases his politico-theological elaboration of Schmitt's concept of sovereignty. Rather, the model can be found in the supreme sovereignty expressed in the most spectacular disasters, from the flood, to Sodom and Gomorrah, to the Egyptian plagues, and to the annihilation of Korah and his faction.

In the beginning, disasters were the business of God alone (humans were used as proxies only), and they remained so until very late in the history of the West. From the flood to the destruction of the Second Temple, God appeared as an almighty generator of catastrophes. When God retreated from the arena of history, for many years disasters continued to be conceived as traces of his actions, anger, and justice, as messengers of his proclaimed and hidden schemes of action. Destruction of human life on a massive scale bore the marks of his actions, expressed his intentions, and testified to the

56 By "Biblical God" I refer always only to the God of the Hebrew Bible.

way he governs the world, but also to his failure to achieve what he had planned.⁵⁷

This aspect of divine sovereignty has often been overlooked by interpreters of the Bible, as well as by historians who have documented the histories of cultures who took the Bible as their first and most fundamental text. The Hebrew Bible established the basic link between God and catastrophe, which the West did not relinquish until the end of the eighteenth century: God needs the occurrence of catastrophes in order to make himself visible to man, and he relies on those unforgettable catastrophes and uses their memories to secure his place in men's imaginations. Those people who survive or witness a catastrophic event need God for the inexplicable happening to take on meaning and direction. Thus catastrophe is a form of divine revelation that establishes divine power and authority.⁵⁸ As the supreme power, God is the true hero of all the stories of disaster, and the affirmation of his supremacy and justice is the ultimate meaning of these stories. Catastrophe is the exteriority of divine justice, the traces of which are discovered after the fact, after judgment has been made; divine justice is the interiority, the profound meaning, of the catastrophic event, a hidden crypt that demands to be excavated.⁵⁹ Although he was never under genuine threat — this ultimate difference between the mortal and immortal sovereign cannot be effaced⁶⁰ — in the presence of sinners, God's attitude and actions may be compared to the response of a person threatened by the most extreme danger. Indeed, sins and evil doings constantly endangered (not him but) his plans and jeopardized his best historical designs. And when he reacted, there seemed to be no limit to the destructiveness of his power. Exercising the most extreme measures, from plagues to earthquakes, he did not simply punish or eradicate the last traces of sin and evil, but also worked to reestablish himself as King of the Universe, Lord of the Hebrews, the ultimate authority whose word is a law and whose will prevails over any law. Catastrophe was his way to demarcate from within, for those who were subject to his rule, the totality of his kingdom,

57 For many, these disasters still bear these marks today, but no contemporary state or statesman will be content with a theological interpretation of disaster.

58 Among the many cases of revelations told in the Bible, only the revelation at Sinai did not involve catastrophe. However, there, too, its shadow hovered over the entire event: "Whosoever toucheth the mount shall be surely put to death." *Exodus* 19:12, 13.

59 I have further discussed and elaborated this theme in Adi Ophir, *The Birth of Theocracy out of Catastrophe* (2005) (unpublished manuscript, on file with author).

60 As we shall see below, *infra* pp. 150-51, this difference is less trivial but also less crucial than it appears at first.

the chaos and nothingness from which it emanated and into which it could fall back when necessary.

Facing catastrophe, earthly powers at most could interpret the event to understand it either as yet another repetition of the first constitutive catastrophe or else as foreshadowing of the final one, whose coming has been foretold. Images of catastrophes — remembered, told, or foretold — have always been an important instrument in the hands of sovereigns for domination and manipulation of the multitudes, but they were not particularly helpful when catastrophes occurred. As evident from the stories of the plague told by Defoe, when a truly catastrophic event occurred, the earthly sovereign was mostly excluded from the site and his subordination to the true, divine sovereign of the world was made manifest. Pombal, the Portuguese dictator, may be associated with ingenious urban planning and administrative reorganization, but on the morning of November 1, 1755, he was completely impotent and useless, something that lasted for a few more days, at least. Divine judgment, when it was recognized, expropriated the judgment of the secular authorities and threatened their order. Therefore, ever since the age of the Pharaohs, heavenly plagues posed the greatest danger and set the clearest bounds to any political power.

It is important to note that God, following this biblical image, was very mighty, indeed, but not entirely omnipotent: from Adam to David and beyond, his chosen people betrayed him, his plans failed, and he was often forced to change his mind, not always doing what he had first wished to do. He was incorruptible and transcendent, no doubt; he was king of the universe, and he was the foundation and source of his own authority. But all these aspects of his absolute power were not enough to convince his subjects and to ensure their obedience. The one feature that made his power truly absolute — or, at least, that made his absoluteness visible and effective — was his ability to destroy anything as he wished. Thus, God was truly omnipotent in one single respect only: there was nothing he could not destroy. This was not enough in order to govern humankind, perhaps, at least not in the full sense of the word, but it was enough to prevent others from governing to some extent or altogether. From the point of view of the human individual, disaster was punishment for sin; from the divine point of view, punishment through disaster was a way to rule the world, to distinguish between faithful and obedient subjects and sinful rebellious ones, to separate the elected from the neglected, and sometimes to salvage the former by abandoning the latter and sending them to their doom.

Moreover, sometimes God's miraculous destructions were associated with providence and redemption. This was the case with the ten plagues in Egypt and the crossing of the Red Sea and when God commanded the sun to

stand still to let Joshua destroy his enemies in the valley of Ayalon. But these are the exceptions that prove the rule: usually God's power to wreak disaster was exercised to punish, purify, destroy, and annihilate, with no redemptive purpose and no redeeming effect in sight. The few singled out to be spared, like Noah and Lot, were, of course, saved, but the catastrophe was not created for their sake. It is not even true that the providential God came into play where his elected people were concerned (as the exceptional story of the exodus from Egypt might mislead one to think), for this people endured a series of plagues and other calamities in the desert, in which thousands of anonymous men and women perished.⁶¹ Most of the time, the Biblical God promised providence but exercised destruction. If he was the true sovereign of the world, it is not because he had created it in six days or because he closely and providentially looked after all of its creatures, but because he was considered capable of destroying the entire world and its creatures, in a single blow, and because he often made this capability visible. It is this power for absolute destruction that constitutes the absolute asymmetry between his authority and the power of his subjects, and it is precisely this power (and the promised, always postponed redemption associated with it) that constitutes him as the theological model for the catastrophic state.

B. Back to Carl Schmitt

The theological model for the providential state is based, as we have seen, on a secularization of certain divine attributes through their incarnation in the political world and their radical conceptual and material transformation. The theological model for the catastrophic state is of a different type. It is based on the isomorphic relations between the divine and earthly sovereigns. Secularization here is achieved through a kind of replication; divine attributes are not incarnated politically and transformed conceptually and materially but simply displaced, more or less intact, from one sphere to another. The state does not complement what God has failed to achieve, but, rather, imitates the destructive power that God has already perfected. This is the "political theology" mode proposed by Carl Schmitt in an essay thus entitled, and it follows Schmitt's understanding of secularization as presented in that essay.⁶²

61 It is interesting to note that while the victims of these calamities are mostly anonymous, their numbers are often mentioned with precision, especially in the book of *Numbers*.

62 SCHMITT, *supra* note 39; for secularization, see *id.* at 34-39.

There are two related reasons for delving more closely into Schmitt's model. First, by pressing the analogy between divine sovereign and earthly sovereign, Schmitt provided us with an effective concept of modern sovereignty and a clear insight into the theological presuppositions of the modern state. Despite this insight, Schmitt interestingly *failed* to draw that aspect of the analogy we have just indicated between the catastrophic state and the God of Sodom and Gomorrah. This lacuna is the second reason for reconsidering Schmitt's discussion. It is a telling omission in that it is indicative of some of the difficulties involved in grasping the catastrophic state formation and theorizing about it, even for the generation that went through the horrors of the First World War. Overcoming Schmitt's lacuna will enable us to fill in a missing element in his analogical structure and make it timely or timelier than it has perhaps ever been.

"Theology" in Schmitt's "political theology" is not a matter of religious concern regarding God's attributes, but, rather, a label for the analogy between these attributes and those of the political sovereign. The sacredness of the state and the unbounded authority of its sovereign are closely analogical to the sacredness of God and his absolute sovereignty. The state is a God-like creature, but the resemblance between the two also implies a clear separation as well as clear hierarchy between the two realms — religion, as a social sphere of action, is subordinated to the law of the state and, more importantly, to the will, decrees, and dictates of the sovereign. The law of religion is no different in that respect from the law of the state, for both may be overcome by a sovereign decision. At the heart of Schmitt's analogy stands a peculiar relationship between the highest authority and the law — namely suspension. At the moment of exception, the political sovereign suspends the state's law and the divine sovereign suspends the law of nature. Declaring a state of emergency is the equivalent of God performing a miracle. In both cases, the sovereign's unlimited power is expressed in its ability and authority — though the two terms cannot be distinguished anymore — to suspend the law and act without being restricted by it, in the lawless realm opened by the suspension.

This moment of suspension guarantees the absolute power of both sovereigns; suspension is the form of the radical asymmetry in the power relations between the sovereigns and their subjects and the basis for their claims to totality. Clear and unyielding asymmetry in power relations is a fundamental or constitutive element of political power and what distinguishes political authority from other forms of power relations. Sovereignty is an absolutely asymmetrical relationship because the obligating force of any reciprocal arrangements and any constraints placed on the highest authority is jeopardized when a state of emergency

is declared. For Schmitt, it is the power to suspend the legal order — and not the absolute power of destruction (of the legal order or of anything else for that matter) — that guarantees this asymmetry and constitutes the true moment of sovereignty. Due to this authority the sovereign is "at the same time, outside and inside the juridical order . . . the one to whom the juridical order grants the power of proclaiming a state of exception and therefore of suspending the order's own validity" and of deciding "if the constitution is to be suspended *in toto*."⁶³

Schmitt can guarantee the absolute superiority of the sovereign without admitting, or even considering, that absolute power to destroy can already be found in the figure of the Biblical God. Three modes or expressions of the sovereign's claim to absolute power and of radically asymmetrical power relations are implied by his paradoxical position. By being at one and the same time inside the law and outside it, having the power and/or authority to suspend and reconstitute the law to which he is subject, the sovereign transcends the juridical order and cannot be subsumed by it. Because the sovereign anticipates, on the basis of the concept of the sovereign exception, what lies outside the realm of law, there is nothing that is not always already included within the scope of his power and hence the totality of his reign. And because the sovereign's power to suspend the law (or the constitution) is authorized by the law but, at the same time, can bring an end to any legal order, sovereign power and the law are forever trapped in a vicious circle in which each one is simultaneously an extension and instrument of the other and the other's very foundation: the law by authorizing the sovereign and the sovereign by not suspending the law. Sovereignty is a self-referential relationship that has no exteriority and, hence, its claim to boundlessness.

Thus, sovereignty, in the full sense of the term, is an unbounded authority. How sovereignty is established is irrelevant. What matters is that once it has been founded, it has no (formal, legal, moral, or theological) bounds. To be without bounds means to be absolute. Schmitt's succinct formulation captures it perfectly: "Sovereign is he who decides on the exception."⁶⁴ No matter what kind of regime is at stake — legal or administrative, moral or theological — its rule does not bind the sovereign. There is no sovereignty when power is bounded, when a privileged relation to the exception is not recognized as part of the sovereign's authority. In this respect, there is no

63 These are Agamben's words, paraphrasing and quoting Schmitt. AGAMBEN, *supra* note 4, at 15. The quote from Schmitt is from his *Political Theology*. SCHMITT, *supra* note 39, at 7.

64 SCHMITT, *supra* note 39, at 5.

difference between the divine sovereign and the earthly sovereign. Schmitt correctly set their relationship as one of strict analogy.⁶⁵ But somehow the analogy, as he formulated it, fails to capture an obvious matter of fact that cannot be overlooked: the eternity of God, the divine sovereign, and the mortality of the earthly sovereign. Human sovereignty is corruptible and can be destroyed by other powers that lay claim to the supreme authority. This simple truth, which even Hobbes had to admit and with which his theory of sovereign power could not contend, means that the Hobbesian sovereign remains forever in a state of nature, always exposed to the brute forces that threaten him.⁶⁶ In this sense, he is on par with the *homo sacer* whose life he has forsaken.⁶⁷ The divine sovereign is exempt from this predicament because he is an incorruptible that can corrupt everything. The king may never die, but he can be killed.

Hence there seem to be *two* ostensible differences between divine and human sovereignty: the incorruptible nature of the former versus the corruptible nature of the latter and the infinite power of destruction versus the unbounded authority of suspension. Both are missing from Schmitt's theological-political analogy. Closer examination of these two differences reveals that the former may be explained away, only to make the latter stand out as even more peculiar than it at first appears.

Corruptibility. In an interesting critique of Kantorowicz' *The King's Two Bodies*,⁶⁸ in which the origin and meaning of the phrase "the king never dies" is thoroughly reconstructed and explicated, Agamben argues that the great historian did not understand the problem that the King's funeral rites, in which that phrase was embodied, were devised to solve. It was not temporal continuity of power that was at stake, he claims, but the absolute nature of sovereign power: "the metaphor of the political body [that multiplies the king's physical body] appears no longer as the symbol of the *perpetuity* of *dignitas* but rather as the cipher of *the absolute* and inhuman character of sovereignty."⁶⁹ The continuity of sovereign power, Agamben then adds, is an effect of its inherent excess and (claim to) absoluteness. Agamben brings Schmitt's logic to its ultimate conclusion: The absolute nature of sovereign

65 *Id.* at 36 *passim*.

66 Hegel spells this out most explicitly. GEORG WILHELM FRIEDRICH HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* 366-70 (Allen W. Wood ed., H.B. Nisbet trans., Cambridge Univ. Press 1991) (1820).

67 AGAMBEN, *supra* note 4, at 105-07.

68 ERNEST H. KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY* (1957).

69 AGAMBEN, *supra* note 4, at 101 (emphasis added).

power that the metaphors and ceremonies at monarchs' funerals on the eve of modernity express cryptically and Schmitt's concept of sovereignty articulates explicitly denotes, according to Agamben, "the capacity to constitute *oneself and others* as *life that may be killed but not sacrificed*."⁷⁰ The sovereign's unbounded destructive power is already contained within this formulation.

Agamben is not interested (explicitly, at least) in what Schmitt called political theology,⁷¹ but his formula betrays (and, to some extent, implies better than Schmitt's) the precise isomorphic relations between the divine sovereign and earthly sovereign. For Schmitt ignored not only the obvious difference between the mortal power and immortal power, but also the fact that human sovereignty is exposed, as bare life, to the violence of others, in that it is a potential victim of the claim of others to the right to declare the exception. Like the earthly sovereign, God forsakes life, kills so many without ever being punished, annihilates without letting those sent to their doom turn their senseless deaths into acts of sacrifice. Every creature is equally exposed to God's death orders, and God alone decides when death will come and which death will be considered a sacrifice within the economy of sin and exoneration that he has established. This is the manner in which he wiped out by flood all living flesh from the face of the earth (exempting Noah and his family); this is how he acted in Sodom and Gomorrah (exempting Lot); this is how he crushed the Egyptians, struck down the infidels in the desert, and sent Korah and his company to the bowels of the earth.

But does God also constitute *himself, not only others*, as life that may be killed but not sacrificed? This is clearly impossible. Because he is incorruptible and immortal, beyond life and death, perhaps beyond time itself (though it really does not matter), he cannot be killed (and this is what really matters — hence the immense importance of Nietzsche). The difference between earthly and divine sovereign appears less dramatic, however, if we stick to our Biblical figure of God and consider his honor or *dignitas (kavod)* instead of his body, recalling that God conceives of sins as

⁷⁰ *Id.* at 101 (emphasis added).

⁷¹ As we have noted, Schmitt's *Political Theology* refers to the theological categories that have been transferred from the realm of the divine to the sphere of earthly politics. Agamben is not questioning the theological residues of sovereignty but its ontological structure, i.e., the very being of sovereignty and the sovereignty of Being. But in truth, his analogy is more consistent and far-reaching than Schmitt's. His sovereign precedes the very distinction between the religious and the political, the sacred and the profane, and makes this distinction possible, in the same way that God precedes the very distinction between the sacred and the profane, which he proclaims and establishes.

injuries inflicted upon his *dignitas*, especially when the sinners are his elected subjects,⁷² and that these injuries can be interpreted as his sacrificial offerings to his own people. God cannot be killed, but by revealing himself to his people he exposed himself;⁷³ his reign was constantly threatened by betrayal and disobedience, until it finally collapsed, at least as a political dominion, when he left his temple and allowed gentiles to destroy it and to exile his people. It is precisely at this point, when his suffering may be interpreted as sacrifice, that those who betrayed and rebelled against him cannot be punished, at least not directly, and probably not in this world. Agamben's formula for *homo sacer's* abandonment, with its negation of both punishment and sacrifice, loses its applicability here. God is not *sacer*, even when his sovereignty is found vulnerable. The sacrificial element *is* maintained in order to give meaning to the exposure and vulnerability of divine sovereignty, while punishment is detached from any particular deed or person and may be ascribed to any calamity. But vulnerability, the threat of being exposed to lawless rebellion and ruthless disobedience, is maintained as a crucial attribute of sovereignty. If we hold to the Biblical figure of God, the analogy between the divine and human sovereigns may be kept almost intact despite the lacuna in Schmitt's argument, and against Agamben's insistence on the status of the sovereign as *homo sacer*.⁷⁴ And indeed, it is the vulnerability of the sovereign, not the negation of his sacrificial death, that counts in the end.⁷⁵

Destructiveness. The second lacuna in Schmitt's analogy concerns the different bases of the asymmetry in the power relations between the sovereign and his subjects. This omission cannot be easily dismissed, because it relates to the principle that lies at the heart of the Schmitt analogy. As we have seen, for Schmitt, it is the suspension of the law — of nature by God or of state law by the human sovereign — that establishes and marks the absolute superiority of the sovereign. But clearly, there is much more to God's miracles, at least to the Biblical ones, than the suspension of the

72 "A son honoureth his father, and a servant his master; if then I be a father, where is mine honour (*kvodi*)? And if I be a master, where is my fear? Saith the Lord of hosts unto you, O priests, that despise my name." *Malachi* 1:6; "O ye sons of men, how long will ye turn my glory (*kvodi*) into shame? how long will ye love vanity, and seek after leasing?" *Psalms* 4:2.

73 God's glory (*kavod*) is his most visible aspect; its exposure is considered rare and dangerous. See, e.g., *Exodus* 16: 7-10, 33:17-23.

74 AGAMBEN, *supra* note 4, at 102-03.

75 That political assassination may be considered a sacrificial act and the murdered sovereign a sacrifice is plainly demonstrated by many political assassinations, including that of Yitzhak Rabin.

laws of nature. These spectacular interventions over the course of natural and historical events are scenes of punishment and revenge, of horror and devastation. They usually involved sensational victories over sinners and rebels in which numerous people perished without a trace. Miracles, if we read them in their proper Biblical context, are expressions of God's truly unbounded capacity for violence. Declaring the exception, if we read it in its proper juridical context, is not *a burst of actual violence* but a proclamation of *its potentiality*. In this aspect, the sovereign, while no different from the rebel, partisan, or terrorist,⁷⁶ certainly differs from God.

It seems that Schmitt could maintain the analogical structure on which his entire concept of political theology is based despite the corruptibility of the human sovereign, but only because of a piously timid and partial representation of God's miracles. Bearing in mind the catastrophic scenery of Biblical miracles, one wonders why Schmitt could not see, or refused to admit, this difference between an actual burst of unbounded violence and the transgression of boundaries that contains potential violence. His concept of sovereignty consists of absolute authority and of ultimate decision-making power; it implies unlimited authority to draw the line demarcating the inside of the juridical order from the outside and to destroy anything that happens to lie in the exteriority of the law. But Schmittian sovereignty *does not* encompass what would later become the hallmark of totalitarian power, namely, that unbounded *capacity, readiness, and will* to annihilate whatever exists in those spheres of exception where the sovereign's mere word forces the law to retreat. The totalitarian state form is often portrayed, erroneously, as a radicalization of Schmitt's concept of the exception, on the one hand, and of the friend-enemy distinction, on the other. But this ascription is misguided. The absolute power of Schmitt's sovereign consists in his power to intervene, interrupt, and suspend, not in his power to destroy. And, most importantly, although sovereign intervention cannot be derived from any rule, it is nevertheless not completely arbitrary; it is basically a more or less reasoned response to great danger: "the exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like."⁷⁷

Disaster, for Schmitt, still loomed on the outside, conceived of as an external agent, an unwelcome guest, not the welcome or tolerated result

⁷⁶ Later in his life, Schmitt well understood this point. See CARL SCHMITT, *THE THEORY OF THE PARTISAN: A COMMENTARY ON THE CONCEPT OF THE POLITICAL* (A.C. Goodson trans., Mich. State Univ. Press 2004) (1963).

⁷⁷ SCHMITT, *supra* note 39, at 6.

of a premeditated course of action, and certainly neither a strategy nor a form of governance. Disaster was not yet a constitutive element of the state form that Schmitt had in mind when he wrote his *Political Theology*, not even of the total state about which he would speak on the eve of the Nazi ascent to power. Even when he wrote about war in relation to the concept of the political, what counted, and what was thought through, was not the disastrous aspects of war. For Schmitt, what makes war such a crucial moment in the experience of sovereignty and the constitution of the political is neither its devastating results nor the victory it promises, but the risks, the readiness to sacrifice, to die for the "political grouping" or for its sovereign.⁷⁸ The enemy may be beyond punishment and sacrifice, perhaps, but for the sovereign and his people, the crucial, most important aspect of war is its sacrificial aspect; the sacrifices citizens are called upon to make are much more significant than the enemies they are ordered to defeat and sometimes even to annihilate. One is willing to sacrifice, unto death; ergo one is (political), that is, exists (politically) in the full sense of (human) existence. What Schmitt failed or could not yet see was how war had become not only a condition for the political state but a continuation and extension of biopolitics, sometimes through other means, sometimes by the very same means. Schmitt still did not see how the administration of lives in-between wars in order to protect or abandon them mattered for the constitution of sovereignty, and he therefore could not see the continuity of war and biopolitics or the intimate contiguity between sovereignty and disaster.

Political Theology was written in 1922. The slaughterhouse of the First World War was still a fresh, painful memory for every European. And yet Schmitt, the theorist of the state, refused to let the madness of total war enter into his political theory. He again refused to do so in 1932, when he explicitly excluded the annihilation of the enemy and warned against confusing enmity with hatred.⁷⁹ His earlier work may be a response to Walter Benjamin's enigmatic essay *Critique of Violence*,⁸⁰ but on the question of absolute destructiveness, the two thinkers were in fundamental accord. Benjamin, even more emphatically than Schmitt, projected it back onto God. Divine violence is "pure," "immediate," and "law destroying"; it strikes without threatening, expiates without punishing, is "lethal without

78 CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* 34-36 (George Schwab trans., Univ. of Chi. Press 1996) (1932).

79 *Id.* at 28-29.

80 1 WALTER BENJAMIN, *Critique of Violence*, in *SELECTED WRITINGS* 236 (Marcus Bullock & Michael W. Jennings eds., 1996).

spilling blood."⁸¹ Benjamin insisted on its strict separation from the human domain, especially from the realm of law, with which it has only one form of relations — absolute negation (which should be distinguished from Schmitt's notion of exception and suspension — in the case of divine violence, the law is not suspended, according to Benjamin, it is utterly annihilated). For Benjamin, this negation of the very existence of the law, and not any difference in sheer magnitude, is what distinguishes — absolutely — divine from mythological (law-constituting, hence political) violence. No analogy can be drawn between the two. In the human domain, violence may abolish an old system of law, constitute a new one, and enforce it. But complete destruction that does not stem from transgression of the law and does not aim at establishing a new law belongs only to God.⁸²

My point in this long digression has been to demonstrate a claim that could be presented here only by way of example, namely, that even in its most radical forms, the political theory that predated the Second World War gave no place to what soon became commonplace: the absolute power of destruction stored in the state. Well into the twentieth century there was still one crucial feature of divine power that remained beyond the scope of the state's expectations: the power to destroy everything. Only with the emergence of the totalitarian state, which Schmitt and Benjamin experienced from such opposite perspectives, did the state's absolute power to destroy gradually make its way into political theory. It was only at that point, when the destructive nature of the catastrophic state was demonstrated on European lands and not in faraway colonies inhabited by savages, that the state could appear as author and administrator of disaster and that the capacity to produce disasters of Biblical magnitude could be grasped as crucial for the state's sovereignty. The secularization — in Schmitt's sense of this term — of divine power was completed. While the providential state is a rationalization and bureaucratization of private providence, the catastrophic state is a displacement of the God of Sodom and Gomorrah and his reenactment in contemporary geo-politics.

81 *Id.* at 249-50.

82 For Benjamin, the notion or image of divine violence was, so it seems, an attempt to conceive of a complete separation between law and violence, which the political realm could never achieve. If Schmitt's text is thought of as a rejoinder to Benjamin, it appears to consist in the willful acceptance of violence within the realm of law, showing its absolute necessity for political power. The absolute destructiveness of divine power has gone unnoticed.

VI. CONCLUDING SPECULATIONS

In the nineteenth century, Marxists and anarchists dreamt about the abolition of the entire social order and the destruction of the state, but not about states of destruction. For them, the bourgeois state was tantamount to a chronic disaster that was constantly getting worse for the proletariat; it was an instrument of power that helped the bourgeoisie exploit, oppress, impoverish, alienate, and dehumanize the working-class, abandoning the workers and their families to ignorance, disease, hunger, and death. But the logic of this destruction, the motivation to bring it about, and its legitimization resided in the economic sphere, not in the state, whose apparatuses were conceived of as auxiliary to this process. Destruction was intrinsic to capital; its logic meant exploitation, but could also have meant increasing the consumption power of the masses. The destructive nature of colonialism too was for many years interpreted as an expansion of the capitalist system of production that followed the secret, victorious logic of capital. A reductive, Marxist-inspired understanding of the state formation that appeared with colonialism and its denial by the enemies of Marxism, progressive liberals and conservative reactionaries alike, may be one of the main reasons for the failure to grasp the catastrophic state formation before the consolidation of totalitarianism.

When the catastrophic state formation was finally articulated in the works of thinkers such as Franz Neuman and Hanna Arendt, it was immediately drawn into a dialectical understanding of modernity. From Adorno, Horkheimer, Heidegger, and Arendt to Foucault, Bauman, and Agamben, destruction has been intimately linked to progress and rationality. The development of providential state structures was not simply associated with this process but absorbed within it. The mediating ground between progress and destruction has varied — technology, the masses, "the social," biopolitics, or "bare life" — but it always serves to explain how the destructiveness of the state inevitably follows its potentiality as a providential agent.

The attempt here to reconstruct a politico-theological model for the catastrophic state and its juxtaposition with the politico-theological model of the providential state should be read as a step towards a clear differentiation between these two state formations and their historical dissociation. It has been accompanied by an attempt — sketchy, partial, and preliminary as it may be at this stage and in this context — to differentiate between two genealogical trees that have yielded and sustained for quite some time the two separated formations. Technologies of relief were not always and necessarily

part of the mechanisms of destruction; the process of their incorporation into state apparatuses and later development by the state was not always and necessarily a moment in the consolidation of the catastrophic state formation. It is not sufficient to argue that some forms of knowledge, practices, and techniques — like statistics or emergency medicine — took part, from the very beginning, in apparatuses that served both state formations; this fact does not explain the fusion between the two and certainly does not render this fusion necessary. Forms of knowledge, practices, and techniques do not operate on their own; rather they need to be inscribed into systems of power and articulated in legal, ideological, and other kinds of discourses. And some of these discourses and practices could have made (and may still make) a difference as far as the state's relation to the exception in general and to disasters in particular is concerned.

We should refuse to accept a reading of history that imposes the perspective of the present on contingent historical processes that could have evolved differently than they finally did. The ultimate fusion of the two state formations which today seems complete was not inevitable, and other, better alternatives are still thinkable. Genealogy allows us to think against the given-ness of the given and to grasp the possibility of other configurations of the real. Avoiding a dialectical, teleological mode of thought, we may consider a contingent crossing of two different processes and two distinct models of sovereign power (earthly and divine, political and theological) and of their corresponding state formations. We might even entertain the possibility that this contingent crossing has not abolished the divergence between the two formations and has not prevented their potential development in two opposing directions. The possibility of an open clash or of new, unheard-of hybridization between the two may exist. Clearly, a dichotomy no longer exists between the two models; if they are to clash, their encounter will not take the form of the clash between democracy and totalitarianism that has characterized the history of the West since the 1920s. It would be no less wrong to imagine their encounter as a clash between gated democracies and the infiltrating and widely disseminating brands of religious fundamentalism, accompanied by nomad terrorism as they might be. Although the agents of disaster and the agents of providence represent, if not embody, two different models of the state, they are no longer separated by territorial or national boundaries but, rather, by their relationship to the exception: the agents of disaster bring it about, whereas the agents of providence work to rule it out. The clash between the two will be conducted — in fact is already being conducted — not as a conflict between two subjects (states, armies, systems), but along the lines of struggles and power relations within subjects. Each of the models will be (is, in fact, already)

a viral interference in the structure of the other. Their fusion is an illusion even though it may be too late now to separate them into two distinct forms of government.

There remains the question of the law, or rather of a third state: the constitutional state.⁸³ In this state, the rule of law constrains providential aspirations and significantly limits, if not altogether excludes, catastrophic tendencies. But when the system of law has become a skeleton that bears and allows the explosive multiplication of a myriad of regulations and decrees that administer lives, bringing security and relief but also producing large-scale disasters, the constitutional state formation has long been absorbed into the other two models. Thinking, as one should, about the legal system as a discourse and set of practices that have been absorbed into and become inseparable from this network of regulations and decrees, inscribed into and merged with the lives and deaths of the governed multitudes, the idea of suspension of the constitution in times of emergency appears especially dubious and murky. Because law is so intimately interwoven into the bureaucratic apparatuses of the state and their biopolitical discourses, sovereign decision has been completely disseminated. Suspension has become a bureaucratic matter and it works continuously within the legal system. Its rare appearances as external interruptions by a "truly sovereign power" in "real states of emergency" should always be suspected as simulations fabricated through the ongoing work of power. A certain combination of the world of Kafka's *Castle* and the cellular space in the Occupied Palestinian Territories is already to be found across the globe, with different distributions and allocations of risks, evils, disasters, care, security, and providence. The law has a certain role in regulating the mechanisms of distribution (of anything to be distributed) and in lubricating the swift transition from the distribution of goods to the distribution of evils. By granting or denying rights and access to the law to this or that segment of the population, the law either prepares or retroactively accompanies this transition. Because it regulates the distribution of both risks and relief, as well as facilitates the transition, in both directions, from one state formation to the other, the law is (or has been for a while, but now clearly appears to be and certainly should be) a very efficient mechanism of viral interference by the agents of providence in the state of disaster, and vice versa.

83 Looking back at the nineteenth century, Schmitt called this form "legislative state," see SCHMITT, *supra* note 10, at 17-26, but "constitutional" seem to me a more adequate term today, as "legislative" is mainly associated with one of the three branches of government.

Finally, the law can be used for better and not for worse only if the distinction between the two state formations is clearly maintained. The theological thread of the argument has even greater weight in this context than the genealogical one, because the theological imagination may be interpreted as a screen onto which an enlarged figure of the formal structure of each formation is projected. It then becomes a question of clear choice: between serving a sovereign who imitates the God of Sodom and Gomorrah and taking part in the incarnation and human transformation of divine providence. The clear rejection of the former course of action does not mean that the providential state formation is an ideal type to be adopted as is, nor that the providential state is an ideal towards which one should aspire. It means just the opposite. The providential state formation is the political framework that requires rethinking and reform. The catastrophic state formation should be unequivocally and absolutely negated. The law, the illustrious servant of two masters, cannot set the ideal in this strife. At best, it can serve as an efficient means, for the goal has been set from the beginning and from the outside: the reduction of human misery to whatever extent possible.