RESTATING SOVEREIGNTY: ON AMERICA'S REGAINING THE OLD SENSE OF THE POLITICAL
Friedrich Balke

In the first lines of his (unfinished) novel *The Man Who Disappeared* (written in 1911), first edited by Max Brod in 1927 under the title of *Amerika*, Franz Kafka gives a description of his protagonist's arrival by ship in the harbor of New York. What is Karl Roßmann's first sight of New York? It is, of course, the Statue of Liberty, which is presented from a slightly different perspective than usual:

> As the seventeen-year-old Karl Roßmann, who had been sent to America by his unfortunate parents because a maid had seduced him and had a child by him, sailed slowly into New York harbour, he suddenly saw the Statue of Liberty, which had already been in view for some time, as though in an intenser sunlight. The sword in her hand seemed only just to have been raised aloft, and the unchained winds blew about her form.[1]

In these lines the Statue of Liberty has been transformed into the Statue of Sovereignty, because it is the sword (together with the law: *arma et leges*) which symbolizes the characteristic privilege of sovereign power, that is, the right to decide over life and death. The initial welcome scene in Kafka's novel corresponds to the initial proposition of Carl Schmitt's famous definition of the sovereign. Schmitt 'defines' the sovereign and Kafka describes a very significant metamorphosis of the Statue of Liberty. Throughout the novel Kafka explores the zone of indistinction between sovereignty and liberty. "All welcome" is the slogan of the "great Theatre of Oklahoma", and further on the poster, which was a "great lure" for Karl Roßmann, reads: "We are the theatre that has a place for everyone, everyone in his place!"[2] Once again – within the limits of a single sentence – we can observe a characteristic movement from the promise of unrestricted inclusion to the sovereign decision of assigning individuals to certain places or restricted areas. The logic of the novel's initial scene can best be described with a formula that has recently been used by members of the Bush administration: the logic is the result of a re-entry of 'old Europe' and its political obsession with sovereignty into the zone which at one time was that same Europe's political hope, 'America'. Kafka insists strongly on the recent character of this re-entry: it is of late that Liberty herself cannot help but be armed with a sword. Actually, it is no longer Liberty that is embodied by the statue bearing its name. Liberty has withdrawn into the "*unchained* winds" ("*freie* Lüfte") that blow about

the renewed Statue of Sovereignty.

The state of exception we have moved into since the events of September 11 is not only symbolically but also juridically older than this date. Its special quality is closely linked to the breakdown of the political topology of the Cold War era. The decomposition of the former system of mutual demarcations and territorial 'enclosures' has much in common with the international situation just before the outbreak of the First World War, a situation that in fact was not fundamentally transformed by the results of this war. Therefore, it is not surprising that a formula coined by Carl Schmitt for rethinking the 'law of exception' can be of use in explaining the current situation. Schmitt's formula, which appeared in his book *Political Theology*, published in 1922, soon became a dictum:

> *Sovereign is he who decides on the exception.*[3]

First of all, I'd like to comment briefly on the fact that Schmitt treats his theory of sovereignty in the context of what he calls "political theology". What is at stake here is of course the very controversial question of whether the structure of sovereignty can only be adequately explained within a framework of theological assumptions. For Schmitt it was beyond any doubt that all "significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development [...] but also because of their systematic structure."[4] Yet it is quite interesting to observe that although Schmitt chose the title of *Political Theology* for his "Four Chapters on the Concept of Sovereignty", he gives a "Definition of Sovereignty" in the first chapter without employing any concepts of political theology. In the second chapter he discusses "Problems of Sovereignty", and it is not until the third chapter that he deals with the problem of "Political Theology", which is neither the starting point nor the final conclusion of the whole essay. When we consider the Roman origins of the concept of sovereignty, which regarded all political power as derived from the will of the people (and not from God), a definition of sovereignty within the limits of political theology seems highly problematic. Schmitt appears to have been aware of this. Otherwise, it would not have been possible for him to give a legal definition of sovereignty independent of its theological background.

So if we leave aside all ambitions that would tempt us to venture beyond the juristic structure and political effects of sovereignty, the question arises: What does Schmitt's initial proposition on sovereignty, which at first sight does not seem to require much analytical effort, actually mean? To answer this question, it is necessary to give you a short close reading of the proposition and reveal some of its more subtle theoretical implications. After that, I will put the rule to the test by looking at the proposition in comparison with the current state of political and military globalization as reflected in the new US "National Security Strategy" dating from last September. My approach to Schmitt's theorizing on the state of exception, which alludes at the same time to the subject and the effect of this state and therefore encompasses a juridical and a factual dimension, is led by a second-order observation that Schmitt himself makes when he writes: "Of all juristic concepts the concept of sovereignty is the one most governed by actual interests."[5] Although Schmitt was very eager to secure the autonomy of the sovereign structure, he was also quite aware of the fact that in the course of history – and obviously in our days as well – sovereignty was never sovereign. Sovereignty, paradoxically enough, always has been and always will be 'governed' by other forces. "Actual interests" of course can be all kinds of interests, for example, national or economic, humanitarian or other global interests.
But let me return to Schmitt's initial proposition, which I would like to comment on briefly.

What strikes the reader is that Schmitt does not name a specific sovereign subject (state, nation, class, empire, etc.). The figure of the sovereign seems to be inseparable from a certain indeterminacy, and the question of *who* is sovereign remains unanswered. And as I have already indicated, Schmitt does not even provide an analogical or metaphorical determination of the sovereign, although, as Ernst Kantorowicz and others have shown, probably the most characteristic figure of all political theology since the Middle Ages has been the sovereign as *vicarius dei*, God's own representative.[6] Schmitt does not incorporate any representational structure into his definition: "Sovereign is not he who acts or decides *in the name of* ..." The sovereign's power is no longer derived from any legitimizing source, his decision is "created out of nothingness"[7] – perhaps because the process of legitimizing or authorizing the sovereign has suffered a profound 'ideological' crisis. Therefore, Schmitt calls sovereignty a "borderline concept", which it obviously was not during the periods in history when the representative capacity of the sovereign was not questioned. *Schmitt's sovereign, the sovereign of his initial proposition, does not have a body, neither a first body nor a second body.* This sovereign has to decide on the exception even when the concrete situation is 'desperate' and his hegemonic capacity – the willingness of the people to support him – is reduced to almost nothing. The proposition therefore shifts the perspective from the level of institutions or corporate bodies to the level of the sovereign act. The subject of the proposition does not refer to an institutionally embodied sovereign but to an arbitrary sovereign: *anybody*, even he who must be considered unqualified according to the criteria of political theology, can occupy this position, which is vested with the greatest political power and almost unlimited administrative discretion. By starting with the distinction between the normal and the exceptional, Schmitt makes it clear that for him the sovereign decision is only concerned with an operation that we may call 'defining and re-stating the normal'. Normalcy as such has become for Schmitt the content and the object of the sovereign decision. For centuries the sovereign power was not interested in what Schmitt calls the "normal, everyday frame of life", but in the age of democratic governmentality, life and its everyday manifestations are of great concern to every government.

Giorgio Agamben has argued that sovereignty should be conceived of as a form of relation and not simply as a power or force. The sovereign decision is governed by the logic of the *exception* and not by the logic of the superlative. Sovereignty thus conceived is the potentiality of the law "to maintain itself in its own privation, to apply in no longer applying. This relation of exception is a relation of ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable."[8] Schmitt's concept of the exception reflects a global situation in which the world society is constantly occupied with replacing the old nationally defined entities by new economically and culturally based 'borderlines' that separate zones of inclusion from zones of exclusion. At the very beginning of his reflections Schmitt therefore promises that his definition of sovereignty "can do justice to a borderline concept [Grenzbegriff]."[9] The sovereign act aims at establishing new borders and patterns of socio-political classifications.

As a jurist, Schmitt is not so much concerned with the logic of law but with the conditions that are required to make law applicable. Therefore, he maintains that "all law is situational law",[10] a statement that has often been thoroughly misunderstood by his juristic critics. The 'situation' for Schmitt "is not a mere 'superficial presupposition' that a jurist can ignore; that situation belongs precisely to its immanent validity."[11] Thus, the sovereign is not so much he who gives the law, the *legislator*, but he who *suspends* it and creates a "normal situation" in order to make the law applicable again. Looking at the historical context of his reasoning, we are inclined to think that Schmitt is referring to enormous political disturbances and the outbreak of enmity between the citizens of a state. But in the chapter in which he defines the "borderline concept" of sovereignty, the paradigm of the 'critical' situation is not civil war but the exceptional or even "extreme case"[12] as such. The extreme case is not hastily identified as

civil war because even in the absence of armed conflicts within a state territory, a case of exception or an imminent threat can be perceived to exist. Therefore, Schmitt argues that the sovereign is he "who definitely decides whether this normal situation actually exists"[13] because only the sovereign is capable of distinguishing between the normal and the exceptional.

Sovereign is he who decides on the difference between 'in' and 'out'. Modern power, Michel Foucault argues, "is no longer a matter of bringing death into play in the field of sovereignty, but of distributing the living in the domain of value and utility."[14] This statement is at the same time both true and false. It is true insofar as "the everyday frame of life," as Schmitt writes, becomes the main target of this power. It is false because it ignores the persistence of the sovereign function *within* the field of modern 'normality' or 'normalizing power': modern power surely operates by differentiating between individuals, and measuring their abilities in quantitative terms, in other words or in the words of Avital Ronell: by subjecting individuals "to the imperative of testing"[15]; but in the last instance "it traces the limit that will define difference in relation to all other differences"[16], and this difference that 'overrules' all other differences brings into play the concept of the political, which, according to Schmitt, can be reduced to the distinction between friend and enemy. Distributing the living in the domain of value and utility is not an alternative, as Foucault argues, to drawing the "line that separates the enemies of the sovereign from his obedient subjects."[17] This is because the distribution of individuals around the norm (according to their abilities and 'moral constitution') immediately provokes the question of what is to be done with those who are regarded as 'useless' and without value or as a danger to 'our' values.

The normalizing power, as Foucault has stated quite clearly in *Discipline and Punish*, always requires and produces what he calls the "'shameful' class,"[18] which – with regard to the international state of affairs – immediately leads us to the terrorists, tyrants and rogue states that populate the political imagination of the sovereign power. The "National Security Strategy of the United States" therefore distinguishes between friends (allies), competing "great powers" (Russia, China), and enemies or foes, which are characterized as 'abnormal' in every respect (although only two decades ago they themselves were allies or partners of the US). So the new "Security Strategy" creates a global field of comparison, a space of differentiation in which the position of each individual political actor is marked: the US and its allies, Russia ("in the midst of a hopeful transition"), China (constantly making progress but still a potentially aggressive 'great power') and at the end of the scale the 'abnormal' powers ("shadowy networks of individuals", "rogue states"), former 'freedom fighters', whose only fault it was to have changed from being authorized fighters in the name of freedom (against Soviet imperialism) to fighters against freedom, that is: against those who formally authorized them. Normalizing power individualizes "by making it possible to measure gaps, to determine levels, to fix specialities and to render the differences useful by fitting them one to another."[19] This is true for the field that is judged by the sovereign to be normalizable. But those who are normalizable have to be separated from those who are classified to resist normalcy, as if it were their 'free will' to remain in the 'shameful' class, as if they had *chosen* to belong to this class and from the beginning renounced the possibility of rising to one of the other classes that constitute the sphere of the politically and culturally acceptable or 'normal'.

According to Schmitt's definition, sovereignty only manifests itself in the 'exceptional' situation, which, from the perspective of global normalcy, is the remainder that is not or never will be normalizable. Consequently, the new "Security Strategy" emphasizes that "our security environment has undergone profound transformation," which refers to the subject status of the new enemies. These enemies belong to the 'shameful' class because, paradoxically enough, they do not have the military capabilities which made the former enemy of the Cold War era so 'strong' and invincible that a war could not be waged against it. Thus, none of the "contemporary threats rival the sheer destructive power that was arrayed

against us by the Soviet Union."[20] The new enemies are regarded as 'exceptional' enemies because they are determined "to obtain destructive powers hitherto available only to the world's strongest states." It is the *normalcy of enmity* as such that is at stake in the new US "Security Strategy". The relation of exception, which determines the structure of sovereignty, cannot be applied to an irreconcilable antagonism between 'great powers' that recognize each other as competing legal and political subjects, but only to a radical political asymmetry, which is supposed to justify suspending the prescriptions of international law. The so-called "New World Order" is emerging as a result of the collapse of an international order that the new "Security Strategy" remembers as "the *balance* of terror". The terror that is produced by the symmetric enmity of two globally operating political and military blocks is of a completely different nature than the terror on which war has currently been declared. This new war is described by the Bush Administration as "a global enterprise of uncertain duration", and it is exactly this spatial and temporal uncertainty that is characteristic for the "situational law" of sovereign power:

> It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty. The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated. The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited.[21]

However 'evil' an enemy may be, what has changed in the time between Reagan's "empire of evil" and Bush's "axis of evil" is not the intensity of the evil but the juridical status of the subjects that are supposed to embody this 'evil'. However destructive the military capabilities on both sides of the Cold War antagonism were, the 'willingness' to respect each other as subjects of international law was never seriously questioned during the Cold War period. Neither superpower could allow itself to treat their relationship as a relationship of exception requiring a sovereign decision to put the adversary 'out of law' (*hors la loi*). Meanwhile, the politics of exclusion enmeshed with the process of globalization has reached a critical point: "It has taken almost a decade for us," the authors of the new "Security Strategy" argue, "to comprehend the true nature of this new threat."[22]

To comprehend the true nature of a new threat? Or to invent a new type of enemy? Perhaps even to encourage a new enemy to present himself in order to be able to fight him? At the beginning of the nineties US policy faced a serious problem which can best be expressed by quoting from Nietzsche, as Jacques Derrida did in his *Politics of Friendship*: "Foes, there are no foes!" It looks as if we have lost our enemies. Maybe – as a superpower, as the only remaining superpower – we can live without friends, but we definitely cannot exist, as a political unit, without an identifiable enemy, however "elusive" and "shadowy" he may appear at first sight. It has taken almost a decade for us to invent the new enemy, to surround ourselves with terrorists, tyrants and rogue states. It has taken almost a decade for us to learn the lesson of Carl Schmitt, whose work Derrida, in his *Politics of Friendship*, reads as the desperate effort to re-invent what seemed, for an exceptional moment after the fall of the Soviet Empire, to have been irretrievably lost:

> The invention of the enemy is where the urgency and the anguish are; this invention is what would have to be brought off, in sum, to repoliticize, to put an end to depoliticization. Where the principal enemy, the 'structuring' enemy, seems nowhere to be found, where it ceases to be identifiable and thus reliable - that is, where the same *phobia* projects a mobile multiplicity of potential, interchangeable, metonymic enemies, in secret alliance with one another: conjuration.[23]

What from the sovereign's point of view is only a change in the character of the enemy – from calculability to incalculability – reveals itself to be a true change in the structure of global exclusion. At the beginning of the nineties, exclusion was merely a by-product of globalization and a result of rapid economic change and political indifference rather than of active political discrimination; since the end of the decade exclusion has functioned according to the logic of the ban. The zones of exclusions are no longer simply set outside the law and left to themselves but rather, as Agamben supposes, "*abandoned* by it, that is, exposed and threatened."[24]

We have to distinguish between two periods in the process of exclusion, which result in what I would call the global restating of sovereignty. In the first period, the law is withdrawn from certain areas or zones in the world, which consequently develop into 'black holes'. Zones of exclusions at this time are not necessarily the result of economic exploitation and political repression but of certain regions in the world being left to themselves and stimulated to develop their own 'national', 'ethnic' or 'religious' model for 'success'. Being excluded from the world society and treated symbolically as 'abnormal' or 'unnormalizable', these nations paradoxically tend to affirm this exclusion (as a symbol of their national or religious peculiarity or otherness) and use the politics of exclusion on their own behalf as they decide in a sovereign manner on the 'internal enemy'. The exclusion that results from the mere functioning of the globally operating social systems is thus 'passed on' to the local level. The state apparatus is no longer used to redistribute the 'national cake' but to declare war against those citizens who are held responsible for the 'national decline'. In the second period, these zones of exclusions are the objects of major security concerns and therefore of another exclusion, a sovereign exclusion, the content of which is not only economic sanctions and military aggression, but, first and foremost, the explicit political affirmation of the process and its ideological causes that lead to the emergence of the 'black holes': the very first sentence of the new "Security Strategy" affirms – as a 'result' of the "decisive victory" over totalitarianism – "a single sustainable model for national success: freedom, democracy and free enterprise."[25] The sovereign decision, as we have seen, is not concerned with "general norms" but with specific situations, that is to say, the enforcement and maintenance of what Schmitt calls the "*normal*, everyday *frame* of life": 'freedom', 'democracy' and 'free enterprise' are highly indeterminate concepts or blanket clauses that are used to justify 'concrete measures' or interventions into a specific situation.

Although the new US strategy is filled with the rhetoric of globalization, the "frame of life" is still defined in *national* and inter-national terms. The strategy continues to address 'nations' although the process of globalization undermines the economic, political and cultural prerequisites of the nation-state form, as the authors of the "Security Strategy" clearly realize when they point to the dangerousness of "weak states": "The events of September 11, 2001 taught us that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states."[26] 'Weak states' are the black holes of the emerging world society. A 'weak state' is the result of a nation-state's failure to provide a 'normal life' for all of its citizens. This failure does not lead to a rejection of the nation form, but rather it is fiercely maintained by transforming the 'national sovereign' into an 'ethnic' one and thus redefining the program of *national* inclusion (of the various social and cultural groups that constitute a 'nation') into a program of *ethnic* exclusion and in some cases even of ethnic cleansing. The 'ethnic turn' of many nations in Eastern Europe at the end of the Cold War and in many parts of Africa and in the Middle East since the nineties is the result of a mechanism that I would describe as a *passing on of exclusion*. Those nations that are subjected to economic and cultural exclusion as a result of the process of globalization are perceived by the world opinion and their media leaders as global 'dropouts'. If they do not succeed in rising to the world society's 'upper classes', where the 'global players' are, they are treated as members of the 'shameful' class and as a result of this treatment desperately search for a way of their 'own' to achieve local independence and modernization. Being excluded from the world society and treated symbolically

as 'abnormal' or 'unnormalizable', those nations tend to use the mechanism of exclusion on their own behalf and decide on the 'internal enemy'. The exclusion that results from the mere functioning of the globally operating social systems is thus 'passed on' to the local level. The state apparatus is no longer used to redistribute the 'national cake' but to declare war against those citizens that are held responsible for the 'national decline'.

This mechanism of duplicating the exclusion process or of re-inserting exclusion into the zone of exclusion is, by the way, reflected perfectly in the writings of Carl Schmitt. From his early definition of sovereignty in *Political Theology* to his later reflections in the *Concept of the Political* Schmitt views the object of the sovereign decision as the "internal enemy". Before Schmitt, it was a common dictum within the context of public law to identify the state as the sovereign. However, as we have seen, Schmitt defines sovereignty without any reference to an institutional subject. It is "he" who is sovereign. This de-institutionalization and de-localization of sovereign power reflects a historical situation in which states that are unable to guarantee the 'welfare' of all their citizens are turned into weapons which – in the 'extreme case' – are used against the parts of their own populations that are regarded as both 'weak' and 'extremely dangerous'. The secular state is no longer defined formally as an entity in which there is an absence of civil war, as in the age of its inventors, but functions as a tool for waging war against those who are excluded from the 'homogeneity' of the people. We have to face the fact that there is a point of indistinction between the dropout states that exclude part of their population because they are believed to be 'unrepresentable' and the newly emerged empire state that promises to restore normalcy by a final and definite, that is, military exclusion of those regimes that disturb the fictitious 'global community'.

The new "Security Strategy" of the United States reflects precisely a certain desperateness that is inseparable from the position of the sovereign and is a central constituent of the 'political' as defined by Carl Schmitt. The classical sovereign acted either in the name of God or in the name of the people. Sovereignty, as we have argued, used to be embedded in a symbolic structure that was articulated by employing the phrase 'in the name of'. We also have to take into account that in the context of international public law the sovereign always acted 'in concert' with other sovereigns although, from a logical point of view, to speak of the sovereign in the plural seems rather paradoxical.

To sum up, what is highly characteristic for the sovereign as Schmitt sees him is not only his willingness to act but his willingness *to act alone*, that is to say, to move beyond any self-binding law when this is required by the situation. Therefore, the decisive passage of the "Security Strategy" reads as follows:

> While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.[27]

Sovereign is he who will not hesitate to act alone and who is therefore willing to maneuver himself into a position that Schmitt, in his writings on international public law, describes as "beyond the line." Beyond the line is defined as a zone in which freedom consists in the pure enforcement of one's own will upon the other. The action of him who possesses exceptional authority produces a space of pure political facticity in which all life is reduced to the will to survive. This is the reason why the new "Security Strategy" identifies freedom with the "nonnegotiable", that is, the unwillingness to negotiate. As the sovereign is to be defined strictly by his determination "to act alone" – without regard for any law (*legibus solutus*) or the will of other sovereigns, he finally 'is' alone and therefore free to do as he pleases.

It has often been argued that any kind of unlimited competence is incompatible with a liberal democracy, which divides sovereign power or submits it to a system of checks and balances. And ironically enough, it is Carl Schmitt, the fierce anti-liberalist, who pays tribute to the traditional reading of liberalism as an effort to eliminate the sovereign by establishing the 'rule of the law'. Schmitt therefore writes: "The exception was something incommensurable to John Locke's doctrine of the constitutional state and the rationalist eighteenth century."[28] However, it is John Locke who, in his *Second Treatise of Government*, proves to be fully aware that the law always leaves a 'rest' which requires a decision that 'overrules' it. The liberal, constitutional order must, under certain circumstances, yield to a power "to act without legal prescriptions – in certain cases even against the law – in order to secure the public interests."[29] Locke's concept of sovereign power under liberal conditions is "prerogative". The prerogative is surely a "borderline concept", which by definition does not replace but supplements or suspends the legal order.

The 'totalizing' effect of the recent sovereign decision becomes clearly visible when we look not only at the way the state of exception was declared but also at the way it has been extended locally and temporally, which makes the return to normalcy appear utopian. If the new enemies are enemies that "cannot be deterred,"[30] as the "Security Strategy" states, normalcy can only be achieved if they are totally eradicated. Authors of such an argument are, in fact, completely obsessed with a reasoning that endows the enemy with a "diabolical stature", as Schmitt shows in the fourth chapter of *Political Theology*. For liberalism, Schmitt argues, it is typical to "dissolve metaphysical truth in a discussion. The essence of liberalism is negotiation, a cautious half measure, in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate and permit the decision to be suspended forever in an everlasting discussion."[31] The essence of the "Security Strategy", however, is to fix the nonnegotiable and radicalize the political conflict in such a way that the "decisive bloody battle" seems the only solution to the problem. "But this decisionism is essentially dictatorship, not legitimacy," Schmitt writes with regard to the "Counterrevolutionary Philosophy of the State", which was developed by Catholic thinkers during the first half of the nineteenth century. "Donoso Cortés," Schmitt continues, "was convinced that the moment of the last battle had arrived; in the face of radical evil the only solution is dictatorship."[32]

We have been taught and many still believe that liberalism and dictatorship are antagonists; but even for a liberal constitutional order the moment may arrive when the *passion of standing alone* seizes the political decision-makers, which Elias Canetti has analyzed in *Crowd and Power*.[33] The remaining superpower, the 'disembedded' sovereign, is by definition a lonely power although it is certainly striving for national and above all international backing, as we have seen in the conflict with Iraq. "We will not hesitate to act alone" is the key phrase of the new "Security Strategy". The sovereign acts alone and in his own name because he decides on the exception, which only he himself can define. The subject of sovereignty cannot be replaced by some sort of political 'intersubjectivity'. Therefore, sovereign power can never be shared with anybody, not even 'allies'. Canetti has described the paranoid structure of the sovereign power, which ends up being its only adherent: "The sense of personal place, or position, is of cardinal importance for the paranoiac: there is always an exalted position to defend and make secure. By the very nature of power, the same must be true of the ruler."[34] The sovereign acts as if he has been left alone by the whole world. At least he takes into account the *possibility* that the whole world is united against him. Even 'Old Europe' appears to be no longer a reliable partner. The sovereign is haunted by the feeling that he is surrounded or enclosed by masses of enemies: Plots and conspiracies "are continually with him".[35] His main enemy, call him the "tyrant" or the "rogue state", will never dare to act alone; he will always incite (and 'sponsor') a pack of people – in our case "terrorists" – to act against the sovereign. Those who belong to the "pack" will hide and can be anywhere. "The pack is always there, even if not actually baying at the moment; and its hostility is unchangeable."[36] For the authors of the "Security Strategy",

the foe has not only become totally incalculable but also invisible, "particularly elusive" and "shadowy", and above all he has *multiplied* himself into numerous enemies (terrorists, tyrants, powerful states, poverty, disease). The exceptional situation has reached such proportions that only extreme measures can turn the tide.

Restating sovereignty, the remaining superpower puts its highly ambivalent position towards 'globalization' to the test. It is attracted by further economic perspectives, but at the same time the "distinctly American internationalism" is willing to "meet the many security challenges we face"[37] by transforming 'critical' parts of the world into 'war theaters' (including "outer space"[38]). At the same moment when 'the world' becomes the object of an irresistible cultural, economic and political process of deterritorialization, a sovereign power emerges that is far from putting any faith into 'globalization' but instead 'abandons' the world and exposes and threatens it by withdrawing all juridical protection from the territories in which it declares hostile activities are being undertaken. Sovereign is he who thinks he is able to create around himself an empty space that can be fully monitored and controlled. But in a 'world society' people realize that the sovereign act of separating and thus 'excluding' certain regions from the world (to 'enclose' their dangerousness) multiplies the zones in which order can only be maintained by the continual use of military force and new governmental forms, possibly neo-colonial ones. And such forms rely on the maintenance of what the sovereign is supposed to "decide on", *the state of exception*, which, according to Carl Schmitt, is "order in the juristic sense" but "not in the ordinary kind."[39] The sovereign is not he who replaces chaos by order, but he who guarantees 'order' *in* the state of exception: "The two elements of the concept *legal order* are then dissolved into independent notions and thereby testify to their conceptual independence."[40] Let me conclude with a quotation from the introduction to Schmitt's essay *The Crisis of Parliamentary Democracy*, which sums up the political strategies of governing and thus reproducing the state of exception (instead of really putting an end to those exceptions):

> Colonies, protectorates, mandates, intervention treaties, and similar forms of dependence make it possible today for a democracy to govern a heterogeneous population without making them citizens, making them dependent upon a democratic state, and at the same time held apart from this state. That is the political and constitutional meaning of the nice formula 'that colonies are foreign in public law, but domestic in interntional law.'[41]

Friedrich Balke and is the Executive Director of the Research Center for Media und Cultural Communication at the University of Cologne. He was Visiting Max Kade Professor at the Department of Germanic Languages at Columbia University, a Visiting Professor in the Department of Literary Studies at the University of Konstanz and in the Department of Media Studies at the Bauhaus-University in Weimar. Professor Balke is the author of *Figuren der Souveränität* (forthcoming), *Gilles Deleuze* (1998) and *Der Staat nach seinem Ende. Die Versuchung Carl Schmitts* (1996). He has also co-edited *Erotische Recherchen. Marcel Prousts Decodierung der Intimität* (2003), *Gilles Deleuze - Fluchtlinien der Philosophie* (1996) and *Zeit des Ereignisses - Ende der Geschichte?* (1992).

NOTES

1. Franz Kafka, *The Man Who Disappeared (Amerika)*. Trans. Michael Hofmann. London: Penguin, 1996, 3.

2. Kafka, *The Man Who Disappeared*, 202.

3. Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty*. Trans. George Schwab, Cambridge: The MIT Press, 1988, 5.

4. Schmitt, *Political Theology*, 36.

5. Schmitt, *Political Theology*, 16.

6. Cf. Ernst Kantorowicz, *The King's Two Bodies. A Study in Mediaeval Political Theology*. Princeton: Princeton University Press, 1997.

7. Schmitt, *Political Theology*, 66.

8. Giorgio Agamben, *Homo sacer. Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998, 28.

9. Schmitt, *Political Theology*, 5.

10. Schmitt, *Political Theology*, 13.

11. Schmitt, *Political Theology*, 13.

12. Schmitt, *Political Theology*, 12.

13. Schmitt, *Political Theology*, 13.

14. Michel Foucault, *Discipline and Punish. The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage Books, 1977, 144.

15. Avital Ronell, "The Test Drive" *Deconstruction is/in America. A new sense of the political*, Ed. Anselm Haverkamp. New York and London: New York University Press, 1995, 201.

16. Foucault, *Discipline and Punish*, 183.

17. Foucault, *Discipline and Punish*, 144.

18. Foucault, *Discipline and Punish*, 183.

19. Foucault, *Discipline and Punish*, 184.

20. *The National Security Strategy of the United States of America*, September 2002, www.whitehouse.gov/nsc/nss., 13.

21. Schmitt, *Political Theology*, 6 f.

22. *National Security Strategy*, 15

23. Jacques Derrida, *Politics of Friendship*, Trans. George Collins, London, New York: Verso, 84.

24. "The ban," according to Agamben, "is the pure form of reference to something in general, which is to say, the simple positing of relation to the nonrelational." Agamben, *Homo sacer*, 29.

25. *National Security Strategy*, preface [unpaginated].

26. *National Security Strategy*, preface.

27. *National Security Strategy*, 6

28. Schmitt, *Political Theology*, 13-14.

29. John Locke, *Second Treatise of Government*, Ed. C.B. Macpherson, Indianopolis: Hackett Publishing Company, 1980, 124.

30. *National Security Strategy*, 30.

31. Schmitt, *Political Theology*, 63.

32. Schmitt, *Political Theology*, 66.

33. Elias Canetti, *Crowds and Power*. Trans. Carol Stewart. New York: Farrar, Straus and Giroux, 1984.

34. Canetti, *Crowds and Power*, 436.

35. Canetti, *Crowds and Power*, 438.

36. Canetti, *Crowds and Power*, 439.

37. *National Security Strategy*, 29.

38. *National Security Strategy*, 30.

39. Schmitt, *Political Theology*, 12.

40. Schmitt, *Political Theology*, 12.

41. Carl Schmitt, *The Crisis of Parliamentary Democracy*. Trans. Ellen Kennedy. Cambridge: The MIT Press, 1988, 10.