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Carl Schmitt and the Mystery of the Incarnation: A Theological Interpretation of the *Rechtsverwirklichung*

• **Abstract** •

This paper attempts to understand the concept of political theology, created by the German jurist Carl Schmitt, in light of the Christological problem of the incarnation. To this goal, we will first study the approach Schmitt introduced to resolve the ontological-legal problem of what German philosophy of the time called *Rechtsverwirklichung*, a term we will translate as "the realization of the Law", a process that involves the relationship between the "Idea of Law", the State, and decision-making. Secondly, we will study the doctrine of sovereignty proposed by Schmitt as a theological solution to this problem, expressed in the relationship between the State, decision-making, and exception. As we will see, this interpretation has its origins in the secularization of Christian theology in the 12th century, centered on the problem of the incarnation, which served as a model for the development of what some historians called the "papal revolution".

Keywords: *Rechtsverwirklichung*, Sovereignty, Political theology, Secularization, Incarnation.

Introduction

Carl Schmitt's work is an attempt to grasp the presence of God within modern secularized society. Therefore, this conception does not in any way imply the restoration of a religious theocracy or the creation of a hierocratic republic, as it might seem. Schmitt believes that this presence is inherent to the very political history of the West, whether it be a religious or atheistic era. For this reason, he identifies its most important manifestation under the concept of political theology. In this sense, if we wish to be more rigorous, the expression political theology means for Schmitt "the presence of God in politics". The sphere in which this presence is

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manifested in a privileged way is the State, which actualizes the divine presence through the sovereign's decision in the face of a state of exception. But what is the presence of God according to Schmitt? Strange as it may seem, the presence of God is Law, or what philosophers call the "Idea of Law". Therefore, the apprehension of God's presence in the world can only occur through the realization of the Idea of Law (*Rechtsverwirklichung*) within society.

In this article, we will attempt to interpret Schmitt's political theology in light of the Christological problem of the incarnation. To this goal, in the first part, we will study the relationship Schmitt establishes between the "Idea of Law", the State, and decision regarding "the realization of the Law" (*Rechtsverwirklichung*). Then, in the second part, we will review the link between the State, decision, and exception regarding the realization of sovereignty. We will see that the doctrine of sovereignty developed by Schmitt is nothing other than the "theological interpretation" of a problem of legal-political ontology that German philosophy of law had identified, since the rise of Neo-Kantianism, with the concept of "the realization of the Law" (*Rechtsverwirklichung*). As we will mention, this interpretation has its origins in the secularization of Christian theology in the 12th century, centered on the problem of the incarnation, which served as a model for the development of what some historians called the "papal revolution".

Rechtsverwirklichung: A Problem of Legal-Political Ontology

State and Sovereign Decision

As is known, from a sociological point of view, the relationship between power and law constitutes the foundation of all social phenomena. On the one hand, power always implies the exercise of a capacity for domination that can eventually become unlimited; on the other hand, law always implies the regulation and limitation of all power (Coing, 1961, p. 89).

If, from a sociological point of view, this relationship is always resolved in favor of power, from a legal point of view, it is law that wins. These are two forms of monism in the relationship between law and power. For the proponents of power, law is merely a more organized expression of power; while for the proponents of law, power is incapable of acting if there is no legal idea behind it (Coing, 1961, p. 48).

Both monisms originate in positivism, one of a sociological nature, the other of a legal nature. Against both, Dilthey developed, at the end of the 19th century, his doctrine on the nature of law, preparing the ontological dualism between power and law. For him, law is nothing more than the link between the "external orga-

nization of society" and the "system of culture", that is, the institutionalized and objective expression of processes of consciousness linked to purposes and values. In this sense, law is a complex of ends founded on the connection between legal consciousness, positive law, and the "Idea of Law", objectified in the will of an institution (Dilthey, 1980, pp. 107–108).

Dilthey established the need to recognize, within reality, a new ontological sphere of an ideal nature, which he identified with the "realm of values". Law would be part of this ideal realm, conceived from now on through the concept of ought-to-be (*sollen*), as opposed to the real being (*sein*) of the concrete world (Coing, 1961, p. 120).

This demarcation between the spheres of law and power—which corresponds, respectively, to that between value (*Wert*) and reality (*Wirklichkeit*), or to that between ought-to-be (*sollen*) and being (*sein*)—has its origin in the Kantian notion of duty, and its historical theoretical continuity is found in the legal reformulation of it by neo-Kantianism: the Baden School, in the ideas of Heinrich Rickert and Wilhelm Windelband, developed by Gustav Radbruch (Kantorowicz, 1964, p. 63); and the Marburg School, based on the ideas of Paul Natorp and Hermann Cohen, developed by Rudolf Stammler (Fassò, 1983, p. 186).

Following neo-Kantian approaches, Radbruch conceived of law as a "system of values" that, while originating in social facts, could not, however, be logically grounded by them. In this sense, legal precepts could only be demonstrated by other precepts of an identical nature, not by any reference to the social forces from which they originated. However, when legal precepts constitute the axioms from which the entire conceptual edifice of law is established, they are unprovable, since their reality must necessarily be presupposed to demonstrate those that are deduced from it (Radbruch, 1944, pp. 16–17).

This perspective leads to the creation of a methodology that Radbruch himself christened "relativism". According to this methodology, it is impossible to discuss the ultimate foundations of law, that is, the values that underpin a given corpus of law. For Radbruch, it is impossible to determine, from a theoretical perspective, which legal precept is preferable to another, which does not, however, mean renouncing its practical application. Thus, from this perspective, the multiplicity of theoretical legal conceptions is affirmed (Radbruch, 1944, pp. 19–20).

However, Radbruch attempted to overcome his own "relativism", distancing himself from the positions of the "Free Law Movement" (*Freirechtsbewegung*), very much in vogue at the time, which lapsed into an extreme relativism incapable of justifying the exercise of law, as it was unable to determine the actualization of legal values in the concrete context of social reality. For this reason, he proposed

the need for a mediating, even authoritarian, body capable of imposing law on concrete reality (Radbruch, 1944, p. 109). This mediation between both worlds would be the decision, which, according to him, would constitute the true expression of the norms, which is why he came to affirm that the effective content of law is not the set of norms, but the set of decisions (Radbruch, 1944, pp. 159–160).

If the post-Kantian tradition of legal philosophy finds its first expression in the Baden School, specifically in Gustav Radbruch's "decisionist doctrine", the second expression of this tradition, embodied in the Marburg School, is represented by Rudolf Stammler's "doctrine of just law". As we shall see, Schmitt reinterpreted Radbruch's "decisionism" in light of what he called the "Idea of Law", a notion that has its origins in Stammler's philosophy of law.

Based on an application of Kantian epistemological theory to law, Stammler believes that law is not an abstraction derived from social facts, but rather their a priori condition, since without legal concepts, not only would it be impossible to think of society in normative terms, but social organization itself would also be impossible (Fassò, 1983, p. 187).

In this sense, according to Stammler, the "concept of society" contains two fundamental elements: the "social connection of individuals" (*Verbindung als solche*) through external regulation, and the social activity of individuals (*zusammenstimmende Tatigkeit*), which are part of this connection. Within the concept of society, social connection is the "logical condition" (*logische Bedingung*) of the social activity of individuals. For this reason, in Kantian terms, with respect to the concept of society, connection is the form of the concept, while activity is its matter. The form of the concept of society will therefore correspond to Law, since, as the external regulation of the social activity of individuals, it will order individual aspirations through the exercise of a single will superior to all of them (Stammler, 1930, p. 101).

For this reason, the "concept of law" is a category referring to a type of act of the human will, distinct from morality, habits, and arbitrary action. The philosophy of law will then have as its primary object of study the categories through which we think legally (Stammler, 1930, pp. 3–5). Thus, Stammler will identify four fundamental legal categories that determine the concept of law: will, bond, autonomy, and inviolability. Law will then be "an autonomous, inviolable, binding will" (*das unverleztbar selbstherrlich verbindende Wollen*) (Fassò, 1983, pp. 187–188).

However, Stammler's Kantian impetus does not stop at this point, since, if the concept of law he discovered corresponds to the theoretical principle that will unify all legal categories into a single system of legal knowledge, as occurs with the idea of God in the Critique of Pure Reason; the "Idea of Law" will correspond to

that principle that, like the Kantian categorical imperative, will completely unify human conduct in accordance with law (Fassò, 1983, p. 188).

Indeed, for German jurists of Stammler's time, the "Idea of Law" was the expression of the ethical and normative content of the legal order, that is, Justice. In this sense, it was the set of values linked to the exercise of law, such that it serves as the ideal objective of legal life. In this sense, it can be said to function as the Kantian regulative idea, distinguishing law from mere power (Coing, 1961, pp. 108, 158, 161).

Thus, the second objective of the philosophy of law will be to determine the "Idea of Law" present in legal activity described through the "concept of law". This idea is none other than Justice, that is, the principle that grants legitimacy to the concept of law. It is not enough, then, to differentiate law from other forms of exercising the will; it is also necessary to establish whether such law is legitimate and just (Stammler, 1930, pp. 4–5).

In this sense, the "Idea of Law", that is, Justice, as the unifying principle of human action carried out within positive law, lacks content and determination. It is therefore a completely a priori formal principle that makes human legal activity possible in the form of a kind of "Natural Law with variable content" (*Naturrecht mit wechselndem Inhalte*). The "Idea of Law" will thus consist of a set of legal propositions that contain the theoretically just law present in concrete social facts (Fassò, 1983, p. 188).

Schmitt will reinterpret Stammler's doctrine of "Natural Law with variable content" (*Naturrecht mit wechselndem Inhalte*) in terms of a "Natural Law without nature" (*Naturrecht on the naturalismus*). In this sense, he will introduce the conception according to which law possesses an original ethos that neither ethics nor theology can substantiate (Galli, 1996, p. 317).

Contrary to Stammler and like Radbruch, Schmitt contrasted the social fact with the evaluative precept of law, introducing a bridge between the two dimensions. However, unlike Radbruch, the Schmittian approach will not fall into resorting to pure decision, since, paradoxical as it may seem, "Schmittian decisionism" does not abolish the function of the norm as the foundation of law. Subordinating the norm to the decision would mean falling into Radbruch's relativism, since the decision, by applying the norm to a specific situation, separates itself from the universality of law. Therefore, to overcome relativism, while maintaining, however, the dualism between the Idea of Law and social facts, it is necessary that the decision be subordinated to the norm (Nicoletti, 1990, p. 19).

Starting from this dualism, Schmitt showed the impossibility of subsuming law under power, as sociologists claimed, and, conversely, the difficulty of subsuming

power under law, as positivist jurists postulated. At the root of this impossibility, according to Schmitt, was an ontological gap between the "Idea of Law" (abstract transcendence) and power (concrete immediacy) (Galli, 1996, pp. 316–317).

Therefore, according to Schmitt, between ought-to-be (*sollen*) and being (*sein*), between law and reality, between law and power, there existed an unbridgeable ontological gap in the first instance. In this sense, law, as an ideal, is not identical with positive law, since the latter arises from the activity of the State in relation to social facts; nor can it be based on the particular or social interests of individuals, since these lack, in and of themselves, any reference to autonomous regulation (Nicoletti, 1990, pp. 43–44).

Likewise, it is also impossible to sustain the conception according to which law would be the "ideal purpose" that concrete reality should achieve, since all purpose corresponds to the moment of realization and will, which belong, on the contrary, to the realm of being, not to the ought-to-be of the legal sphere. In this sense, the realization of law (*Rechtsverwirklichung*) will always correspond to an entity linked to will and decision, aspects that do not belong to law as an abstract norm (Nicoletti, 1990, pp. 45–46).

Therefore, Schmitt will propose the need to realize the "ethos of law" in the concrete world. In this sense, the autonomy of law, as a system of values, can only be realized, although always "incompletely", by the "ends of a public will" (*Willszweck*), determined socio-historically, which does not formally belong to the legal sphere. The separation between the "Idea of Law" and empirical reality thus requires an agent capable of realizing law in the world. This agent is none other than the State (Galli, 1996, p. 318).

The Idea of Law, Decision, and Positive Law

To successfully articulate the dualism between both dimensions of being without falling into relativism, Schmitt integrates decision-making within the State, transforming it into the only possible mediator between Law and social facts. The State will thus be the only subject that can embody the ethos of Law, and to this extent, decision-making, which in Radbruch prevailed in a detached manner over the norm, in Schmitt, being part of the State, will end up being subordinated to the norm. In this sense, decision-making, as an act of the State itself, will become the instrument through which the State will elevate itself to the spiritual world of Law, thus imbuing itself with its legal ethos (Calabrese, 2009, pp. 185–186).

Thus, the opposition between power and law can only be resolved through the establishment of a legal-political unit capable of creating a stable normative order

for social life: the State. Thanks to this unity, power and law can be integrated into a single institution charged with both exercising power and controlling it at the same time (Coing, 1961, p. 92).

In this sense, the sovereign decision executed by the State is not identified with "naked power", as many critics and/or supporters of dictatorship claim, since what the State carries out is not the result of arbitrariness, but of an action subordinated to the "Idea of Law". From this, the State creates positive law through sovereign decision (Galli, 1996, p. 321).

Between the evaluative dimension of legal precepts and the dimension of social facts, an intersubjective medium is thus constructed, constituted by the "ends of the will" (*Willszweck*). These "ends of the will", which allow the law to be concretely implemented in practice, are determined by historical and social circumstances, which is why they are not part of the evaluative essence of law, but of the state. In this way, Schmitt leaves aside any reference to Natural Law or ethics as the foundation of Law (Nicoletti, 1990, pp. 20–21). These ends will be embodied by the State, which, from now on, becomes the subject of the "legal ethos" that must be realized in social facts through sovereign decision (Nicoletti, 1990, p. 56).

Thanks to the State, law deploys its authority against the "naked power" that inhabits social facts, and the two ontological regions separated by the very structure of reality are articulated. The difference between ought (*sollen*) and being (*sein*) remains, but it remains linked by state mediation, although always determined by the contingency associated with the State (Galli, 1996, p. 323).

This dominance of law over the state is explained by Schmitt through a reference to Saint Augustine, who describes the Trinity present in The City of God. Thus, surprisingly enough, Schmitt uses three qualities of the Trinity to explain the imprint of law on the state, just as Saint Augustine describes the foundation of the divine city: "Das Recht ist für den Staat, um einen Ausdruck des Augustinus zu verwerten, *origo*, *informatio*, *beatitudo*" (Schmitt, 1914, p. 53).

Indeed, Saint Augustine uses these expressions to describe the action of the Trinity through the Holy Spirit in the works of God. In Saint Augustine's text, the terms *origo* (origin), *informatio* (form), and *beatitudo* (happiness) are used to characterize the City of God through the activity of the Holy Spirit, who imprints the seal of the Trinity on the works it accomplishes. Thus, origin corresponds to God the Father, form to God the Son, and happiness to God the Holy Spirit. From God the Father originates all that exists, whether created or begotten; from God the Son all things receive their form, the image of the Word; and from God the Holy Spirit all that exists obtains its happiness, teleological goodness (Agustín, 1958, p. 757).

Secondly, Saint Augustine affirms the belonging of the divine city to the Trinity. From this it follows that the divine city is an extension of God himself. Thirdly, it is said that the Trinity is insinuated to us in the works of the Holy Spirit, so that, as creations of God, we are always in relationship with him through such works. The only way this can happen is because the image of the Trinity is also found in human nature. Thus, within us, as extensions of the Trinity, lives the Divine City, which we must realize in practice if we wish to aspire to it, through the actions that Jesus demonstrated by his example in the Gospel.

Similarly, Law, according to Schmitt, is the Trinity with respect to the State, for the State draws from it its origin, its form, and its happiness—that is, its essence, its science, and its love, or, in more secular terms, its desire to live, its desire to know, and its desire to love. In this sense, the State, like all created beings, bears the Trinity imprinted in its soul. The soul of the State is constituted by the universal community of human souls; therefore, Law is the immortal Trinitarian God from whom the State draws its own nature, for the State constitutes an ontological extension of the former. The State only makes sense within the context of law, which represents the immortal trinity (Agustín, 1958, p. 761).

Precisely, the State constitutes that public will that is expressed through a specific type of personality, the personality of the State, which, as the bearer of the "ethos of law", can "materialize" legal norms in the social sphere. In doing so, it constitutes itself as the servant of the norms and transforms itself into a State of Law, introducing a new legal-political entity that did not previously exist (Calabrese, 2009, p. 185).

From this confrontation between Law and the State, two dimensions are introduced within Law itself, an ideal dimension and a positive dimension, respectively: the completely ideal "Idea of Law", which ontologically precedes the State and serves as its model, and positive Law created by State decision (Calabrese, 2009, p. 189).

In this way, the "Idea of Law", as a legal dimension prior to the State, will fulfill, with respect to positive Law, the function that was once attributed to Natural Law, but without reference to human nature (*Naturrecht ohne Naturalismus*). In this sense, the "Idea of Law" will be a fundamental, but not essential, Law, that is, a curious form of a priori Natural Law, whose function resembles the functions of the ideas of reason in Kant in its practical version (Nicoletti, 1990, pp. 50–51). The transition from one dimension to another occurs through a sovereign decision that will allow the State to "realize" (*Rechtsverwirklichung*) the "Idea of Law" in positive law (Nicoletti, 1990, p. 46).

The State will then fulfill the mission of updating this idea so that, subsequently, social forces become legalized. In this way, the State carries out two mediations

through which three spheres of legal-political reality are articulated: one between the "Idea of Law" and positive law, and another between positive law and social facts. Thus, a concrete legal form is created from the "Idea of Law" (Galli, 1996, p. 321). "Der Staat ist danach das Rechtsgebilde, dessen Sinn ausschliesslich in der Aufgabe besteht, Recht zu verwirklichen (…)" (Schmitt, 1914, p. 52).

Thus, as a point of transition between both worlds, the State becomes a fundamental element within Schmittian theory, which places it in the position of a true "mortal god" within the sphere of law, similar to that of the categorical imperative in Kantian ethics. In this sense, the mediation between the ideal world of legal values and the material world of facts operated by the State will ultimately be revealed as its theological-political function (Galli, 1996, p. 319).

The task of the State will then be to actualize the completely transcendent "Idea of Law" within concrete political praxis through state mediation between law and power. Therefore, the State will always have a subordinate role to law, although, in the face of concrete facts, it may have a rather absolute character (Nicoletti, 1990, p. 55). "La autoridad del Estado, pese a todo, no se sustenta en el Poder sino en el Derecho que pone en ejecución. Justamente porque el que lo ejecuta es el Estado, se sigue la superioridad del Derecho" (Schmitt, 2011a, p. 49).

At the same time, although the State is responsible for giving political form, through positive law, to a set of social facts originally lacking in form and organization, the value of the State lies in recognizing that the mediation it carries out will never be perfect, but rather incomplete and instrumental to the purposes of the legal form, which operates coercively on political facts (Galli, 2011, p. 24).

Therefore, the State is a "transcendental original instance" of a legal, not merely sociological, nature, which assumes the responsibility of creating the concrete situation within which the positive legal order must operate. It is the condition of possibility for legal norms to develop in society. In this sense, the State will always have the prerogative to transform the positive normative order if circumstances eventually require it (Dotti, 1996, p. 137).

The Sovereign Decision

The origin of the concept of sovereign decision, as a mediation between the ideal sphere of law and actual facts, stems, as Schmitt has emphasized on many occasions, from the legal dynamic deployed over the centuries by the Catholic Church and its supreme sovereign: the Pope. Indeed, the sovereign decision is nothing more than the secularized expression of the Catholic doctrine according to which the Supreme Pontiff is "the infallible interpreter of moral and natural laws and the

content of revelation", which is why "he has been empowered to declare that state laws that contradict natural moral laws or the *ius divino naturale* are not binding in conscience" (Schmitt, 2011a, p. 57).

From this systematization of Roman law by the Catholic Church, the figure of the sovereign was introduced in the West. However, this assimilation of Roman law into a Christian context was due to the new needs that the Christian community itself had to face from the moment it became the official religion of the empire. As is known, the connection between the invisible world constituted by the Holy Spirit and the visible world constituted by the faithful could only be realized through the sacraments, especially the Eucharist, and ethical praxis. However, when Christianity ceased to be an interior religion and became a state religion, it required the creation of a constitutional legal order capable of governing the social life of its faithful. Thus, the idea of "papal infallibility" was established, materialized in the *ex cathedra* decisions of the Supreme Pontiff, based in turn on an established *ius divinum* (Schmitt, 2011a, p. 57).

Thus, through the concept of sovereign decision, Schmitt describes the "incomplete mediation" carried out by the State between the "Idea of Law" and the actual power of social events, transforming the former into positive law (*Rechtsverwirklichung*). However, the creation of these laws is not the result of arbitrariness, since the State is subordinate to the "Idea of Law". Therefore, it is the State itself that, through sovereign decision, creates these concrete forms from the "Idea of Law". In doing so, it will insert it into the concrete order, representing it within contingency. For this reason, Schmitt will always maintain that it is the State, and not law, that has as its objective social coercion, since, being part of the concrete world, it has the capacity to do so (Galli, 1996, p. 321).

The creation of norms by the State implies the division of law into two spheres: the "Idea of Law" and Positive Law. Thanks to the State's activity, a new dynamic will be created between these two spheres within the legal dimension itself. In relation to the "Idea of Law", the State will have a subordinate position, while, in relation to Positive Law, it will have a dominant position. The "Idea of Law" will function, as we have already mentioned, as a "Natural Law without Nature" (*Naturrecht onhe Naturalismus*) (Nicoletti, 1990, p. 51).

The ontological gap between the "Idea of Law" and social facts can only be bridged by an act of decision that remains in the hands of the State, even if this act is always imperfect. If, on the one hand, the intrinsic purpose of state decision-making is the realization of the "Idea of Law", on the other hand, the consistent realization of this purpose is never completely guaranteed. The ontological gap between both spheres thus implies an insurmountable original fault

in the construction of the political unity of the modern State (Scalone, 2005, p. 334).

The act of decision-making will be reproduced in all constituent bodies of the State; thus, for example, in the case of a judicial decision, it will mediate between Positive Law and the specific case; in the case of "judicial execution", it will mediate between the specific case and the executive decision to which it is subordinated; all this thanks to the transformation of the "Idea of Law" into Positive Law (Schmitt, 2011a, p. 55).

Similarly, the State makes the decision that serves to transform the "Idea of Law" (*Rechtsnorm*) into a positive norm with the purpose of "legalizing" social reality (*Rechtsverwirklichung*). The State must engage in a double mediation with the Law: transferring the "Idea of Law" to social facts and applying the Law to the specific legal situation: through the first, positive law is created in a document; through the second, Positive Law is applied to the specific legal situation: both acts through a sovereign decision (Calabrese, 2009, pp. 156–157).

For a state decision to be truly sovereign, it must be rooted in the figure of the official in charge of making it. Otherwise, we would be faced with a mere bureaucratic administrative procedure derived from the norm, a kind of substantialist dynamization of the norm, according to which the norm itself would be applied to the facts without the need for any personal action by the official. In this sense, the example of an official who exercises sovereign decision-making in service to the law as opposed to power is the Judge, who embodies the "mouth of the law" (Schmitt, 2011a, p. 52).

The sovereign decision will thus consist of state mediation embodied by the competent official who actualizes law in the factual world. From Schmitt's perspective, it is therefore a matter of determining the role that authority plays in generating the act of decision, combining the formal aspect of the decision with the personal aspect of sovereignty (Dotti, 1996, pp. 134–135).

Now, it is necessary to emphasize once again that, for Schmitt, the State is not autonomous from the Law; that is, the State is always an instrument of the Law, even if the norm or the legal system as a whole has been suspended. To the extent that state decision-making also belongs to the Law, it is possible to avoid anarchy, chaos, or war despite the absence of norms. In this sense, as surprising as it may seem, decision-making is a condition that makes possible the regular functioning of the norm (Dotti, 1996, pp. 136–137).

For this reason, Schmitt always distinguishes between Law (*Recht*), as the "order of law" or legal organization with respect to society, and law, as "law", "legal order", or set of norms (*Gesetz*). The "order of law", embodied in the State, is thus

responsible for "normalizing" social relations and making possible the peaceful coexistence based on which the "legal order", embodied in the norms, can be applied. In this sense, thanks to the State, as the "order of law", "the set of peaceful habits and behaviors, legally regularized and predictable in a community", can be adequately developed; that is, a factual normality is established upon which normative normality is built (Dotti, 1996, p. 137).

In this way, the "order of law" provides the sovereign decision to the entire legal system, while the "legal order" provides its stable normative structure. Both elements are combined both logically and genetically, where the decision establishes the norm, and synchronously, where both moments usually occur simultaneously. The meaning of the decision is its legal purpose, that is, to make the rule of law possible (Dotti, 1996, p. 138).

Sovereign decision-making can take two forms: either it is carried out under the modality by which the legal order is "created" from the conjunction of the "Idea of Law", the State, and the *de facto* power; or it is carried out under the modality by which, within an already established legal order, this order is materialized from the interaction between positive law, the State, and social facts. This latter modality will have two moments that we will call normative decision-making, exercised in normal cases, and exceptional decision-making, exercised in exceptional cases.

An example of a normative decision can be found in Schmitt's study of "Law and Judgment" (1912), in which he focused on the "judicial decision", that is, the function of the decision within the framework of judicial praxis. In this work, the decision is subordinated to the norms, to the point that we no longer speak of the will of the judge, but rather of the "will of the law" or the "will of the legislator". Thus, in general, judicial praxis appears as an "application of the law" (Schmitt, 2012, p. 41).

Thus, what the guarantee-based conception seeks is to subordinate judicial activity to the "principle of legality", making this the criterion for the correctness of judicial decisions. This subordination is achieved by subsuming judicial rulings to the rule of law, so that the "principle of legality" always presupposes subsumption as the criterion for correcting the "judicial decision" (Schmitt, 2012, p. 61).

However, the subsumption of judicial decisions under norms is insufficient to establish the appropriate criterion for correctness in the judicial decision. Indeed, over time, practical difficulties inherent in judicial proceedings arise that affect the effectiveness of the application of the law, especially when factual exceptions arise that limit the required subsumption (Schmitt, 2012, p. 62).

On the contrary, when we look at judicial practice, we can observe that the content of the law passes through the filter of the "judicial decision", such that such

content leaves the ideal world of precepts and appears in a "new sphere" of legal reality. Thus, thanks to this filter, the result of the application of the law to a specific case is differentiated from the abstract content of the law (Schmitt, 2012, p. 50).

Schmitt denies as criteria for the correctness of a "judicial decision" both the positivists' subsumption of the law and the "weighing of pre-legal aspects" of the Free Law School. Thus, what is required of the judge for his judicial decision (his judgment) to be correct is that it satisfy the principle of "determination" of law, which, according to Schmitt, consists of the judge's ability to calculate what judicial practice considers correct based on the effectiveness of norms, positive laws, certain metapositive norms, and legal precedents (Schmitt, 2012, pp. 156–157).

Sovereignty: A Theological Interpretation of *Rechtsverwirklichung*

Sovereignty and Exceptional Decision

In his famous lectures on the "sociology of religions", those specifically dedicated to the study of Protestantism, later collected under the celebrated title "The Protestant Ethic and the Spirit of Capitalism", Max Weber attempted to demonstrate that the work ethic developed by Calvinism had ultimately produced the phenomenon of the "disenchantment of the world", and had served as the basis for the development of capitalism. The final conclusion of his diagnosis was the transformation of Calvinism's economic ethics into an atheistic instrumental rationality, which, in turn, would have allowed for the emergence of the famous "iron cage" of modernity, subordinating all spheres of human life to the economic sphere (Weber, 2011, p. 248).

Contrary to Weber's diagnosis, Carl Schmitt, thanks to his Catholic upbringing, rediscovered within this instrumental civilization a new way of approaching the legal-political dimension "neutralized" by economism and technology. To this end, a new concept of sovereignty was needed that, through the mediation of law, would restore the political sphere to its primary dimension. This concept is defined in Schmitt's famous dictum: "The sovereign is he who decides on the state of exception" (Schmitt, 2009, p. 17) (orig. *Souverain ist, wer in Ausnahmezustand entscheidet*) (Schmitt, 2004, p. 13), from which the famous neologism "decisionism" will emerge, which will serve to identify the legal-political thought so characteristic of Schmitt (Schmitt, 2009, p. 13). Specifically, to clarify the problem of the "jurisdiction of the supreme court" as opposed to the normative decision-making process ordinarily exercised in judicial decisions, Schmitt highlights the decision-making process in situations of emergency or necessity as the true core

of the problem of sovereignty. In this sense, the German jurist developed a new concept of sovereignty based on the notion of the "state of exception" considered the founding legal moment of the State. For the German jurist, this possibility was expressed not in norms but in the decision-making capacity of the competent authority within the State; therefore, this new doctrine of sovereignty will be called decisionism (Schmitt, 2009, p. 13).

Thus, according to Schmitt, the concept of sovereignty would be "einem Grenzbegriff" (Schmitt, 2004, p. 13) [a "limit concept" (Schmitt, 2009, p. 13)] of the theory of the State, that is, its definition cannot be connected to the normal case, but rather to the limit case (Schmitt, 2009, p. 13). What does this mean? In Schmitt's case, sovereignty is a "limit concept" because it lies beyond the doctrine of public law, as it lies on the border between the sphere of "the political" and the sphere of the State; at the same time and in parallel, the "Idea of Law" lies beyond Public Law, as it constitutes the boundary between the sphere of the State and that of pure Law. Therefore, it can be argued that Schmitt introduces a conception of sovereignty without reference to the State (Gómez Orfanel, 1986, p. 41).

Sovereignty is then the "condition of possibility" that supports the entire legal-political framework of State power, because it "cannot be deduced from the order that, nevertheless, it itself brings into existence, and that, in turn, cannot be directly deduced from it", which is why, insofar as it is the "concept of the extreme sphere", "sovereignty, as a decision in cases of exception, is the critical point of modern rational mediation, that is, of the nexus between legal order and politics, and between the individual and the totality" (Galli, 2011, pp. 64–65).

Now, the classic definition of sovereignty, created by Bodin, holds that sovereignty is the "absolute and perpetual power of a republic" or, more precisely, "the supreme power detached from the laws with respect to citizens and subjects" (*majestas est summa in cives ac subditos legibusque soluta potestas*) (Bodin, 1985, p. 47), so that sovereignty is conceived as a permanent and limitless power.

This means that the holder of sovereignty cannot be subject to any other power, which is why he is in the position of "giving law to the subjects and annulling or amending useless laws" (Bodin, 1985, p. 52). In this sense, the principal quality "of sovereign majesty and absolute power consists primarily in giving the law to the subjects in general without their consent". Therefore, it is necessary for the sovereign prince to have the laws under his power so that he can "change and amend them according to the circumstances" (Bodin, 1985, pp. 57–58).

This clarification about the prince's power to change laws according to circumstances is very important, since it distinguishes the modern concept of political power, based on sovereignty, from the medieval conception, in which the monarch

did not create laws, but either reached an agreement with the nobles to establish them or was guided by the laws established by religious Natural Law. With Bodin, however, the monarch became a legislator (Abellán, 2014, p. 72). Thus, Bodin's conception served as the basis for Schmitt's later reinterpretation of sovereignty: the reference to circumstances allowed Schmitt to introduce the problem of the exceptional case (Schmitt, 2009, pp. 13–14).

Thus, even though public order and security have different concrete realizations (depending on whether the subject of sovereignty is a military bureaucracy, a commercial administration, or a revolutionary party), they will always be based on a decision. Therefore, sovereignty does not consist in the sovereign's possession of certain attributes, such as those Bodin describes, but in their application, through a decision, to a "concrete situation" (*konkreten Tatbestand*) (Schmitt, 2009, p. 16).

This "concrete situation" can be none other than the case of extreme necessity, since it is thanks to it that it is possible to adequately explain the exercise of sovereign power. Only the exceptional case, which is never provided for in the current legal order, precisely because it can be classified as one of extreme necessity, actualizes the problem of the subject of sovereignty. In this sense, the exception, which precedes the norm from a logical and epistemological point of view, is the insurmountable conflict that, as an absolute beginning, is the origin of the political-legal form and of the regular norm; therefore, the decision in an exceptional case is the sovereignty that underlies the origin of the political order (Galli, 2011, p. 66).

This relationship between exception and decision stems from the fact that, in such a "concrete situation", it is not possible to clearly establish whether it is indeed a case of extreme necessity, nor to predict what should be done in such a case to control the situation. Therefore, the problem of sovereignty consists in determining who has the competence to resolve a case for which no competence has been prescribed (Schmitt, 2009, p. 16).

Sovereign, Decision and Exception

The reinterpretation of sovereignty based on the decision and the specific exceptional case has introduced a new actor into this doctrine: the sovereign. In a certain sense, we can say that we have moved from a static to a dynamic conception of sovereignty. According to this, while the first conception attempted to define sovereignty as a power in a latent state, the second seeks to define it as a current and full power (Gómez Orfanel, 1986, p. 40).

However, the Schmittian interpretation does not stop at a mere ontological definition of sovereignty, but adds to it an eschatological dimension, embodied in

the figure of the sovereign who, through his decision, unites the world of the gods with the world of men in a single "personal act". In this way, Schmitt recovers the old Roman tradition of the "sovereign pontiff" of the Romans (*pontifex maximus*), as a bridge between the two worlds.

With the arrival of Christianity, throughout the Middle Ages, this power passed from the emperor to the Pope, so that, as Hugo Ball—a personal friend of Schmitt and one of the founders of Swiss Dadaism—early stated, it would be up to the Catholic Church to develop the legacy of Roman jurisprudence to its ultimate consequences in the new incarnation of the pontifex maximus of the Romans, now identified in the Pope (Ball, 2013, pp. 233–234).

Thus, within the juridical rationality of Roman law, Latin Christianity introduced the irrationality of the Christian faith, replacing the world of the gods with the mystery of the incarnation. In this sense, ecclesial rationality will have as its limits Revelation at its highest extreme and the State at its lowest extreme (Ball, 2013, p. 233).

For this reason, the Church will assume as a presupposition the belief in the existence of God and, along with it, the need to represent this belief. In this sense, the rationality of the Church is born from an "institutional will", that is, from the claim to normatively direct society precisely through "the principle of representation", the greatest example of which is none other than the figure of the Pope (Ball, 2013, p. 234).

The Pope thus has a fundamental attribute: representation. Thanks to it, he can place himself above the established legal order and become the vehicle of a higher legitimacy that, in the case of the Church, comes from God, and which allows him to decide absolutely on the facts of his government. Representation, then, implies "making present" or "making visible" something that, by nature, is invisible; papal representation is thus the actualization of the incarnation of Christ, through which God becomes present in human history, through the Church (Nicoletti, 1990, p. 242).

The ontological dualism between the "Idea of Law" and power, constitutive of modern politics, has its remote origins in Christianity and its immediate origins in the Gregorian reform or, as some historians call it, the papal revolution. In 1075, Gregory VII decided to declare independence from the Holy Roman Empire and became head of the Western Church, legally and politically separating the Church from secular powers (Berman, 1996, pp. 11–12). As if this were not enough, Gregory VII proclaimed in his Dictatus papae the legal supremacy of the Pope over all Christians and the supremacy of the clergy over all secular authorities (Berman, 1996, p. 104).

To achieve its goals, the Church systematized the existing law of its time. Thus, a new system of canon law and new secular legal systems emerged, along with a class of professional jurists and judges, hierarchies of courts, law schools, legal treatises, and a concept of law as an autonomous body integrated and developed with principles and procedures (Berman, 1996, p. 128). Building on the Gregorian Reform, canonists of the late 12th and 13th centuries attributed supreme government of the Church to the Pope. He had full authority (*plenitudo auctoritatis*) and full power (*plenitudo potestatis*). Thus, he could promulgate laws, set taxes, punish crimes, and dispose of ecclesiastical benefices, as well as the acquisition and administration of all Church property (Berman, 1996, p. 218).

From this separation, Western kingship changed its nature, as it abandoned its Christ-like mediating nature to develop what modernity has called representative power. Paradoxically, both the Church and the Empire drifted, each in its own way, toward what later became identified with the modern State. The Church, under Gregory VII, created a centralized bureaucratic power based on canon law. The Empire, divided into national monarchies, ceased to embody the divine foundation and became the mediator of the social body with itself. Thus appeared the two constitutive principles of the modern political world: the sovereignty of Law and the representative legitimacy of the State (Gauchet, 2005, pp. 203–204).

The decisive step in the process of secularization was taken by Thomas Hobbes. His work not only describes the new reality of the State but also establishes the theoretical foundations of the new, already secularized political theory. Indeed, unlike the medieval political theology that had preceded him, Hobbes merged the two orders it presupposed. Thus, the spiritual order, assumed by the historical reality of the Church, lost its transcendent character, and in its place appeared a single institution that carried both the temporal and spiritual orders: the State (Scattola, 2008, pp. 111–112).

Unlike in the medieval world, in the emerging modern world, the supreme theological principle became part of the temporal power of the sovereign, and the objectivity of divine legitimacy that gave it consistency disappeared. From now on, the authority that once came from God would reside in the sovereign himself; thus was established what Schmitt would call "the sovereign's decision". The ancient distinction "between auctoritas and potestas disappears completely in the sovereign decision. It is *summa auctoritas* and *summa potestas* at the same time. Whoever establishes peace, security, and order is sovereign and has all authority" (Schmitt, 1996, p. 30).

Unlike the Church, which always acted on society from the outside, the State, following the disappearance of religious transcendence, introduced a separation

within the immanence of the social body itself. The State, immanent in society, was thus transformed into an unprecedented institutional machine capable of intervening in all aspects of human life from this separation (Gauchet, 2005, pp. 276–277).

However, the disappearance of religious transcendence brought dramatic consequences for the future of modernity. Indeed, according to Schmitt, the Church's continuity as an institution in history was due to its organization around a "transcendent idea personally represented" by the figure of the pontiff (Schmitt, 2011b, pp. 26–27). The Catholic Church's legal capacity derives from this representativeness, since, through law, the Church organizes the formless matter of social facts (Schmitt, 2011b, p. 17).

On the contrary, in the case of the State and its modern political forms, despite functioning with the logic transferred from the Church, representation undergoes a radical transformation. With the disappearance of the personal representation of the pontiff, based on a pre-existing metaphysical order, an unbridgeable gap is established between the representative and the represented, since the State is an artificial creation whose foundation is purely abstract and constitutes an impersonal "transcendence". For this reason, the modern political form constantly tends to lose legitimacy (Scalone, 2005, p. 340).

The foundation of representation in the modern state is, therefore, unfounded, or, in other words, groundless. For this reason, modern political forms permanently require a decision-making body to make them effective and overcome the gap inherent in the lack of representation. Thus, the origin of political modernity is determined by the abyss of constituent power, which, upon losing its personal representative, needs to be legitimized. The only way to do this is through law, as it constitutes the instrument that the modern state has created for this purpose. However, for law to legitimize constituent power, the idea of law needs to be concretized through an act of decision by the political unit that makes its positive concretion possible in representation (Scalone, 2005, p. 343).

This model would become part, not without transformations, of secular political culture and would find its first reinterpretation in the work of Thomas Hobbes in light of the religious wars that ravaged Europe at the time. However, unlike papal representation, which actualizes a divine and eternal truth within society through a specific person, the great English philosopher speaks of a person constituted by the union of a multiplicity of human beings into a single artificial entity that represents them all. Hobbes calls this entity the civitas, and it is equivalent to what we know as the State or republic. The State is thus the new sovereign and heir to papal representation, although, unlike the latter, it only actualizes a temporal and human truth (Negro, 1996, pp. 258–259).

Thus, unlike papal representation, in which the Pope directly represents Christ, in the modern political representation initiated by Hobbes, the sovereign represents a "human-artificial person" of colossal dimensions; that is, he represents the community transformed into a mass of individuals. For this reason, the new sovereign, despite his concreteness, will gradually become an "invisible person", who will operate at the very heart of the state machinery at the expense of the entire established legal system (Negro, 1996, p. 259).

Schmitt would not have been able to recover the figure of the sovereign if he had not come into contact with the political philosophy of counterrevolutionary Catholic thinkers, especially the work of the Savoyard diplomat Joseph de Maistre, who, as is well known, developed a theory of sovereignty based on "papal infallibility", from which, according to Schmitt, his decisionism was derived (Schmitt, 2009, p. 50).

In this sense, following de Maistre, Schmitt considers that, through the sovereign's decision, the fundamental theological-political problem underlying modern politics is actualized: that is, the problem of the mediation of power through authority, since, thanks to the sovereign, power can manifest itself within human society. In this sense, the sovereign, insofar as he is invested with power, "can decide absolutely when the exception is present, solely because power exists absolutely" and, consequently, "God thus presents himself, in the eyes of political theology, as the absolute power of decision and, therefore, as the sovereign par excellence" (Herrero López, 2007, p. 365).

Thus, as we have said, the sovereignty of the sovereign no longer refers to the essence or abstract nature of power, but to the authority that aims to actualize it through decision. As Castrucci has aptly described, "a sovereign is one who effectively manages to resolve the conflict for his own benefit thanks to his own decision". For this reason, it can be verified that "the root of law lies in the principle of effectiveness, that is, in a power relationship, invisible in the normal situation, but visible and disruptive in the exceptional situation" (Castrucci, 1991, p. 18).

Thanks to the sovereign's protagonism, sovereignty can be actualized in legal, and political reality, so that it now becomes a quality of the sovereign, such that acting sovereignly consists of "categorizing as exceptional a state of affairs that is reluctant to submit to the usual normalizing patterns; and, simultaneously, putting an end to it with measures that are also exceptional". For this reason, "sovereignty is a specific type of action, that is, the conduct of man considered as an ethical, free, and responsible subject in specific circumstances" (Dotti, 1996, p. 129).

For its part, the decision must be understood as an element inherent to the universe of praxis. In this sense, it is completely superfluous to appeal to knowledge

to legitimize one's actions, since the decision does not seek to solve a theoretical problem, but rather a practical one. For this reason, "the objectivity of politics is peculiar to the realm of practice: it is a construct of the will, the result of an act of freedom" (Dotti, 1996, pp. 129–130).

Thus, as an act of freedom, the decision is the expression of sovereignty, since, thanks to it, authority can achieve the purpose for which it was instituted. In this sense, the sovereign is presented as someone who possesses "the capacity to establish order, peace, and stability from a chaotic situation", which is why they have the "responsibility to safeguard the stability of the newly created situation" (Schwab, 1989, p. 45).

For his part, the concept of exception has its origin in a new metaphysical presupposition. Thanks to this, Schmitt was able to discover the effectiveness of power, such that, based on the dialectic between norm, decision, and exception, sovereignty is effectively exercised.

Thus, in the face of normal situations, only exceptional events can give rise to sovereignty, because they are capable of concretely revealing the general; therefore, only decision has the capacity to resolve them. This new metaphysical foundation was extracted by Schmitt himself from the book "Repetition" by the Danish thinker Søren Kierkegaard (Nicoletti, 1990, p. 153): "A Protestant theologian, who demonstrated the vital intensity that theological reflection could achieve even in the 19th century, said: «The exception explains the general and explains itself»" (Schmitt, 2009, p. 20).

Thanks to Kierkegaardian concept of exception, Schmitt was able to reinterpret the legal concept of the state of exception. In this way, exception and the general are opposed, just as the state of exception is opposed to the normal case. The best way to differentiate both situations is by comparing the functioning of the relationship between decision and norm in both circumstances, since decision and norm constitute the fundamental elements of law. Thus, in the state of exception, the norm is annihilated by the decision, suspending the legal order; while in the normal case, the decision disappears into the norm, while the legal order is maintained (Calabrese, 2012, p. 63).

As we have seen, the function of the State is to materialize, in social reality, the "Idea of law" contained in the positive norm (*Rechtsverwirklichung*). By fulfilling this function, the State becomes a fundamental authority within legal reality. In this sense, the realization of law implies the application of legal thought to a specific case, since the "Idea of Law" cannot be realized by itself. Every time a decision is made, it requires the State to achieve the transition from the abstract to the concrete (Schmitt, 2009, p. 30).

However, in every legal decision, there is a margin of indifference regarding the content of the norm, since the legal conclusion does not arise directly from the premises. The "Idea of Law" is never translated into reality in its entirety, precisely because the decision, by intervening in its realization, adds a new element that is not contained therein (Schmitt, 2009, p. 31).

Consequently, based on the generality of the norm, there is no way to determine "who" should actualize the "Idea of Law" through the decision. Therefore, the "mediation of an authority" (*auctoritatis interpositio*) is always required, which, although belonging to the legal sphere, is external to the legal system itself. In this way, the decision adopted by the competent authority "becomes independent" of the content of the norm and acquires its own value, even though it has been exercised for the purpose of the norm (Schmitt, 2009, p. 32).

As we can see, both the norm and the decision constitute the two essential components of legal activity; however, we must consider that "While in normal cases the autonomous element of the decision can be reduced to a minimum, in exceptional cases it is the norm that is annihilated" (Schmitt, 2009, p. 18). Even so, in both the normal and exceptional cases, we always find ourselves within the realm of law, since "between decision and norm there is a relationship, not a non-relationship: both belong within the «legal data»" (Galli, 2011, p. 68).

The law never tells us to whom it grants authority, since each legal precept only informs us of the manner in which a decision should be made, not who is responsible for doing so. At the same time, not just anyone can execute and implement the content of the norm, which would occur if there were no supreme authority. The supreme authority is never derived from the existence of the norm. Thus, the underlying problem of the decision is that of the "competence of the supreme authority" and, in this sense, it can only be clarified within the framework of the theory of sovereignty (Schmitt, 2009, p. 33).

The metaphysical concept of exception, drawn from Kierkegaard's philosophy, not only serves as the foundation for the legal concept of the state of exception, but also This also updates a problem of a theological nature that we had already seen. Indeed, if the State is analogous to God, the State's decision, implicit in the state of exception, is analogous to the miracle; and, in this sense, it is the secularization of the miracle (Galli, 2011, p. 78): "The state of exception has a similar significance in jurisprudence to that of the miracle in theology. Only by being aware of this analogy can we understand the evolution of philosophical and political ideas in recent centuries" (Schmitt, 2009, p. 37).

As a miracle-maker, the State represents an invisible reality in the visible world, a function it inherited from the Church, but which it performs by emptying the

divine substance of its theological content (Galli, 2011, pp. 78–79). The consequence of this type of decision is the total suspension of the established legal order and the establishment of a new provisional legal and political order that Schmitt identifies with dictatorship.[1]

Conclusions

1. Law and power constitute two independent regions of being: ideal being and real being, respectively. Ideal being corresponds to the realm of values, while real being corresponds to that of concrete facts.
2. Law and power can only be related through a third element embodied by an agent or authority: the State or the respective political unit, whose function is to actualize, through a decision, the norms of law in the realm of facts, that is, to implement law (*Rechtsverwirklichung*).
3. This actualization through the decision of the State always leaves a margin of discretion to the competent authority, since the relationship between law and power, when actualized by an external agent, is determined by the qualities of that agent.
4. With the intervention of the State's decision as an agent that actualizes law in concrete facts, a distinction is created within law itself between the ideal norm (Idea of Law) and the norm applied to facts (Positive Law). Positive law is thus born from the application of the ideal norm (Idea of Law) to the concrete fact through the sovereign decision of the agent or authority (State).

[1] Against all the ideological chatter about the concept of dictatorship, so widespread in our times, the Italian philosopher Giorgio Agamben was able to write: "In the doctrine of modern public law, it is a widespread habit to define as dictatorships those totalitarian states born out of the crisis of democracies after the First World War. Thus, both Hitler and Mussolini, both Franco and Stalin, are presented indiscriminately as dictators. But neither Mussolini nor Hitler can technically be defined as dictators. Mussolini was the head of the government, legally invested with that office by the king, just as Hitler was the Reich Chancellor, appointed by the legitimate President of the Reich. What characterizes both the fascist regime and the Nazi regime, as is well known, is that both allowed the existing constitutions (respectively, the Albertine Statute and the Weimar Constitution) to subsist—according to a paradigm that has been sharply defined as that of a «dual state»—placing alongside the legal Constitution a second one structure, often legally unformalized, which could exist side by side only thanks to the state of exception. The term «dictatorship» is entirely inadequate to describe such regimes from a legal point of view, just as the straightforward opposition democracy/dictatorship is misleading for an analysis of the governmental paradigms that are dominant today" (Agamben, 2005, pp. 95–96).

5. The notion of decision permeates Carl Schmitt's entire work in two fundamental forms: the normative decision, deployed within normal legal Flow—as is the case with the judicial decision—and the exceptional decision, made in emergency situations.
6. The normative decision is materialized in judicial rulings and administrative resolutions in normal legal flow; the exceptional decision, on the other hand, materializes as a dictatorial measure in emergency situations.
7. The sovereign decision describes the entire functioning of the State in its two fundamental moments: the constitution of the legal order and its ordinary execution. Ordinary execution takes two forms according to the dynamics of the decision: the exceptional decision, which constitutes the "active moment" of state power, and the normative decision, which is the "potential moment" of that same power.
8. The relationship between the norm and the decision is determined by the specific situation in which the law is exercised. If the situation is ordinary, the decision is subordinate to the norm; however, if the situation is extraordinary, the norm is subordinate to the decision.
9. When the decision is subordinate to the norm, we find ourselves in a normal legal situation (*Normalzustand*), one of whose expressions is the application of due process; when, on the contrary, the norm is subordinate to the decision, we find ourselves in an exceptional legal situation (*Ausnahmezustand*), whose expression is the state of exception.
10. The Schmittian notion of sovereignty, defined as decisionism, implies the interaction between the decision and the norm, which is resolved, through the suspension of the norm, in the confrontation with the state of exception through an exceptional decision.
11. A given situation is declared a state of exception when it constitutes a situation of necessity, that is, a situation that, because it has no place in the normative system due to its extraordinary nature, completely invalidates it, forcing the competent authority to decide on it, suspending and/or recreating the established legal-political norm (the Constitution) in its entirety.
12. For Carl Schmitt, political theology implies the theological role of state mediation (*Rechtsverwirklichung*) between the realm of the "Idea of Law" and that of the facts, which the State's decision performs to articulate the transcendent and immanent dimension of human reality.

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