

## CRISIS, (NON)DECISION? FROM CARL SCHMITT TO BARTLEBY THE SCRIVENER

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*The article deals with the concept of “decision” related with the concept of “crisis” in Carl Schmitt’s thought. In the first part of the paper, I try to show why Carl Schmitt could be considered a “thinker of the crisis”, through the analysis of two of his major books: Die Diktatur (1921) and Politische Theologie (1922). In the second part, I show why “crisis” and “decision” are related in Schmitt’s doctrine. In the last part, I try to give a counter-reading of Schmitt’s decisionism through two literary characters: Bartleby the Scrivener and Mullah Nasrr Eddin. In this final part, the article discusses whether Giorgio Agamben’s theory of power can offer an adequate counterbalance for the dominant decisionist approach to the politics. My aim is to show how only an indecisionist approach could refuse the lexicon of the “crisis” in which our society lives.*

*Keywords: Carl Schmitt, crisis, decision, power, Giorgio Agamben.*

### **Etymology**

In an important article published in the *Journal of the History of Ideas*, Reinhart Koselleck wrote, speaking about the term “crisis”:

For the Greeks the term “crisis” had relatively clearly demarcated meanings in the spheres of law, medicine, and theology. The concept imposed choices between stark alternatives – right or wrong, salvation or damnation, life or death. Until the early modern period the medical meaning, which continued to be used technically, remained dominant virtually without interruption (Koselleck 2006: 358).

Careful etymological research connects the term “crisis” to the Greek word *Krino*, indicating the act of separating. In this sense, crisis is the moment of separation,

i.e. the point when a stable condition dramatically mutates its order. This is the meaning of “crisis” that is used in the current economic vocabulary, and it does not indicate instability exclusively, but also (and foremost) the jeopardized conditions of global markets and of the financial world in general. The same social meaning of “crisis”, according to which we name something “social crisis”, comes from the semantic field of medicine, and it indicates the point of sickness in which the life of the patient is most in danger and therefore, on a social plan, the point at which the life or death of a sick society is decided. First the *Corpus Ippocraticum* and then Galen passed down to the tradition of the “medical” meaning of the word “crisis”. That was how Hippocrates could refer to crisis as to the status that follows a symptom (*Epidemiae*,

I 14) and that precedes the healing or the decease of the patient. A further step in this etymological research shows how the Greek verb *Krino*, “to separate”, can figuratively be equivalent to the Latin verb *cernere*, which means “to decide”. Crisis in this sense is not only terminologically, but also conceptually close to the concept of decision. Thinking about the Christian use of the term crisis, which indicates both a “religious crisis” like the conversion of St. Paul described in the Acts of the Apostles, through medical terminology (*Acts IX, 1-9*); and the “crisis” of this world, meaning the moment in which God will judge the creation. *Krisis* in this sense has the same value as *iudicium*, an affinity that will programmatically be adopted by Kant’s *Kritik*: the “critique” of reason will coincide with the judgment expressed on it by the “tribunal of reason”. Moreover, always from an etymological point of view, it is easy to see how “decide” comes from *caedere*, indicating the act of cutting (*Silvas caedere*), which in its Sanskrit version literally means “to shatter” (*Khad-ayami*). So, crisis and decision belong to the same semantic area. The author that investigated the most on the conceptual closeness of crisis and decision was the German jurist Carl Schmitt. Schmitt was a controversial thinker, most of all for his political theories and positions (it is known that he compromised with the Nazi regime to which he formally adhered on the May 1<sup>st</sup>, 1933). He was one of the most important representatives of the juridical science of the 20<sup>th</sup> Century (Galli 1996; 2010). The present article has three goals: first of all, to explain why Schmitt’s thought can be considered “a thought of the crisis”; secondly, to analyze the concept of decision

in Schmitt’s work, and thirdly, to propose some counter-readings to the proposal of Schmitt.

### Carl Schmitt as a thinker of the crisis

There are two main reasons why Schmitt’s thought can be well defined as a “thought of the crisis”. The first one, historical and probably less interesting, has already been expressed implicitly: the troubled and tragic period Schmitt lived in, i.e. the years of World War II, forced the German thinker to consider the problem of the historical moment, a consideration that was pretty common in the European intellectual environment of that time. As a matter of fact, living in the moment of a deep crisis indelibly marks the intellectual path of a thinker. This is what Schmitt shares with the philosophers and thinkers that were active between the Twenties and the Fifties of the 20<sup>th</sup> Century. The second point, which I am going to deepen in this essay, is exclusively theoretical. We can affirm that Schmitt makes the concepts of crisis and decision his landmarks, or, in other terms, Schmitt’s philosophy cannot be understood but starting from his reflections about crisis and decision-making.

The first example of this reflection in Schmitt’s work is the text of 1921, *Die Diktatur*. As he considered the historical period Europe went through between the 16<sup>th</sup> and the 17<sup>th</sup> Century, a period that was characterized by bloody civil wars, Schmitt tried to find an answer about how a political system could withstand the shock of a hostile tension of two powers, a situation we could define as “critic” in the Hippocratic sense of the term. The

outcome of this hostile situation is nothing but the survival of the political system. In this frame, which can be defined as the exceptional moment that breaks the veil of the monotonous string of the history, the exception as the crystallization of a crisis situation stands out as the element that allows, although in great contrasts, the survival of the political world. Therefore, far from being considered as a mere contingent moment, a momentous wavelet of the order tamed in the rationally unfounded plot of facts of history, it assumes the original form of the politician and becomes its matrix and fundamental category. The exception, in this sense, represents the category through which it is possible to evaluate, comprehend, and analyze a crisis situation that could not be evaluated otherwise, as it is purely factual. This is like saying that, unlike Kelsen's theory (1960), the specific character of exceptionality consists in being an absolutely formal political and juridical category. As he wrote in the following year in its *Politische Theologie*, "The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception" (Schmitt 1985: 22).

In this perspective, it looks evident why, according to Schmitt, the phenomenon of the dictatorship assumes a particular theoretical and political relevance. As a matter of fact, a dictatorship intervenes when the state of crisis shows the normative powerlessness of the current juridical system, and as a consequence it authorizes an extraordinary event to re-establish the social order. In particular, the specific aspect of Schmitt's thought consists in the individu-

ation of two different kinds of dictatorship: the commissary and the sovereign ones. The first one has a defined mandate that must be carried out in a stable political and juridical situation, while the second one contains a far more personalistic and undetermined essence at the time. Schmitt defines it as follows: "Sovereign dictatorship sees in all the existent order a condition to be completely removed by action. It does not suspend a living constitution by leveraging the law it foresees, which is therefore constitutional, but aims at creating a condition in which it is possible to impose a constitution that is believed to be the authentic one" (Schmitt 1978: 137).

Therefore, while on the one hand the commissary dictatorship conceives the sovereign action within the frame of a pre-set power, no matter how weakly it is perceived by society, on the other hand, sovereign dictatorship revolves around the power's possibility of determining a new political order. The core theory of sovereign dictatorship allows Schmitt to define a field of action in which it is possible for the constituent power to take a concrete action and overcome the chaos and anomie the crisis brings within. It is interesting to underline the importance of the final part of this text, in which Schmitt deals exclusively with article 48 of the Weimar constitution. He debates it discussing the problem of the *martial law*, i.e. of "the *de facto* military intervention" which creates a "sort of lawless situation in which the executive power, i.e. the army that intervenes, can act without respecting the legal bondings according to the necessities imposed by the circumstances to repress the enemy" (Schmitt 1978: 172). Schmitt affirms that

this right is not a particular kind of law, but its very suspension and substitution with “a process that is essentially guided by the necessity of reaching a given scope” (Schmitt 1978: 172). It is important to underline the purely factual essence of the intervention in case of crisis, which must not, in any case, become law. “The purely factual measure”, Schmitt says, “remains inaccessible to any rightful consideration” (Schmitt 1978: 175). Sticking to the point, we can affirm that the crisis condition that through its concrete factuality justifies the procedures that do not belong to the standard law system, determines an exceptional condition, a state of exception (*Ausnahmezustand*). We may say that, in this condition, the agents perfectly coincide with those who judged the conditions of the possibility of their extra-ordinary actions. According to Schmitt, the exemplar paradigm of this is article 48 of the Weimar constitution, drafted in August 1919. The article says: “In case public safety is seriously threatened or disturbed, the Reich President may take the measures necessary to re-establish law and order, if necessary using armed force. In the pursuit of this aim, he may suspend the civil rights described in articles 114, 115, 117, 118, 123, 124 and 154, partially or entirely”. It is interesting to note the fields these articles belong to: personal freedom, inviolability of the home, secrecy of correspondence, freedom of expression, freedom of assembly. It appears clear that during the crisis, which determines a state of emergency and exception, what is at stake is the possibility to invade the most intimate and private parts of the life of everybody, including their bodies and physical existence. The fact that article 48 does not

consider a time limit for the suspension of the juridical order highlights the paradoxical structure of the exception condition. Although it represents the last possibility to restore the order after a conflictive crisis, it actually appears to be the incubation of the constituent power (that becomes a property of the president of the *Reich* who, almost paradoxically, becomes the “guardian” of the Constitution) through the confusion between commissary and sovereign dictatorship. This confusion generates a “grey area” in which the distinction between pure factuality and juridical order collapses, as the two constantly merge one onto the other. It is not a case if the Nazi regime was said to be a permanent state of exception that lasted 12 years, from 1933 to 1945.

### Decision and sovereign power

These considerations allow us to access one of the most famous works by Schmitt, *Politische Theologie*, published in 1922, right one year after his text about dictatorship. The famous incipit says: “Sovereign is he who decides on the exception” (Schmitt 1985: 11). To avoid the violent affirmation of the power and the negation of the legitimate power which historically belong to the phenomenon of the dictatorship, Schmitt established an indissoluble bond between the possibility of concretely take action in a state of exception and the existence of a sovereign authority. By doing this, Schmitt theorizes, or maybe discovers, the deepest root of the sovereign power, some sort of *loop* that dangerously resembles a vicious circle<sup>1</sup>: the sovereign is

<sup>1</sup> Please note that the “looping nature” of Schmitt’s definition emerges only when it

he who can take concrete actions between a state of exception, thus solving the critical and conflictive situation which originated it; but at the same time he is the one who actually gives life to the state of exception, i.e. creates the condition in which the existence of the sovereign power is jeopardized. The paradox of the sovereignty structure Schmitt proposed is analyzed in detail by Giorgio Agamben:

The situation created in the exception has the peculiar characteristic that it cannot be defined either as a situation of fact or as a situation of right, but instead institutes a paradoxical threshold of indistinction between the two. It is not a fact, since it is only created through the suspension of the rule. But, for the same reason, it is not even a juridical case in point, even if it opens the possibility of the force of law (Agamben 2005: 23).

In this relation, it is interesting to mention Karl Löwith's critique of Schmitt's decisionism. In his essay *Der okkasionelle Dezisionismus von Carl Schmitt*, Löwith reproached the thinker of being unable to distinguish between decision and occasion, a category that Schmitt himself had severely criticized in *Politische Romantik* (Schmitt 1968). If the extreme resort of the Political is the concrete sovereign decision, then "Schmitt's decision [...] is nothing but a decision towards resolution" (Löwith 1994: 137). We also mention that the sovereign decision in a normal condition is, accord-

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is balanced and crystallized in a formula. Schmitt actually talks about a legitimization of the exercise of the sovereign power that makes reference to the secularization of the power apparatuses that follow the religious doctrine of the divine power (Schmitt 1984).

ing to Schmitt, a tyrannical action that has no justification. All the same, in spite of a certain superficiality, Löwith's critique is not far from the proposal of this essay. The perverse ontological circle of exception and sovereignty finds its nourishment in the confusion between the formality of the exception category and the personalism of the concrete act of deciding, so that to a total indeterminacy correspond concrete acts of control of the individuals' life and bodies, a condition in which, always according to Agamben, our society seems to be living. If we want to interrupt this circle and prevent the "decision for the decision" to assume the original form of the political dimension, it is necessary to ontologically re-consider the concept of decision itself and to renounce to the crisis vocabulary, which we will try to do in this work. Deciding, i.e. the concretization of a will in response to a state of crisis, reflects the Aristotelian dialectic between potency and act exposed in the *Theta* book of the *Metaphysics*. This means overcoming the historic contingency that determines the concrete possibility of sovereign decision and analyzing instead its ontological structure through the concepts of potency and act. Before doing so, it is necessary to clarify Schmitt's dialectic between decision and sovereignty, most of all recalling the dialogue from the distance between Schmitt and Benjamin. It is well known that the concept of "state of exception", which Benjamin (2010) explained in the eighth thesis about the concept of history, written in the late Forties shortly before killing himself, comes from Schmitt's work. To the "state of exception" turned into the standard, the tradition of oppression taught us that it is necessary to compare the authentic state of

exception and to start a work of historical research that allows the creation of this new condition. It is probably less known that the authentic battlefield between the two is the concept of “decision”. If *Politische Theologie* was completely aimed at pointing out the sovereign power as the place for the unique, authentic and legitimate decision, in Benjamin’s work dedicated to the *Trauerspiel*, the situation reverses completely. Discussing the baroque German drama, Benjamin chooses a philosophically decisive option: he puts the character of the sovereign in the aesthetical dimension of the Baroque, defining him as he who “holds the course of history in his hand like a scepter” (Benjamin 1963: 54), and underlining that this concept of sovereign belongs to some sort of no-man’s land where the juridical theory of the State and theater fiction combine. What radically differs in Schmitt and Benjamin’s perspectives is that here the sovereign is by definition unable to make a decision:

The antithesis between the power of the ruler and his capacity to rule led to a feature peculiar to the *Trauerspiel* which is, however, only apparently a generic feature and which can be illuminated only against the background of the theory of sovereignty. This is the indecisiveness of the tyrant. The prince, who is responsible for making the decision to proclaim the state of exception, reveals, at the first opportunity, that he is almost incapable of making a decision (Benjamin 1963: 62).

Benjamin’s analysis reveals what the real nature of the sovereign power is, the same one that Schmitt identified in the authentic deciding ability as we have seen already. Just like in the Baroque art the jewels, trinkets and frills are showed off to fight the fear of emptiness and to

“fill” the space, in the juridical theory the sovereign becomes nothing but a sham, a theater put-on to hide the nothingness that feeds the juridical and political power. The pneumatic vacuum that allows the power to work in the decision-making process is legitimate only in the glorious form of a theater power whose inconsistency survived exclusively thanks to the applauses of the public that had come to see the play. Benjamin’s consideration must have impressed Schmitt, as in the end of *Hamlet oder Hekuba* (Schmitt 1958b) the author makes an excursus about Benjamin’s text regarding the *Trauerspiel*. Nevertheless, the discussion was focused more on Benjamin’s analysis of Shakespeare, a big part of which, as Schmitt himself declared, is quite obscure. The symbolic gauntlet of non-decision-making went void, maybe due to the candid admission of Schmitt who in *Verfassungslehre* declared how important the secularization of the apparatus of power glorification was: “public opinion is the modern form of acclamation” (Schmitt 1983: 244). And still, from the theoretical point of view that goes beyond the textual debate between two intellectuals, Benjamin’s perspective opens a field of research that, more than “decision”, invites to deepen and exploit indecision and to make it the ultimate term of the analysis of power by developing all the inconsistency, the vacuity, and the irrationality of its concrete forms.

### The scrivener and the camel

In the final part of his essay, through some suggestions proposed by the Italian philosopher Giorgio Agamben, I will propose two characters of indecision that certainly



do not end the debate on the theme but may strengthen some characteristics that normally, due to the “crisis terminology” we are used to, are not considered. The first one is Bartleby the scrivener, protagonist of a short story of Herman Melville (Weaver 1956). Agamben analyzed this story as he thought it to be the paradigm of an ontological analysis of decision and sovereignty. The second character comes from a legend which is said to belong to the famous Mullah Nassr Eddin.

The plot of Melville’s story is well-known. The mysterious Bartleby, a precise, punctual and scrupulous law scrivener, suddenly starts to answer all the requests of his employer with an enigmatic “I would prefer not to”. To understand the real challenge of this formula, i.e. an authentic anthropological mutation, it is necessary to recall Agamben’s thesis according to which the problem of sovereignty is nothing but the Aristotelian problem of the act-potency dialectic. This implies revoking something like the coincidence between “sovereignty” and power’s autonomy, which is the possibility-not-to. In spite of the difficulties of the Aristotelian texts we will not focus on in this work, we can take as the core point of the *Theta* volume of the *Metaphysics* the will to maintain the potency as something that exists autonomously. This effort is particularly evident in the Aristotelian critique of the Megarian doctrine, according to which the potency exists only in act. In the same way, shifted in an explicitly political vocabulary, the distinction between constituent and constituted power – a milestone of Schmitt’s thought – can be resumed in the potency–act dialectic. In other words, the effort to think about politics independently

from the concept of sovereignty and, as a consequence, from the concept of deciding coincides with the attempt of conceiving an ontology in which the existence of potency has no relation at all with the act. In an important work of his, Toni Negri tried to point out the absolute antithetic of the relationship between constituent power (pure potency) and sovereignty:

Sovereignty [...] is a foundation contrary to constituent power; it is a summit, whereas constituent power is a basis. It is an accomplished finality, whereas constituent power is unfinalized; it implies a limited time and space, whereas constituent power implies a multidirectional plurality of times and spaces; it is a rigidified formal constitution, whereas constituent power is absolute process (Negri 1992: 22).

Negri marks out that the ontological roots of the constituent power are nothing but the consideration that “constitutive strength never ends up as power” (Negri 1992: 23). It is Spinoza’s pretention (Negri 1981) that human, social and political nature can coincide with the autonomy of its absolute power. This happens because, as Negri further says, given that the constituent power is “the radical apparatus of something that does not yet exist”, it cannot end up in the constituted power which appears to be an ordinate and closed system and, finally, the radical negation of human freedom. Sovereignty, instead, represents the “fixing of constituent power, as its termination, as the exhaustion of the freedom that constituent power carries” (Negri 1992: 31). To avoid the constituent power to be fixed and reduced through the sovereign power into a constituted power, the politic task is to preserve the

constituent power as an endless, open process, an eternal “act of creation”, that widens the horizons and gives birth to a new life condition. The theoretical horizon this task is framed within is the ontological one: the human power that turns into a constituent power calls for its survival in the absence (also interpretable in the form of the “desire”, so much indeed that René Girard could build the theory of the “*désir métaphysique*” by developing the idea of a desire without an object, of a desire that is a constitutive lack and negativity of the human being (Girard 1978)). Nevertheless, this permanence can be understood only if the Aristotelian position according to which “everything that has a power can be and not be” is taken as valid. In this case, the power is always defined in relation to the “power-not-to”.

This is precisely what Bartleby’s indecision, his balance between *yes* and *no*, tries to do. More in detail, what Bartleby radically rejects is the fact that a decision, i.e. the manifestation of a will to do or not to do, resolves the problem of the passage from the potency to the act, the fact itself that we can conceive as “will” eliminating “pure potency”. In other words, Bartleby’s experiment, his way of remaining in a “zone of indiscernibility or indetermination between some non-preferred activities and a preferable activity” (Deleuze 1993: 92), radically attacks Schmitt’s lapidary affirmation according to which “Sovereign is he who decides on the exception”. If the state of exception here is taken as the power, or more Leibniz-likely as the possible world (or like the more recent prospective proposed by Massimo Cacciari (1990)), the passage to the action carries out a

possible world and makes what may seem impossible. In this sense, the decision is renouncing to the power and abandoning the mythic forces of power, i.e. renouncing to resist its concreteness that materializes in specific forms. Agamben writes: “It is not that he does not *want* to copy or that he does not *want* to leave the office; he simply would prefer not to. The formula that he so obstinately repeats destroys all possibility of constructing a relation between being able and willing” (Agamben 1993: 65).

The second figure I would like to propose as a paradigm of non-decision which comes from an ancient Sufi legend. Kristupas Sabolius has recently spoken about it in his book dedicated to the imaginary.

There is a notorious story about Mullah Nasreddin who managed to unravel the complicated case of an asymmetrical legacy. They say a very rich man died and left his children a message stating that the first son would get half, the second would get one third and the last would get one ninth of the property. Everything went fine except the problem involving 17 camels. One cannot divide this number according to the indicated proportions, unless one camel would be cut into pieces. That is why the children came to Nasreddin, and he offered a solution. He lent one camel, so there would be 18 of them. The first son would get 9, or a half of the wealth. The second would get 6 camels, or one third. The youngest child would get 2 camels, which would be one ninth. There would be one camel left, the same one which belonged to Nasreddin, so they could give his camel back to its owner (Sabolius 2013: 245).

What happens in this little mathematical trick? Nothing but the passage from a situation in which it is impossible to decide



without applying a certain amount of violence (like cutting the camel) to a situation in which the decision is taken in an absolutely pacific way, under the admired glance of the whole village. Nevertheless, this passage is made possible only by the appearance of an external, imaginary agent that was not there before. An irrational decision turns rational thanks to an element that does not belong to the given context, an element that, once the non-decision-making of the situation has been resolved, can be also rejected. This paradoxical situation presents the irrational character of every decision, an irrationality that Schmitt's thesis about the state of exception not only allowed, but also legitimated, as it enclosed the decision-making action in the frame of an extra-ordinary condition. As a matter of fact, every "decision", i.e. every voluntary passage from a potential to an actual situation is either not a decision – as it comes from a more or less conscious calculation that leads to a solution which is only apparently the result of a free choice of the individual or is either obtained through irrational elements that do not belong to the given context, whose appearance is so perturbing that must be deleted afterwards, like in the case of the eighteenth camel. Derrida had already found an aporetic situation in decision-making: "The undecidable is the experience of that which, though

heterogeneous, foreign to the order of the calculable and the rule, is still obliged to give itself up to the impossible decision" (Derrida 1990: 963).

If the impossibility to decide is perfectly expressed by the legend of Mullah Nassr Eddin, the result of the abandon to the impossible decision is a prerogative of Bartleby's. By categorically refusing the passage from the purely potential condition to the action, Bartleby finds himself in a position of suspension that breaks the bond between decision-making and sovereignty Schmitt had theorized. The semantic universe of the crisis we are in since long ago convinces us that the political paradigm is "decision-making". In Italy, for instance, good politicians are positively referred to as "uomo del fare", *decision-making man*, an expression that is as ridiculous as politically dangerous. To set us free from the vocabulary of the crisis, which conditions our actions and our political strategies, it is necessary to turn to the protagonists of suspensions, to those characters who do not exercise power because they do not decide, and through their constitutive indecision they break the plot of sovereignty that, from Hobbes to our days, has been ruling the political thought of the Western world. This is what I believe the paradoxical task of a theoretical and political reflection about the crisis should be, even during crisis.

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## KRIZĖ, (NEAPSI)SPRENDIMAS? NUO CARLO SCHMITTO PRIE RAŠTININKO BARTLBIO

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Santrauka

Straipsnyje nagrinėjama „sprendimo“ sąvokos sąsaja su „krizės“ sąvoka Carlo Schmitto mąstyme. Pirmoje straipsnio dalyje, pasitelkus jo pagrindinių knygų *Diktatūra* (1921) ir *Politinė teologija* (1921) analizę, mėginama parodyti, kodėl Schmittas gali būti laikomas „krizės mąstytoju“. Antrą straipsnio dalyje pagrindžiama, kodėl sąvokos „krizė“ ir „sprendimas“ Schmitto doktrinoje yra susijusios. Paskutinėje straipsnio dalyje mėginama imtis Schmitto decizionizmui priešingos skaitymo strategijos pasitelkus du literatūrinius personažus – raštininką Bartlby ir mulą Nasrediną. Šioje straipsnio dalyje taip pat svarstoma, ar Giorgio Agambeno galios teorija gali pasiūlyti adekvačią atsvarą politikoje vyraujančiai decizionistinei prieigai. Autorius siekia parodyti, kaip neapsisprendimu, svyravimu besiremianti prieiga gali atsakyti „krizės“, kurioje gyvena mūsų visuomenė, žodyno.

Pagrindiniai žodžiai: Carl Schmitt, krizė, sprendimas, galia, Giorgio Agamben.