March 9, 2010

Dear Colleagues at LAPA,

I am delighted to have the opportunity to present some of my work to you. At the moment, I am engaged in the process of writing a book on *Theaters of Pardoning: Sovereignty and Judgment from Shakespeare to Kant*, and I was hoping to focus our conversation on one section of that project. I am, therefore, including a draft of the first chapter of the manuscript, on “Theatricality, Pardoning, Sovereignty.” Because the chapter bears the traces of appearing in the midst of a longer project, it is preceded by an abstract of the entire book, which is intended to furnish a sense of the overarching context. If time limitations are a constraint, I would suggest reading only pages 3-6 and 22-53 of the chapter. I very much look forward to your comments, questions, and suggestions!

Best wishes,

Bernie Meyler
THEATERS OF PARDONING:
SOVEREIGNTY AND JUDGMENT FROM SHAKESPEARE TO KANT

BOOK ABSTRACT

Philosophers from Jean Bodin, to Immanuel Kant, to Jacques Derrida have analyzed the power of pardoning as constituting one of the highest marks of majesty. The pardon represents an exception to the application of the laws; if Carl Schmitt was right that “Sovereign is he who decides on the exception,” the one who pardons is also the sovereign. Despite the persistent association between pardoning and the King, the right to pardon became, in seventeenth-century England, gradually divested from the monarch and accorded, at least in part, to Parliament. This alteration corresponded to a change in the location of sovereignty itself.

This book project examines the role of “theaters of pardoning”—a form of tragicomedy—in the drama and politics of seventeenth-century England, positing that shifts in the treatment of pardoning, and, especially, the pardoning of revolutionary or proto-revolutionary violence were instrumental in the transition from a more monarchical and judgment-focused to an increasingly parliamentary and legislative vision of sovereignty. After reading Shakespeare’s Measure for Measure as revising the tradition of revenge tragedy and re-establishing the laws in the face of the possibility of revolutionary violence, the book then turns to King James I, analyzing how his own, biblically inflected version of tragicomedy influenced his response to the Gunpowder Plot, and how he could instead have turned to the tragicomic model provided by Measure for Measure itself, performed before him in 1604. The following chapter interprets the play The Laws of Candy as staging the near dissolution of a state but resolving the potential tragedy by providing pardons that come not from above but instead interpersonally between subject/citizens.

The second half of the book turns to the period following the English Revolution and examines the formulation of a specifically philosophical account of sovereignty. After showing how Thomas Hobbes’ interpretation of the Act of Oblivion proposed by King Charles II but ultimately passed by Parliament undermined his insistence on monarchical sovereignty, the book concludes by arguing that, even in the writings of Immanuel Kant, who associated sovereignty most firmly with law giving, a certain singularity of sovereignty remained—a singularity that took the form of the pardon.
Chapter I: Theatricality, Pardoning, Sovereignty

What, one might ask, does the phrase “theaters of pardoning” designate? This book attempts to define such a genre, demonstrating that it subsists between the spheres of drama and legal judgment, and, at the same time, emphasizing the crucial role that genre plays in the intersection of law and literature. While pardoning in the political context actualizes an element of sovereignty, the genre constructed by specifically dramatic theaters of pardoning has political implications.

Considered from a purely juridico-political vantage point, pardoning already involves a theatrical scene. This is apparent from the entire history of pardoning’s description within political philosophy, ranging from the texts of Jean Bodin through those of Immanuel Kant to some recent comments of Jacques Derrida. In each instance, pardoning assumes a “spectacular” quality, phenomenally displaying the majesty of the sovereign. According to Michel Foucault’s description of its function, pardoning—even more than punishment—actualizes what he terms the “super-power” of the sovereign, his affirmation of a personal excess over the criminal (*Discipline and Punish* 51). The exception constituted by the pardon, far from undermining the power of the classical sovereign that is staged in the scene of execution, underlines his supremacy over the individual malefactor; it permits him the acclamation of the people as though he had returned to them a life already forfeited. Jacques Derrida similarly speaks of “the theatrical space in which the grand forgiveness, the grand scene of repentance . . . , is played, sincerely or not” (*On Forgiveness* 29). At the same time as philosophy describes the phenomenal appearance of pardoning, however, it reserves the sovereign in the wings. Even for Foucault, who most emphatically insists upon the visibility of power in
the classical age, the pardon arrives not with the person of the sovereign, but by letter—
conveyed from outside the scope of the play by a messenger; as he writes, “The sovereign
power that enjoined [the executioner] to kill, and which through him did kill, was not
present in him; it was not identified with his own ruthlessness. And it never appeared
with more spectacular effect than when it interrupted the executioner’s gesture with a
letter of pardon” (Discipline and Punish 53). Thus the political theater of pardoning
traces an elaborate relation between the presence and the absence of the sovereign.

Certain plays likewise stage theaters of pardoning as politico-juridical moments
dramatically depicted. From Measure for Measure to The Laws of Candy, each play
discussed below contains at least one scene of judgment followed by pardoning. On first
glance, these moments appear to represent the legal verdict and subsequent pardon
thematically—in the same way as graveside mourning or a precipitous flight from
avengers. The structure of the sovereign’s pardon itself, however, already entails a
certain theatricality; given between the ineluctable fact of his presence and the necessity
of his withdrawal, the pardon unhinges the sovereign from a law that finds itself defined
as positive insofar as it is posited apart from him. In each instance, the pardon delineates
a relation between the law and the sovereign that the drama allegorizes. From the
beginning, then, the staging of the pardon belongs not exclusively to the sovereign, but to
the play itself—implicating its own theatricality.

Drawing on the theory of genre and legal and political philosophy, this chapter
analyzes the structure of pardoning within the overlapping spheres of drama, law, and
politics. The first section contends that the plays I am dubbing “theaters of pardoning”
stand in an important relation to tragedy; although they approach close to a tragic
outcome, a set of final pardons, delivered by a *deus ex machina* figure, renders them tragicomedies instead. This *deus ex machina* may seem alternately a character intervening in the narrative or a function of the plot itself. The intrusion of the event of pardoning from outside the established universe of the play unsettles the tragic structure of knowledge and instead invites the audience to re-imagine the world represented.

The second part of the chapter then turns to an analysis of the role of forgiveness and pardoning in political contexts akin to that experienced by the audience of these early modern theaters of pardoning—the scene of revolution. Following Hannah Arendt, it considers the possibility for forgiveness—the personal counterpart to the institutional pardon—to produce a kind of freedom in the political sphere that would be distinct from the freedom of the will or sovereignty. At the same time, it examines how a different account of forgiveness could supplement Arendt’s analysis of Hegel in *On Revolution* and break the sense of historical necessity that she criticizes in his work. According to this understanding, forgiveness could intervene in the revolutionary moment to prevent the revolution from consuming itself.

Taking up the long-standing claim of a relation between pardoning and sovereignty, the final portion of the chapter then uses the work of Carl Schmitt to examine the relationship between the pardon and the state of exception. On the one hand, it contends that Schmitt’s claim in *Political Theology* that “Sovereign is he who decides on the exception” can be usefully extended to situate sovereignty in the entity—whether King or Parliament—accorded the pardon power. On the other hand, however, it suggests that Schmitt’s account is insufficient to explain the role of non-sovereign forgiveness in setting up the possibility of politics after revolution in at least some of the
plays discussed below. Although the transition from a more monarchical to a more parliamentary conception of sovereignty during the course of seventeenth-century England can be tracked with reference to the power of pardoning, forgiveness also takes on another role in theaters of pardoning, helping the audience to imagine a political order not constrained by those two alternatives.

Within the chapter, a number of disputes about the nature of pardoning and forgiveness arise. To what extent must a pardon be personally given rather than received from an unknown source? When does pardon or forgiveness emanate from the individual rather than institutional capacity of the one responsible? Should pardons and forgiveness involve forgetting or remembering the circumstances necessitating them? Is it a distortion of forgiveness to employ it in service of setting up a state? Can the unpardonable be pardoned, or under what circumstances? Does the exceptionality of the pardon create difficulty in reconciling its existence with liberal theories of law? Will the pardon always bear the traces of its theological-political origins and how can it then be reconciled with the modern secular polity? These questions will not be resolved here, but their parameters will be outlined to aid in understanding how they are treated by the historical examples explored in the remainder of the book.

**Theaters of Pardoning**

Neither tragedy nor comedy, nor a simple combination of the two, theaters of pardoning constitute a kind of tragicomedy—one that undercuts the tragic unity valued at least since Aristotle’s *Poetics*. Tragedy itself has often been interpreted epistemologically, viewed as entailing judgment both on the part of the characters and on
that of the audience. Kathy Eden and Hans-Georg Gadamer—inheritors of the Platonic and Aristotelian traditions—emphasize respectively the relevance of judgment to the nature of tragic recognition (anagnorisis) and the link between the characters’ and the spectators’ anagnorises. Operating without Aristotle’s explicit aid, Stanley Cavell has instead discerned in tragedy—specifically, Shakespearean tragedy—stagings of and responses to modern skepticism. Partly on account of Aristotle’s reception in the Renaissance by such theorists of tragicomedy as Giambattista Guarini and Giraldi Cinthio, and partly because Aristotle’s formulation of tragedy has proved the most productive source of resistance for subsequent thinkers on the theater, this study situates theaters of pardoning within a post-Aristotelian context. The plays discussed, however, do not enact a particular, pre-formulated version of tragicomedy, but instead progressively define the theater of pardoning. At the same time, as characters within these plays—and even political actors like King James I—are revealed as dramatizing certain types of tragedy or tragicomedy, such genres should emerge as elaborations of the politico-juridical mode of theatricality that Bodin and Kant describe. Generating a means for mapping crises within the political, they describe patterns for thinking through political scenarios in terms of judgment.

In revising Aristotle’s recommendations aimed at ensuring the unity of the tragic form, Renaissance writers like Giambattista Guarini and Giraldi Cinthio simultaneously imported a Christian perspective and reinforced some of the divisions that Aristotle’s Poetics had suggested. Although only descriptive in its original formulation, the Poetics has functioned as a privileged object of subsequent opposition, especially in its post-seventeenth-century incarnation as a series of dramaturgical rules. Among the theses that
have been attacked, three in particular have provided focal points for the work of subsequent theorists of the theater. These can be identified as Aristotle’s description of the requisite reversal (*peripeteia*) and recognition (*anagnorisis*), his comments about what kinds of characters (*ta êthê*) tragedy should depict, and the mandate of unity in space, time, and action that has been attributed to him.\(^1\) Examples of drama deviating from each of these principles can be found in the seventeenth century as well as subsequently,\(^2\) but Renaissance accounts of tragicomedy and theaters of pardoning themselves respond principally to strictures about action, reversal and recognition, and character. Whereas the articulation of tragicomic genre in Guarini’s *Compendio della Poesia Tragicomica* separated such internal or “instrumental” concerns from tragicomedy’s “architectonic” end—the catharsis peculiar to it—theaters of pardoning demonstrate the fundamental coherence between the instrumental and the architectonic. By undermining the security of the epistemological judgment that tragic spectators attain, these plays do not induce affective responses that would remain juxtaposed with the audience’s exercise of reason, but instead produce feelings out of the impasse that rational judgment reaches.\(^3\)

The works of three more recent thinkers on tragedy assist in connecting the characters’ recognition with that of the audience and elaborating their epistemological, and, in particular, legal valences. While Cavell and Gadamer insist upon the resemblance

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1 The extent to which Aristotle’s text endorsed such unities has often been debated, and their systematic articulation has generally been attributed to seventeenth-century French writers like Pierre Corneille. The character Eugenius in John Dryden’s “Essay of Dramatic Poesy,” arguing for Modern over Ancient drama, claims that the unity of place was invented by “the French poets” (274), and that the unity of time was historically neglected (274).

2 For instance, the problems that Hamlet experiences with a time that is “out of joint,” a phrase that Derrida’s reading of the play in *Specters of Marx* emphasized, can be interpreted in relation to a postulated unity of time.

3 Chapter 7 treats Immanuel Kant’s philosophical analysis of a similar situation, in which the spectator of revolution on the world-historical stage experiences a feeling akin to but not precisely that of the sublime.
between the experience of figures within the play and that of the audience, Eden and Cavell discuss the nature of the knowledge attained—or the disappointment of the desire for knowledge suffered—through these recognitions. Although Gadamer and Eden agree in conjoining Aristotle’s discussion of mimesis with Plato’s supposed condemnation of it (Eden 31-32; Gadamer “Poetry and Mimesis”), they diverge in the extent of their adherence to Plato and in prioritizing the ontological and epistemological dimensions of recognition respectively.

In both the final section of The Claim of Reason (“Between Acknowledgment and Avoidance”) and Disowning Knowledge in Six Plays of Shakespeare, Cavell argues for “an epistemological reading of Shakespearean tragedy” (Disowning Knowledge 1), and maintains more generally that “tragedy is the story and study of a failure of acknowledgment, of what goes before it and after it—i.e. . . . the form of tragedy is the public form of the life of skepticism with respect to other minds” (The Claim of Reason 478). As Cavell reminds us, acknowledgment (of other minds) cannot simply be reduced to knowledge (of external objects); employing the language of recognition, he stresses that “acknowledgment ‘goes beyond’ knowledge, not in the order, or as a feat, of cognition, but in the call upon me to express the knowledge at its core, to recognize what I know, to do something in the light of it, apart from which this knowledge remains without expression, hence without possession” (The Claim of Reason 428). The urgency of the problem of skepticism as it is staged by tragedy does not subsist, for Cavell, absolutely, but instead within a specifically modern historical situation. Already indicating the historical inflection of his study in The Claim of Reason (468-78), he asserts, in introducing Disowning Knowledge, his “intuition . . . that the advent of
skepticism as manifested in Descartes’ Meditations is already in full existence in Shakespeare, from the time of the great tragedies in the first years of the seventeenth century, in the generation preceding that of Descartes” (3). Cavell thus implicitly intervenes in a conversation about the historical transmogrification of genre—or more specifically, in this case, of tragedy—and claims that the early seventeenth century provides a unique epistemological setting.

Cavell ends the same introduction with a reading of Antony and Cleopatra that views the play as figuring world catastrophe—the catastrophe of skepticism (20-21)—while simultaneously emphasizing the text’s affinity with Shakespeare’s romances (20). Although Cavell does not explicitly demonstrate how Antony and Cleopatra constitutes a romance rather than a tragedy, the significance of the label emerges from his discussion of what occurs after the world has been withdrawn from Antony, or what he dubs “the shrinking of the world, from him, from itself” (25). Corresponding to the place of a conventional tragic recognition, which it disappoints, “The recession of the world is this play’s interpretation of what I have called the truth of skepticism, that the human habitation of the world is not assured in what philosophy calls knowledge” (25). Interpreting the conclusion of the play as a wedding, Cavell discovers, however, a renewed and disparate role for theatricality that Cleopatra herself reveals following the withdrawal of the world; as he writes, “I say that Cleopatra’s desire in her conclusion is to present the world, make a present of it, to Antony; to return or represent it by presenting, finding out new ways of representing, her satisfaction by him; and I find that this requires the theatricalization of the world, hence her enacting of it” (37). The theatricalization that Cleopatra performs for Antony is also that which the play generates
for its spectators; thus, “Antony’s subjection to mood is ours, this theater’s” (37). As Cavell asserts more generally, “it is the work of this theater to present itself as an instance of the ceremonies and institutions toward which our relation is in doubt, exists in doubt, is unknowable from outside” (29).

Gadamer’s treatment of the work of art, whose prototype is, for him, the dramatic performance, similarly insists upon the resemblance between the characters’ relationship to each other and the audience’s connection with the play. Rather than, like Cavell, positing a representation that would remain independent of the spectator, toward which the latter would assume an epistemologically-oriented stance, he instead suggests that the play already—and ontologically—assumes an audience. Gadamer explains this position through appealing to his concept of mimesis, which combines a Platonic priority on anamnesis, or a return to the essence by way of memory, with Aristotle’s attempt to redeem mimesis from Plato’s critique. As he concludes in the section of Truth and Method entitled “Play as the Clue to Ontological Explanation,” “Imitation and representation are not merely a repetition, a copy, but knowledge of the essence. Because they are not merely repetition, but a ‘bringing forth,’ they imply a spectator as well. They contain in themselves an essential relation to everyone for whom the representation occurs” (114-5).

The ontological perspective of this statement carries over into Gadamer’s understanding of recognition—which occurs not only for characters, but for spectators as well. Although recognition itself was first introduced by Aristotle as an element of drama, Gadamer invokes a Platonic scene to give content to the term, reminding the reader of “The relevance of the beautiful” of Aristophanes’ description of love in the
Symposium (31-32). As the playwright Aristophanes suggested in Plato’s dialogue, “originally all human beings were spherical creatures. But later, on account of their misbehavior, the gods cut them in two. Thereafter, each of the halves, which originally belonged to one complete living being, seeks to be made whole once again. Thus every individual is a fragment or a symbolon tou anthropou. This expectation that there is another half that can complete us and makes us whole once more is fulfilled in the experience of love” (32). According to Gadamer, dramatic recognition, both on the part of the protagonist and on that of the audience member, constitutes such a reunification of the symbol. Rather than standing as the endpoint of a series of rational calculations, recognition names an ontological identity between the spectator and the play. Indeed, the customary order of knowledge and recognition is reversed: “Every representation finds its genuine fulfillment simply in the fact that what it represents is emphatically there. When Aristotle describes how the onlooker knows that ‘that is who it is,’ he does not mean that we see through the disguise and know the identity of the person dressed up. On the contrary, he means that we know who is represented. Knowledge here means recognition. We recognize whom we know . . . Mimesis is a representation in which we ‘know’ and have in view the essential content of what is represented” (“Poetry and mimesis” 119). On this account, recognition actualizes our capacity for knowledge by allowing us to participate in a whole of which we are already a part; knowledge here concerns not an independent object but the ontological understanding produced by the event of recognition.

If Gadamer’s version of recognition depends on the symbol, Eden’s—which remains more faithful to the Aristotelian corpus—relies on the syllogism. Eden provides
the most concrete juridico-epistemological explanation of recognition, “isolating the Aristotelian correspondence between legal and poetic procedures in a single element of tragic structure—the anagnorisis or tragic discovery” (9). She demonstrates the similarity between how Aristotle ranks different types of proof in the Rhetoric and in the Poetics, emphasizing that, in both texts, “Aristotle . . . gives priority to rational argument over physical proof” (18) and that probability “is responsible for the best recognitions” (19). The characters’ judgments, which depend exclusively on such ratiocination, differ slightly in nature from those of the spectators. According to Aristotle’s description, tragedy should affect the audience psychologically by exciting pity and fear (Section XIII). Taking into account this axiom, Eden asserts that the viewers’ judgments are aided by the concomitant activity of their emotions; as she writes, “Aristotle’s stand on these matters represents a general attempt to include the emotions in the activity of making ethical judgments, whether in the law court or the theater” (100-101).

While these judgments may correspond to tragedy in the theater, they correlate with equity in the legal sphere. Looking to the intention of the legislator—and, especially, that of the actor—the equitable judgment mitigates punishment through pity for the person. Moving to Renaissance versions of Aristotle, Eden demonstrates that the classical understanding of equity is converted into a specifically Christian distinction between the Old Testament and the New—between the letter of the law and its overcoming by the spirit. Thus encapsulated in Eden’s account, tragedy in the Aristotelian tradition may already appear to verge on theaters of pardoning. It is important to note, however, two ways in which these theaters of pardoning could differ

4 Another version of equity, one associated with the law itself rather than the judge who interprets more mercifully than literally, appears in another strain of writings on equity, one taken up, in part, by Thomas Hobbes, as discussed in Chapter 6.
from tragedy. As I have already suggested, in theaters of pardoning, emotion may arise out of the failure of judgment, rather than accompanying it. Likewise, equity itself—which seems to lose its potency when faced with the specter of truly criminal intention—falls short in treating the problem of intended treason, like the Gunpowder Plot, which, although never actualized in its severity, was fully meant. It is, indeed, the revolutionary intention itself, that of killing the King as lawgiver, that Immanuel Kant condemns as something verging on the unpardonable in *The Metaphysics of Morals*—and thus, as Derrida would insist, that which truly calls forth pardoning (*On Pardoning* 47).

Remembering these elaborations of the juridico-epistemological dimension of tragedy and its effects both within and outside the confines of the play, let us turn to Aristotle’s *Poetics* and its revision by theaters of pardoning, which, while subverting established Aristotelian principles, simultaneously demonstrate the mutual imbrication of apparently distinct, and even opposed dramatic elements. In such plays, pardoning intervenes in sequence after judgment, but undermines its security. Arriving almost too late, in a time out of joint, it engenders a second reversal—and with it, a version of recognition. Often granted by a figure who appears from above—or as a stranger—this pardoning may seem to be the gift of a god. Plautus’ *Amphitryon*, the first play to use the term *tragicomoedia* and a text which is taken by some as the prototype of the genre, expressly derives its comic outcome from Jupiter. These two determinations of pardoning—its divine aspect and its ability to generate a new recognition and reversal—partake at once of character and of plot. Nor can the two be divided. Precisely the

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5 The possibility of pardoning without knowing a putative perpetrator’s intention is discussed in Chapter 2 in the context of Shakespeare’s *Measure for Measure*.

6 There is no contradiction with the stranger and God since there is a venerable tradition (Jewish and Greek) of the stranger as God.
discontinuity between the nature of the god and that of the other characters permits the former to reconfigure the theatrical terrain.

Elaborating his assertion that “tragedy is the representation [mimesis] of an action [praxeos] that is serious [spoudaios] and complete [teleias] and has a certain magnitude” (Loeb 22), Aristotle enumerates the genre’s several component parts. Foremost among these he ranks plot (muthos)—or “the arrangement of the events [pragmaton], since it is the “representation [mimesis] of the action [praxeos].” Second in place is classed “character” (ethos) which determines the quality of the actors (prattontes) (Loeb 24). As the color (or pharmakos), as it were, of tragedy, the character merely fills in the pre-existing sketch (graphé). In discussing each of these elements, however, Aristotle reaches a point where they overlap. He specifies that character must, in tragedy, both be ethically good (chrestos, also serious, spoudaios)—and better (beltion) than the norm—like the larger-than-life pictures of Polygnotus (Chaps. 2 and 15). Although the demand for a certain status is combined here with the ethical component of character, and Aristotle even writes of the hero that “he must be one who is highly renowned and prosperous” (p. 23), he acknowledges the possibility that a slave might be “good” in the sense that he suggests—and thus, presumably, capable of being included in a tragedy. This potential was overlooked by subsequent critics, who rapidly assimilated Aristotle’s comments on character to prescriptions about what kinds of individuals tragedy could represent.

In his chapter discussing character, Aristotle emphasizes that it must, like plot, fulfill the criteria of probability and necessity. The analogy he raises between plot and
character rapidly transforms into what seems to be an excursus on plot within this otherwise character-focused section. As Aristotle writes,

> It is clear therefore that the untying \([luseis]\) of plots should emanate from the plot of itself and not by means a machine \([mechanē]\) as in the Medea and in the Iliad with respect to the embarkation. For the mechanē should only be used for things that lie outside the play, either what happened before and is therefore not such a thing as man knows \([eidein]\), or what happens later and must be foretold \([proagoreusein]\) and announced; for all things we give to the gods to see \([similar to know]\). But there must be nothing illogical \([alogon]\) in the incidents, or if not, it must lie outside the tragedy, as in Sophocles’ Oedipus. (Chapter 15)

The mechanē here refers both to the machine itself, and, synecdochally, to the deity arriving within it, later and in Latin dubbed the deus ex machina. Aristotle’s prohibition against the mechanē commences as a statement about plot, but concludes as a point about character—and the god associated with the machine. In both cases, knowledge is at stake. Suggesting that tragedy can appositely circumscribe human knowledge while giving back to the gods precisely what is due to them, Aristotle provides an epistemological picture according to which human beings can arrive at appropriate and fairly unproblematic judgments. The plot must adhere to that logic familiar to the spectators and remain confined within their perspective. The gods, since they observe from a further remove (where knowledge is given up \([apo]\) to them)—synchronically seeing the context and realization of the events depicted—should not interfere lest they disturb the unity of this theater, the unity of the spectator’s temporally conditioned synthesis. In the scope of their knowledge and vision, these gods are too much “better”—than us, or than the other characters—to do more than fill in outlying incidents. The disruption of the organic logic of the plot and its unity, initially attributed to the mechanē, is thus eventually personified in the figure of the god who knows too much.
The shift within this passage from the *mechané* itself to the person of the god, from the intrusion of the literal machine to the knowledge of its occupant, elides another reading, one focused on plot rather than character, and on the performative rather than the on the constative dimensions of the play. In both of the examples that Aristotle mentions, Homer’s *Iliad* and Euripides’ *Medea*, machines literally appear, unaccompanied by gods. Although in referring to the embarkation Aristotle presumably designates the appearance of Athena, who urges the Greeks to remain at Troy, the reversal itself in the *Iliad* occurs through the contrivance of the horse, left behind as the Greeks supposedly depart. Likewise, in the *Medea*, Medea herself appears at the end in a *mechané* not occupied by but instead given to her by a god. This escape mechanism, like a pardon, enables her to elude punishment but not to avoid judgment—or, at least, not that of the audience. When Medea returns from offstage carried aloft in the machine, it is to announce her imperviousness to the operations of the penal law—the logic of cause and effect associated with crime and its punishment. The *mechané* in these instances functions as a force against which the operations of probability and necessity are ineffectual, a force that ignores the power of logic and cognition. Not tied to the personified character of the deity, it subsists on the level of the plot itself, intruding within and disrupting a sequence that it would be possible to anticipate. Emerging from a discussion of character and ultimately reinscribed within that compass, Aristotle’s treatment of the *mechané* thus also involves a performative break associated with the plot itself.

This intertwining of plot and character through the figure of the *mechané/deus ex machina* emerges with particular clarity in a passage from the Prologue of Plautus’ *Amphitryon* delivered by Mercury, the messenger god of money. At the same time,
however, the *Amphitryon* moves a step further towards reifying its characters rather than viewing them as personified agents of the plot. Serving Jupiter and impersonating the king Amphitryon’s slave Sosia in the play, Mercury explains the tragicomic genre in terms of a disparity in character, between gods and slaves, but also implies a change from tragedy to comedy that depends both on knowledge and performance. As Mercury announces,

Now first I’ll tell you what I’ve come to ask,  
Then what’s the subject [*argumentum*] of this tragedy.  
[Why do you frown? Because a tragedy  
I ...? Being a god, I will change it [*commutauero*].  
The same thing, if you like, I will make from tragedy  
Comedy and let be in the very same verses.  
Would you not like that? But I am stupid,  
As if I did not know what you wanted, being a god.  
I ...  
I will make it mixed [*commixa*] tragedy [*tragic*] and comedy [*comoedia*].  
For to make constantly a comedy  
A play where kings and gods come...  
What therefore? Since a slave [*seruus*] has some part here,  
I will make it be, as I said before, a tragicomedy [*tragicomedia*]. (ll. 50-63)

Mercury emphasizes both the aspects of divinity that Aristotle had noted, the gods’ comprehensive knowledge (cognizing even the desires of the audience) and their performative power (transforming the genre of the play). As he explicitly states, however, this change leaves every line intact. What then constitutes the difference? The alteration, I would argue, is effected by Mercury’s own statement—and that of Jupiter at the conclusion. These speech acts serve to recontextualize the play, undermining the security of a tragic outcome on the level of language as well as on that of plot.

During the course of the drama, several characters (including Jupiter himself in the guise of Amphitrion) invoke the name of the king of the gods, but the characters are not alerted to the futility of these promises and oaths until the conclusion of the play.
when Jupiter reveals himself. Likewise, Jupiter converts the plot from tragic to
tragicomic by elaborating his perspective on the events of the play, explaining that the
infidelity of Amphitryon’s wife Alcmena cannot be considered culpable since divinely
coerced. As he instructs Amphitryon, “Live as you used to live with Alcmena,/ In love
and mutual trust. She did no wrong--/It was my strength” (literally, she had to submit to
me) (1141-43). Just as the fact of Jupiter’s involvement in the plot alters the nature of the
oaths sworn upon his name, his absolute power changes the quality of Alcmena’s
admittedly inadvertent actions. The assertion of divinity—both initially by Mercury and
subsequently by Jupiter—is thus also a proclamation of tragicomedy rather than tragedy.
In theaters of pardoning, the pardon serves a similar function, but rather than exculpating
the condemned, it usually only remits their punishment.

At the same time as Mercury announces his and Jupiter’s capacity to change the
genre of the play, he describes why it must remain tragicomedy rather than becoming
comedy. If at first he espouses a performative production of genre, he shifts then to a
constative definition. While the omniscience and capacity of the gods allowed them to
negate the tragic quality of the plot, their presence also renders pure comedy impossible.
As Mercury explains, the very fact that the Amphitryon involves kings and gods as well
as slaves prevents the play from being categorized as comedy. Guarini confirms this
suggestion, asserting that “These specific differences are proper to tragedy: persons of
high rank, serious actions, terror, and pity; and these to comedy: private persons and
affairs, laughter, and witty remarks” (150). For both Plautus and Guarini, however,
tragicomedy combines high and low characters in more than one sense. In the
Amphitryon, Mercury is a god, yet plays the part of the slave Sosia; a further
representational abyss is opened by Mercury’s suggestion that the actor himself may only be a servant (l. 1020). By merging the god with the slave in a single individual, the play likewise raises the suggestion that even gods or kings may carry out private as well as public activities. As Guarini writes on this subject, citing the example of the Amphitryon, “do princes always sit in majesty? Do they never deal in private matters? Certainly they do: why then cannot a high-ranking person appear on the stage when he is not engaged in matters of great importance?” (151). This vision of tragicomedy as actualizing both of the King’s two bodies—the political and the personal—is confirmed by the circumstances under which Jupiter disguises himself as Amphitryon—the pursuit of his desire for Alcmena.

When the pardon—coming on the scene as a mechané, a deus ex machina, or both—occasions a second reversal, accompanied or not by one or more recognitions, it further defies Aristotle’s instructions. As Aristotle writes with reference to the reversal and recognition involved in the complex plot, which he values above the simple one, “these things should happen through the very arrangement (suntasis) of the plot (muthos), so that out of what has happened before comes either by necessity (anagke) or according to probability (to eikos) what happens later; for there is a great difference between what happens because of something and what happens after it” (Chapter X). Not only does the mechané of the pardon generate a second reversal, a possibility that Aristotle never mentions, it also interferes with the organic logic of the plot, intervening between cause and effect. Either personified or simply the place of a break within the plot, the pardon belongs not only to the god or sovereign, but to the plot itself as its openness to the unexpected.
For the characters, pardoning does not necessarily transform the original judgment. But for the audience, I would argue, it does. As part of the plot, pardoning sets up the possibility of the new. The tragicomedies, as well as the political and philosophical responses to proto-revolutionary and revolutionary events discussed below demonstrate how the very act of pardoning constitutes the precondition for the establishment of a new political ground and allows for the reconfiguration of the existing terrain.

At the same time, however, to the extent that pardoning is aimed at the future, it may fail to become a “forgiveness worthy of its name,” a forgiveness that, according to Derrida, “must forgive the unforgivable, and without condition” (On Forgiveness 39). In that respect, “[o]ne could never . . . found a politics or law on forgiveness” (On Forgiveness 39). The political pardon instead represents an act of sovereignty; indeed, “what makes the ‘I forgive you’ sometimes unbearable or odious, even obscene, is the affirmation of sovereignty. . . . Each time forgiveness is effectively exercised, it seems to suppose some sovereign power” (On Forgiveness 58-59). Only a forgiveness that exceeded the frame of the political—even if subsequently reinscribed in it—would actualize the pure version of the concept. There may, indeed, be a space for such forgiveness in the aftermath of revolutionary violence—a forgiveness that is, as Derrida insists, “unconditional but without sovereignty” (On Forgiveness 59)—but it will almost always, as demonstrated in the chapters that follow, be co-opted by a pragmatic plan for the future, and a new grounding of the state.

While, in many of the instances discussed below, the pardon effects a renewal of the state, the structure of the tragedies out of which tragicomedy emerges altered over the
course of the seventeenth century. At the commencement of the reign of James I, the central paradigm remained that of revenge, but this revenge itself became progressively generalized into the threat of revolutionary violence, culminating in the English Civil War and the execution of James’ son, King Charles I. Corresponding to this evolution from the personal level of revenge to the political construction of revolution is the transition from a more monarchical, judgment-focused conception of sovereignty to a more parliamentary, and legislative vision. The danger of revolution, as opposed to revenge, thus becomes not the peril it poses to the body of the King, but rather its act of striking at the very source of legality and law-giving.

Forgiveness and Re-foundation

Examining several accounts of the relationship among revenge, retribution, revolution, and forgiveness may illuminate the significance of this transition from revenge to revolution over the course of the seventeenth century, as well as the way in which the mediation of the law can transform revenge into retribution. Revenge generally involves a relation between two, whereas retribution instead takes place within a structure in which the judge intervenes as a third to arbitrate the dispute. In certain circumstances, however, forgiveness may intervene even in the sphere of retribution and bring the relational back into the institution of the law. This form of forgiveness remains distinct from pardoning, because it does not aspire to the status of a sovereign act. Although, when applied to revolutionary violence, such forgiveness may provide the prelude to a new institution of the state or laws, it may subsist before then, for a virtual moment, in its purity.
Hannah Arendt concludes the section of *The Human Condition* on “Action” by considering two complementary concepts, those of forgiving and promising—both of which establish the other-regarding quality of action, and, hence, its political dimension. As she additionally explains, both forgiving and promising also affect the temporality of the world of action; while forgiving supposedly “serves to undo the deeds of the past,” promising “serves to set up in the ocean of uncertainty, which the future is by definition, islands of security without which not even continuity, let alone durability of any kind, would be possible in the relationships between men” (*HC*, 237). Although forgiving and promising each provide a plurality for the political that Arendt deems lacking in a Platonic politics, she identifies them as inherently moral rather than immediately political (*HC*, 245-46). Forgiving, in particular, is not described within the context of a recognizable political sphere, but instead assumes an interpersonal quality; verging on a religious type of redemption, it was supposedly “discovered” by Jesus of Nazareth (*HC*, 238). Promising appears to make up this deficit, as Arendt insists that it provides the only viable basis for the concept of sovereignty, and, in doing so, transforms that political principle (*HC*, 245). Given the intimate connection Arendt diagnoses between forgiving and promising, it is somewhat surprising that, when she rejects sovereignty as traditionally conceived in *On Revolution*, and insists upon the significance of the American revolution’s experience of promising, forgiveness nowhere appears on the horizon. Why, then, has forgiveness fallen away from this text?

Before approaching the question, it may be useful to imagine how forgiveness might have operated in *On Revolution*. Dealing with beginnings, the text focuses
primarily on a comparison between the French and American revolutions and their respective capacities to continue the process of recommencement. Forgiveness, as Arendt describes it in *The Human Condition*, should assist in this task, the attempt to reformulate the present in a manner that exceeds the potential of the past. Calling forgiveness “the exact opposite of vengeance” (*HC*, 240), she explains that, whereas the latter simply reinforces the initial deed by perpetuating a “chain reaction,” the former realizes human agency, since “it is the only reaction that acts in an unexpected way and thus retains, though being a reaction, something of the original character of action” (*HC*, 241). When Arendt then explains the triangulation of forgiveness, vengeance, and punishment, the final element differentiated from but not opposed to the others, her account recalls Hegel’s description of the relationship between revenge and retribution in *The Philosophy of Right*.

Whereas revenge (*die Rache*), for Hegel, remains personal, a “particular caprice of the subjective will (*subjectiven Willens*)” (*PR*, § 101 *Addition (H)*),\(^8\) retribution (*die Wiedervergeltung*)\(^9\) represents the cancellation (*Aufheben*) of the crime (*PR*, § 101). Although acknowledging that retribution may adopt the same form of arbitrary external equivalence as the *lex talionis’s* “eye for an eye,” Hegel insists that it instead establishes an inner equality of value between crime and punishment (*PR*, § 101). Rather than being imposed from without, retribution is entailed by the concept of the crime itself: “What is at first sight objectionable about retribution is that it looks like something immoral, like revenge, and may thus be interpreted as a personal matter. Yet it is not the personal

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\(^8\) The ‘Additions’ to the *Philosophy of Right* contain the notes on Hegel’s lectures compiled by Eduard Gans.

\(^9\) Although it is accurate to translate Hegel’s term as “retribution,” the German might be more aptly rendered “retaliation,” since etymologically “Wiedervergeltung” implies a paying back. The word thus conjures a connection with the *lex talionis*. 

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element, but the concept \textit{[Begriff]} itself which carries out retribution” (\textit{PR}, § 101 \textit{Addition} (\textit{H})).

Aligning Arendt’s punishment with Hegel’s retribution and pairing vengeance with revenge, the nature of the relationship between forgiveness and punishment becomes apparent. Since Arendt conceives of forgiveness as “an eminently personal (though not necessarily individual or private) affair” (\textit{HC}, 241), an act that occurs for the sake of the other and does not pass through the objective determination of the state, it subsists on the same level as revenge. Punishment, like forgiveness, however, also represents an end to the cycle of crime, in contrast to vengeance (\textit{HC}, 241); as Hegel, whom Arendt follows here, asserts, “revenge, as the positive action of a \textit{particular} will, becomes \textit{a new infringement}; because of this contradiction, it becomes part of an infinite progression and is inherited indefinitely from generation to generation” (\textit{PR}, § 102). We have seen, however, that for Hegel, retribution is implicit within the crime itself; in the terms of Aeschylus’ \textit{Oresteia}, an example Hegel often invokes in the context of revenge and retribution, “The Eumenides sleep, but crime awakens them; thus the deed brings its own retribution with it” (\textit{PR}, § 101 \textit{Addition} (\textit{H})). Rather than allowing for the appearance of the new, which forgiveness could permit, punishment continues within the constraints of the concept evoked by the crime.

Applying this triangulated structure to the revolutionary scene reveals that forgiveness might serve to break the deleterious pattern according to which the revolution brings about its own failure. According to Arendt, only a revolutionary redefinition of revolution led to our current understanding of the term as referring to innovation rather than cyclical return. As she asserts, “The modern concept of revolution, inextricably
bound up with the notion that the course of history suddenly begins anew, that an entirely new story, a story never known or told before, is about to unfold, was unknown prior to the two great revolutions at the end of the eighteenth century” (OR, 28). In discussing the English Revolution, Arendt adds content to this claim by reminding her readers that the designation “revolution” emerged only at the moment when the monarchy was to be restored (OR, 43). Although this cyclical vision of revolution was superceded, another inheritance of the term’s astronomical derivation remains—the notion of its irresistibility, or, as Arendt puts it, “the fact that the revolving motion of the stars follows a preordained path and is removed from all influence of human power” (OR, 47). The modern concept of revolution’s unstoppable force she identifies with “the idea of historical necessity” (OR, 48), and with Hegel, whom she views as the thinker of such necessity.

To this Hegelian vision of history, and its inheritance in Marx, both of which she presents in fairly reductive terms, Arendt opposes the revolutionary attempt to attain freedom. Such freedom—envisioned not merely as liberation, but more substantively as “participation in public affairs, or admission to the public realm” (OR, 32)—Arendt insists upon as the only justifiable goal of violence.10 Consisting in the ability to act within the political sphere, the freedom Arendt espouses stands in contrast with the modern concept of freedom of the will, and the political principle corresponding to it—that of sovereignty. Arendt elaborates upon her concept of freedom most explicitly in the

10 Explaining why the use of violence is not sufficient to define an event as a revolution, Arendt elaborates that “violence is no more adequate to describe the phenomenon of revolution than change; only where change occurs in the sense of new beginning, where violence is used to constitute an altogether different form of government, to bring about the formation of a new body politic, where the liberation from oppression aims at least at the constitution of freedom can we speak of revolution” (OR, 35). Approaching Arendt’s distinction between violence and freedom from the vantage point of the former rather than the latter, Beatrice Hanssen has confirmed that “The only politically acceptable limit case[s] of violence [for Arendt] were democratic revolutions—her grand exemplar being the American Revolution—which consisted of nation-founding acts of violence, animated by a revolutionary spirit that unfailingly espoused the ideals of ‘public freedom, public happiness, public spirit.’” (Hanssen Critique of Violence 30).
essay “What is Freedom?,” the lessons of which *On Revolution* internalizes. She describes her vision of freedom in terms of the classical *polis*, arguing that “freedom was an exclusively political concept” in Greek and Roman antiquity (*WF*, 157) and, furthermore, that “[f]reedom as a political phenomenon was coeval with the rise of the Greek city-states” (*OR*, 30). These contexts provide an example, for Arendt, of her claim that “The *raison d’être* of politics is freedom, and its field of experience is action” (*WF*, 146).

Western philosophical and religious traditions, and, in accordance with them, modern political thought, have instead emphasized free will (*WF*, 156-65).11 Jean-Jacques Rousseau, as the pre-eminent thinker of sovereignty in terms of the general will, thus furnishes the exemplary object of Arendt’s critique (*WF*, 163-65).12 In *What is Freedom?*, Arendt juxtaposes Rousseau’s conception of the sovereign will and her own insistence on a community constructed through promising, highlighting a distinction that emerges more obliquely in *On Revolution*:

> In reality Rousseau’s theory stands refuted for the simple reason that ‘it is absurd for the will to bind itself for the future’; a community actually founded on this sovereign will would be built not on sand but on quicksand. All political business is, and always has been, transacted within an elaborate framework of ties and bonds for the future—such as laws and constitutions, treaties and alliances—all of which derive in the last instance from the faculty to promise and to keep promises in the face of the essential uncertainties of the future. (*WF*, 163-4)

Not the sovereign will, but the promise, which, like forgiveness, is a manifestation of that sphere of action in which freedom is experienced, constitutes the condition of possibility

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11 Although Arendt regards both the philosophical and Christian concepts of freedom as centered on the will, she distinguishes Augustine’s *City of God* and “the sayings of Jesus of Nazareth” from the Pauline tradition (*HC*, 167); whereas the latter emphasizes freedom as an outgrowth of will, the former, according to Arendt, envisions freedom as a function of faith, the work of which is the miracle (*HC*, 168). Arendt’s tentative approval of Jesus’ stance on freedom accords with her claim in *The Human Condition* that Jesus discovered forgiveness.

12 Arendt identifies Carl Schmitt as the modern inheritor of Rousseau’s understanding of sovereignty as a phenomenon of the will (*WF*, 296).
for politics. At the same time, freedom in the form of action constitutes the interruption of a cycle and the arrival of the unexpected, observed from the vantage point of the outsider as a miracle; as Arendt writes, “Every act, seen from the perspective not of the agent but of the process in whose framework it occurs and whose automatism it interrupts, is a ‘miracle’—that is, something which could not be expected” (WF, 169).

The principal problem, she claims, with a Hegelian or post-Hegelian approach is that it views revolution not from the perspective of the actors—which she sees as the properly political point of view—but instead from that of the spectator—which instead produces a philosophy of history (OR, 52-53). Described as a drama, revolution is then either played for the spectator—and thereby manifests itself according to a logic of necessity—or is lived by the actors—who discover freedom. In other words, what Arendt views as happening in Hegel is the reinstatement of the fundamentally foreign nature of revolutions—like that of the starry heavens. The cyclical quality of revolution is thus realized in a modified form within the French Revolution’s inability to achieve the goal of freedom.

The opposition between the inevitability of natural phenomena and the freedom of human affairs that Arendt describes in the context of revolution can also, however, be found in the section of The Human Condition on “Acting.” In that context, forgiving and promising together permit escape from the constraints of necessity. The duality of perspectives on revolution is there anticipated by the doubleness of viewpoints on man: “[J]ust as, from the standpoint of nature, the rectilinear movement of man’s life-span

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13 This emphasis on promising suggests, of course, the relevance of the social contract, the Hobbesian version of which is discussed in Chapter 6. Forgiveness and promising are, in a sense, combined in The Laws of Candy, treated in Chapter 4, because forgivenesses are exchanged in a manner that suggests the refounding of the state.
between birth and death looks like a peculiar deviation from the common natural rule of cyclical movement, thus action, seen from the viewpoint of the automatic processes which seem to determine the course of the world, looks like a miracle” (*HC*, 246).

Action itself—and, in particular, forgiving, which can occur only, or at least without the risk of great danger (*HC*, 238), between men—controverts the natural process of cyclical movement from which the concept of revolution was first derived.

A problem, however, arises here. According to the argument that we have been pursuing, Arendt identifies the capacity to forgive as one of the mortal abilities that would controvert a Hegelian philosophy of historical necessity. At the same time, her understanding of forgiveness and the structure of its relationship with vengeance and punishment echoes that of Hegel. While the resemblance between passages in the *Philosophy of Right* and *The Human Condition* could simply evince incidental similarities, Hegel’s accounts of forgiveness in the early text *The Spirit of Christianity* and in *The Phenomenology of Spirit* demonstrate the fundamental nature of the connection between his and Arendt’s versions of the concept. In these contexts, forgiveness emanates from love and allows for the reconciliation between judge—often an embodiment of Kantian adherence to duty—and judged through a reciprocal process. It is, indeed, on account of life itself that it can occur. Forgiveness thus presents a moment in Hegel of which Arendt avails herself yet dare not acknowledge, since she cannot reconcile the vision of him as philosopher of necessity with her insistence on the power of forgiveness in enabling a new beginning. This contradiction comes to the fore

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14 It is worth mentioning here that, even if able to forgive, the judge cannot, in his institutional place, actually pardon. The association between sovereignty and the power to pardon is intimate and ineluctable, and the judge, as an inferior officer, would not be able to wield the mark of sovereignty that pardoning represents.
in *On Revolution*, where that which most closely resembles forgiveness—compassion—is diagnosed as having corrupted the French Revolution.

Analyzing the relationship between Hegel’s and Arendt’s versions of forgiveness will assist us in comprehending these references to compassion in *On Revolution*. In *The Spirit of Christianity*, a text that succeeds in critiquing modern philosophy at the same time as preserving a narrative form corresponding to the history of the Judaeo-Christian tradition, Hegel—like Arendt—describes forgiveness as Jesus’ innovation, and explains that it derives from love. Distinguishing between the operations of the law and of fate, Hegel elucidates the place of pardoning and forgiveness in them respectively. In the case of the law, “Punishment [*die Strafe*] [of the trespasser] lies directly [*unmittelbar*] in the offended law” (*SC*, 225); however, since the law remains on the level of concept rather than life, it must be executed. At that moment, the judge enters the scene, a figure who “is not abstract justice [*abstrakte Gerechtigkeit*], but a living being [*ein Wesen*]” (*SC*, 226). As Hegel then writes,

Punishment [*Strafe*] is inevitably deserved; that is inescapable. But the execution of justice is not inevitable, because as a characteristic [*Modifikation*] of a living being [*eines Lebendigen*] it may vanish and another characteristic may come on the scene [*eintreten*] instead. Justice thus becomes something contingent; there may be a contradiction between it as universal, as thought, and it as real, i.e., in a living being. An avenger [*ein Rächer*] can forgive [*verzeihen*], can forgo his revenge, and a judge [*ein Richter*] can give up acting as a judge, i.e., can pardon [*begnadigen*]. But this does not satisfy justice, for justice is unbending . . . . (*SC*, 226)

As a living being, the judge remains a particular attached to the universal system of the law. Although a *Richter* rather than a *Rächer*, he translates the duality of revenge and forgiveness into the context of the retributive legal structure, substituting pardon for
forgiveness. From the vantage point of the universality of the law, however, his pardon cannot be considered just.

By contrast, Hegel explains, forgiveness provides the natural means for an individual to be reconciled with his fate. This fate he associates here with the reaction of the Eumenides, rather than connecting them with the automatic quality of retribution. As Hegel writes, “Punishment represented as fate [Schicksal] is of a quite different kind [than legal punishment]. In fate, punishment is a hostile power [Macht], an individual thing [ein Individuelles], in which universal [Allgemeines] and particular [Besonderes] are united in the sense that in it there is no cleavage between command [das Sollen] and its execution [die Ausführung dieses Sollens]” (SC, 228). According to his account, fate acts as life’s own revenge against an injury to it; in other words, “punishment as fate [die Strafe als Schicksal] is the equal reaction [die gleiche Rückwirkung] of the trespasser’s own deed, of a power [einer Macht] which he himself has armed, of an enemy [eines Feindes] made an enemy by himself” (SC, 230). Reconciliation, however, remains possible, since, as Hegel claims, employing the imagery of amputation, “life [das Leben] can heal its wounds again; the severed, hostile [feindliche] life can return into itself again and annul [aufheben] the bungling achievement of a trespass, can annul the law [das Gesetz] and punishment [die Strafe]” (SC, 230). The substrate of life itself permits this reconciliation, which can occur only through love, manifested as forgiveness; love both allows an individual to avoid entanglement in the fate of another when it appears as a response to an injury and permits the criminal to “put to sleep” his own fate, sending his Eumenides back to rest underground (SC, 238).
Arendt’s take on forgiveness remains quite close to what Hegel claims here, as she emphasizes both life and the relationship between self and other; she states, “what was done is forgiven for the sake of who did it. This, too, was clearly recognized by Jesus (‘Her sins which are many are forgiven; for she loved much: but to whom little is forgiven, the same loveth little’), and it is the reason for the current conviction that only love has the power to forgive” (SC, 241-2). Although viewing forgiveness partly as an emanation of love, Arendt also attempts to derive from love a more political manifestation, which she identifies as “respect.” Kant’s concept of respect for the individual as instantiation of the moral law lies not far beneath Arendt’s employment of the term.\footnote{Although Arendt does not refer to Kant in this context, her writings, even aside from the Lectures on Kant’s Political Philosophy, are suffused with Kantian implications.} Hegel, by contrast, critiques as hypocritical the Kantian manifestation of respect—the love of honor.\footnote{In The Metaphysics of Morals, Kant asserts that Respect [Achtung] for the law, which in its subjective aspect is called moral feeling, is identical with consciousness of one’s duty. This is why showing respect for a human being as a moral being (holding his duty in highest esteem) is also a duty that others have toward him and a right to which he cannot renounce his claim.—This claim is called love of honor [Ehrliebe], and its manifestation [Phänomen] in external conduct, respectability (honestas externa) [Ehrbarkeit]. Immanuel Kant, The Metaphysics of Morals, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 210.} Indeed, immediately preceding the discussion of law and fate, The Spirit of Christianity explains, through the example of the Pharisee, that the consciousness of fulfilling one’s duty is equivalent to honor, and that such consciousness is necessarily hypocritical [Heuchelei] since it remains external to the action itself and posits a moral totality for the agent, disregarding the fact that he has displayed only particular virtues (SC, 219-20). Arendt’s version of forgiveness thus ceases to resemble Hegel’s when she generalizes it into a political form.

The passages on forgiveness in The Spirit of Christianity do, however, impede Arendt’s attempts to associate Hegel’s work definitively with a philosophy of historical
necessity. Hegel’s claim that fate can be reconciled and need not perpetuate an interminable cycle of punishment contravenes Arendt’s reading. Furthermore, his account of how fate attaches itself to an individual allows the same freedom for the subject as Arendt deems essential. Rather than being imposed arbitrarily by nature or the gods, a man’s fate originates with his own reaction—which remains guilty even if not culpable according to the law. As Hegel writes,

A fate [Ein Schicksal] appears to arise only through another’s deed [fremde Tat]; but this is only the occasion of the fate. What really produces it is the manner of receiving [der Aufnahme] and reacting [der Reaktion] against the other’s deed. If someone suffers an unjust attack, he can arm and defend himself and his right, or he may do the reverse. It is with his reaction, be it battle or submissive grief, that his guilt [seine Schuld], his fate [seine Schicksal], begins. (SC, 233)

Arendt’s assertion that forgiveness is the only reaction that responds in an unanticipated fashion resonates with Hegel’s insistence that the individual’s fate is inaugurated by his own reaction. The guilt by which a person’s fate is generated may, for Hegel, also not even be associated with crime; thus, “fate has a more extended domain than punishment has. It is aroused even by guilt without crime, and hence it is implicitly stricter than punishment. Its strictness often seems to pass over into the most crying injustice when it makes its appearance, more terrible than ever, over against the most exalted form of guilt [der erhabensten Schuld], the guilt of innocence [der Schuld der Unschuld]” (SC, 232-3).

Even if the one responding is on the side of right and rights, he has still damaged life, and, “Where life [Leben] is injured, be it ever so rightly, i.e., even if no dissatisfaction is felt, there fate appears” (SC, 233).

It is at this point that the figure of the judge and his pardon, seemingly left behind in the discussion of the law, and superceded by fate and its relation with forgiveness, again become relevant. To the violently injured individual Hegel analogizes the one
whose commitment to duty and righteousness has been offended—a satirical version of a Kantian figure. Briefly sketching the scene of a judge who condemns others and refuses to pardon, a kernel developed in much more detail in *The Phenomenology of Spirit*, Hegel suggests that his allegory elucidates the import of the Biblical command “Judge not that ye be not judged; with what measure ye mete, it shall be measured to you again” (*SC*, 237). The judge, who depends only on the law, places this law above life, and, in declining to pardon, “has taken from itself the possibility of being pardoned [*Verzeihung*] for its own sins, of being reconciled [*ausgesohnt*] with a fate which they would bring on it, for it has fixed specific standards which do not permit it to soar above its real situation, i.e., above its sins” (*SC*, 237).

When Hegel expands this episode into the confrontation between the beautiful soul—in the form of the universal consciousness—and the evil [*böse*] consciousness at the conclusion of “Spirit” in *The Phenomenology of Spirit*, it becomes evident that, in fact, the insistence on judging rather than pardoning can be identified as the reaction that instigates the judge’s fate. From the point of view of the universal consciousness, which adheres to duty, the individual, who acts, is hypocritical [*Heuchelei*] and evil (*PS*, § 660). This hypocrisy, the donning of a theatrical mask, persists, however, only until the evil consciousness recognizes that, in the speech act of judging him, the universal consciousness has itself become hypocritical, since it wants its words of judgment—which simply place its own particular law alongside that of the other consciousness—to constitute a higher actuality rather than simply another type of evil (*PS*, § 666). At that point, the evil consciousness states the identity that he has discerned between himself and the universal consciousness and confesses [*gestehen*] that he is evil (*PS*, § 666); rather
than reciprocating, however, the universal consciousness, as the hard heart [*das harte Herz*] that is for itself, remains stubbornly silent (*PS*, § 667). The beautiful soul, unable to attain an identity with the rejected consciousness or to actualize itself, wastes away (*PS*, § 668); the hard heart is, likewise, ultimately broken (*PS*, § 669). When the universal consciousness extends forgiveness (*die Verziehung*) to the particular consciousness, reconciliation (*Versöhnung*) finally occurs, and, like the wounds of life in *The Spirit of Christianity*, “The wounds of the Spirit heal, and leave no scars behind” (*PS*, § 669). The fate of the judge himself thus becomes involved in any judgment, no matter how faithful he may be to the law. Here an inconsistency between Hegel’s and Arendt’s concepts of forgiveness emerges; whereas, for the latter, “men are unable to forgive what they cannot punish and . . . they are unable to punish what has turned out to be unforgivable” (*HC*, 241), it is, for Hegel, precisely the judging consciousness that must forgive rather than punish.

What Arendt refers to as “compassion” in *On Revolution* remains close to forgiveness as both she and Hegel describe it. Her attitudes toward the two, however, stand in stark contrast with each other; indeed, she considers compassion the source of the French Revolution’s failure, stating that it constituted “the most powerful and perhaps the most devastating passion motivating revolutionaries” (*OR*, 72). Compassion, in fact, which can be interpreted as the negative manifestation of forgiveness, becomes politically generalized as pity (*OR*, 88-89), in contrast to a forgiveness based on respect. Like Hegel’s account of forgiveness, compassion prioritizes life itself over political life (*OR*, 64), and “not unlike love, abolishes the distance, the in-between which always exists in

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17 Giorgio Agamben, in *Homo Sacer*, responds to Arendt’s distinction between natural life and political action by collapsing the two and positing a sovereignty of bare life; in doing so, however, he omits any
human intercourse” (OR, 86). Although Arendt discusses both Rousseau and Robespierre, she posits that Melville and Dostoevski provide the most prescient interpretations of the spirit of the French Revolution. Her ingenious reading of Billy Budd, in particular, both demonstrates her indebtedness to the Hegelian narrative of fate and the necessity for another—missing—version of forgiveness to complete her work.18

For Arendt, Melville’s novel narrates the encounter between the Rights of Man—identified as Billy himself, the embodiment of absolute innocence—and politico-legal institutions. As Arendt explains, when Billy kills Claggart, who has slandered him, tragedy has not yet occurred; it only commences when virtue, represented by Captain Vere, intercedes between “absolute good and absolute evil” (OR, 84). The institutional quality of law cannot allow even Billy’s “violence of absolute innocence” (OR, 84) to remain unpunished. Billy thus appears to exemplify what Hegel termed the “guilt of innocence,” acting without doing wrong, yet harming life and thus awakening his fate.

Rather than interpreting Captain Vere as an outgrowth of Billy’s fate, however, Arendt sees him as an icon of law. In a sense then, Captain Vere combines the nature of

consideration of the figure that Arendt, in On Revolution, most associates with concern for life— that of Marx.

18 In her interpretation of Billy Budd, Arendt relies heavily on what she calls the “Preface”; as she asserts, “Melville states the guiding question of his story himself in the Preface: How was it possible that after ‘the rectification of the Old World’s hereditary wrongs . . . straightway the Revolution itself became a wrongdoer, one more oppressive than the Kings?’” (OR, 87). Harrison Hayford and Merton Sealts, Jr.’s 1962 critical edition of Billy Budd demonstrated, however, that what Arendt terms the “Preface” was miscategorized by Mrs. Melville and probably derived instead from the section of the novella following Claggart’s death. Harrison Hayford and Merton M. Seals, eds., Billy Budd, Sailor (An Inside Narrative), by Herman Melville (Chicago: University of Chicago Press, 1962), 18-19. The 1962 edition of Billy Budd that Arendt’s bibliography indicates she employed (OR, 336) clearly failed to incorporate Hayford and Sealts’ discoveries. Within the same putative “Preface,” Arendt may also have found reason to read Melville’s stance on the French Revolution as indebted to Hegel. Referring to the Revolutionary period, Melville alludes to unnamed “thinkers”—which could include Hegel—who read it in retrospect as a moment of historical progress: “During those years not the wisest could have foreseen that the outcome of all would be what to some thinkers apparently it has since turned out to be—a political advance along nearly the whole line for Europeans.” Frederic Barron Freeman and Elizabeth Treeman, eds., Billy Budd, by Herman Melville, in Billy Budd and Other Tales (New York: Signet Classics, 1961), 7.
the individual’s fate with the quality of the judge from Hegel’s comments on penal law and on the judging consciousness. Although Arendt does not mention Captain Vere’s own references to compassion, he adjures his fellow judges not to operate according to its dictates in this instance (Billy Budd 110), disclaiming personal responsibility for the martial law they must mete out, and stating “That however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it” (Billy Budd 111). At this first stage, Captain Vere exemplifies the universal consciousness, which pronounces judgment upon the evil consciousness that acts.

This orientation is rapidly reversed, however, and what follows could be anticipated from Hegel as well. While Captain Vere enforces the rigor of the law in his official capacity, he does not personally endorse it. Thus, when a meeting between Billy and Captain Vere occurs that is so much between them it remains a secret even to the narrator, who must only speculate on what took place, the same narrator attributes a “confession” to Vere (Billy Budd 115). This confession cannot but recall the interaction between the universal consciousness and the evil consciousness in the Phenomenology of Spirit. Surpassing the judging consciousness of the Phenomenology, Captain Vere acknowledges that he has acted in judging, and himself now adopts the attitude of the evil consciousness at the moment when he recognizes that the universal consciousness resembles him. The one who embodies not only innocence but also a version of rights that Hegel himself would see as Kantian, Billy likewise comes to occupy the position of the judge who must forgive. As Arendt herself concludes, Billy then, at the point of his execution, has compassion on Captain Vere—or, in other words, forgives him—rather than the reverse (OR, 85).
In the terms of the *Spirit of Christianity*, Billy would, in forgiving, reconcile himself with his fate, or, in those of the *Phenomenology*, reconcile the two opposing consciousnesses into absolute Spirit (*PS*, § 670). Neither occurs according to Arendt’s reading. Instead she concludes that “The absolute—and to Melville an absolute was incorporated in the Rights of Man—spells doom to everyone when it is introduced into the political realm” (*OR*, 84). An interesting elision has occurred in this judgment, however; it is not entirely clear that, in being conscripted from the ship named “The Rights of Man” to that called the *Bellipotent*,19 Billy has entered the specifically political rather than the simply revolutionary. In the transition from a merchant ship (of the marketplace of ideas?) to a war ship, he comes upon not only the rigors of law itself, but specifically of martial law; in fact, Captain Vere ensures that the judges distinguish between the two in rendering their verdict (*Billy Budd* 111-12). The difficulty, then, transpires in the relationship between the violence of right and the violent “law” of war—the inaugural violence of the revolution and the law-like necessity of war’s trajectory.

War cannot permit the continuation of the revolutionary spirit and condemns it on account of its innocent violence, according to this alternative interpretation of *Billy Budd*. As Arendt had specified toward the commencement of her text, the beginning generated by revolution is linked with violence: “That such a beginning must be intimately connected with violence seems to be vouched for by the legendary beginnings of our history as both biblical and classical antiquity report it: Cain slew Abel, and Romulus slew Remus; violence was the beginning and, by the same token, no beginning could be made without using violence, without violating” (*OR*, 20). Modifying this assertion after

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19 The name *Indomitable* occurs with more frequency than the designation *Bellipotent* in Melville’s papers, but Hayford and Seals argue convincingly that *Bellipotent*, as a later addition, should supercede the earlier *Indomitable* (Hayford and Seals 20-21).
performing her reading of *Billy Budd*, she describes how Melville, following the men of the French Revolution, “reversed the primordial legendary crime, Cain slew Abel, which has played such an enormous role in our tradition of political thought” (*OR*, 87). Despite this foundational difference, Arendt claims, the same result occurs—“the same chain of wrongdoing will follow” (*OR*, 87-88). Given Arendt’s criticism of violence in *On Violence*—and her desire to supplant such violence with a non-sovereign power—we can begin to discern a place for forgiveness—between the initial impetus of Billy’s revolutionary violence and its “necessary” consequences. Since Arendt considers punishment a pre-requisite for forgiveness and views the tribunal in *Billy Budd* as representing the institution of law in general rather than specifically martial law, she instead affirms the necessity of Billy’s fate, herself—not Hegel—the prophet of inevitability rather than freedom.

A second place for forgiveness likewise emerges from the movement of *Billy Budd* itself. If the automatism of the law of war constitutes a seemingly ineluctable force, that force may be forgiven by the very revolutionary possibility it has condemned. This forgiveness arrives at the point of the revolutionary spirit’s death—Billy Budd’s demise—and is heard through its echo within Melville’s novella. Rather than being effaced into a unity without scar, the revolutionary outburst remains in the testimony of the text, precisely because Billy’s forgiveness permits his own persistence in the memory of Melville’s “inside narrative,” distinct from the popularly disseminated version of Billy’s story (*Billy Budd* 130-31). Although the newly constituted order that follows the revolution may appear to have fallen into the constraints of necessity rather than actualizing the potential for beginning, the image of the revolutionary impulse—Billy’s
textual ghost—remains, a crucial precondition for renewal. Such forgiveness clears the way for a foundation based on promising that would escape from necessity not by erasing history’s path but instead precisely through refusing to forget the past.

The Pardon as Exception

Just as the pardon of tragicomic drama set up the possibility of the new, forgiveness may allow for re-foundation of the laws in the political sphere. Yet certain questions remain about the forms of pardoning and forgiveness. Are these versions of pardoning simply deployments for pragmatic purposes? Even if forgiveness is conscripted into the service of preparing for the future, what are the contours of this future, and who determines them? For whom, and before whom, is the pardon given? Within the history of political theory, pardoning was characterized by Jean Bodin as one of the marks of sovereignty and by Immanuel Kant as the act that most enhances the majesty of the King.20 According to this tradition, pardoning itself constitutes a display of sovereignty and the location of the pardon power indicates the place of sovereignty within the state. The pardon, however, sits ill with liberal political theory. Rather than treating all citizens as equal under law, the pardon exempts an individual or group from punishment; an advantage for some could thus seem an injustice to others, especially those harmed by what has been pardoned. At the same time, pardoning revolutionary violence may, as a form of what Thomas Hobbes would consider seeking peace, serve the interests of the entire future citizenry, for whom the continuation or renewal of the state is enabled.21 As Alexander Hamilton claimed in Federalist 74, “in seasons of insurrection

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20 See below Chapters Three and Seven for discussions of Bodin and Kant respectively.
21 For a treatment of Hobbes’ argument about what seeking peace entails, see Chapter Six below.
or rebellion, there are often critical moments, when a well-timed offer of pardon to the
insurgents or rebels may restore the tranquility of the commonwealth; and which, if
suffered to pass unimproved, it may never be possible afterwards to recall” (*Federalist*
74). When it takes on the guise of amnesty, as in Hamilton’s example, pardoning may
itself constitute the political community for the sake of which it is given.

If the identity of those for whom and before whom the pardon is given has
remained vexed, the connection between the one who pardons and the sovereign
appeared much clearer from Bodin forwards. Even within the American constitutional
context, the pardon power that Article II accords the President has often seemed an
undemocratic residue of the King’s monarchical authority. The structure of sovereignty
analyzed by Carl Schmitt—whose work has been made newly relevant through, among
others, Giorgio Agamben’s and Jacques Derrida’s engagement with it—illuminates the
nature of the relationship between pardoning and sovereignty. Although Schmitt himself
devoted little attention to the pardon power, referring to it only in passing in
*Constitutional Theory*, his account of the exception shares critical features with a vision
of pardoning.

According to the now familiar mantra at the opening of *Political Theology*,
“Sovereign is he who decides on the exception” (*PT* 5) [“Souverän ist, wer über den
Ausnahmezustand entscheidet” (*PT* 13)]. The exception, or emergency, as Schmitt
defines it, “can at best be characterized as a case of extreme peril, a danger to the
existence of the state, or the like” (*PT* 6). The necessity of a decision on the exception
controverts the possibility of a completely self-sufficient *Rechtsstaat*, or state
characterized by the rule of law, and demonstrates the inevitably political—rather than
exclusively legal—character of any constitution. As he explains in *Constitutional Theory*, the modern constitution must contain both *Rechtsstaat* and political elements: “[f]or the Rechtsstaat understanding, the law is essentially a norm,” whereas “‘political’ means a concept of law that, in contrast to the Rechtsstaat, results from the political form of existence of the state and out of the concrete manner of the formation of the organization of rule” (*Constitutional Theory* 187). The mistake of liberal constitutional theory, in Schmitt’s view, is to confuse the “constitution” with “constitutional law” (*Constitutional Theory* 75): “The distinction between constitution and constitutional law . . . [is] possible because the essence of the constitution is not contained in a statute or in a norm. Prior to the establishment of any norm, there is a fundamental *political decision by the bearer of the constitution-making power*. In a democracy, more specifically, this is a decision by the people; in a genuine monarchy, it is a decision by the monarch” (*Constitutional Theory* 77). The political decision both precedes the establishment of the norm and intervenes at the moment of the emergency to re-ground the *Rechtsstaat*. The sovereignty of the constitution-making power reveals itself again when a decision is rendered on the exception.

Rather than recognizing the inevitably political component of the constitution, the bourgeois *Rechtsstaat* instead attempts to regulate the emergency from within constitutional law by “spell[ing] out in detail the case in which law suspends itself” (*Political Theology* 14). Many of the post-Weimar constitutions of Latin America and the post-Soviet ones of Eastern Europe attempted to avoid the abuse of emergency powers in precisely such a manner, depriving the executive of the capacity to decide, limiting the duration of the emergency, or protecting certain fundamental rights against
abrogation during the period of exception. More recently, Bruce Ackerman has proposed a set of procedural steps whereby ever-increasing super-majorities would be required to sustain a continuing state of emergency within the United States (“Emergency Constitution”).

The effort to constrain the exception through constitutional law coincides with the Rechtsstaat’s failure to disclose the source of sovereign power. As Schmitt contends, the Rechtsstaat “aspires, in fact, to not answer the question of sovereignty and to leave open the question of which political will makes the appropriate norm into a positively valid command. As noted, this must lead to concealments and fictions, with every instance of conflict posing anew the problem of sovereignty” (Constitutional Theory 187). Despite these supposed fictions and subterfuges, “[i]nside every political unity, there can only be one bearer of the constitution-making power” and the constitution must “rest[] either on the monarchical or the democratic principle, on the constitution-making power of the prince or that of the people” (Constitutional Theory 105). The fictions in question may result either from a compromise within the constitution—one that defers to the future the ultimate question of who will exercise sovereignty—or a refusal of the decision entirely (Constitutional Theory 86-87). Whereas the Weimar Constitution (1919) arrived at the most fundamental political decision—that the “German Reich is a constitutional democracy” (Constitutional Theory 88)—the 1875 constitutional laws of the French National Assembly attempted to leave open whether the state would be a monarchy or republic (Constitutional Theory 82). Notwithstanding this effort, however, the popular rejection in 1877 of the steps that the Third Republic’s president, Patrice de Mac-Mahon, 22 Many of these measures are catalogued in Venelin I. Ganev’s “Emergency Powers and the New East European Constitutions” and Gabriel Negretto and Jose Rivera’s “Liberalism and Emergency Powers in Latin America: Reflections on Carl Schmitt and the Theory of Constitutional Dictatorship.”
had taken to ensure a conservative government created a precedent ensuring the republican rather than monarchical character of France (*Constitutional Theory* 82-83). In the absence of a decision embodied in constitutional laws, political precedent thus supplied the requisite determination of the identity of the sovereign. As this example suggests, the constitutional law may hold open a gap that practice steps in to fill.

While Schmitt devotes little attention to pardoning in *Constitutional Theory*—or in his other works—the position and specifications of the pardon power in the Weimar Constitution suggests a compromise akin to those he does discuss. The clauses pertaining to pardoning immediately followed the notorious Article 48, the grant of emergency powers to the President of the Reich that later furnished Hitler with a legal excuse for suppressing individual rights. As they specified: “The President exercises the right of pardon [*das Begnadigungsrecht*] for the Reich. Reich amnesties [*Reichsamnestien*] require a Reich statute” (Article 49). Harkening back to the logic of monarchy, Article

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23 Article 48 reads:

1. If a Land does not fulfill its duties according to the Reich Constitution or Reich statutes, the President can compel it to do so with the aid of armed force.
2. If in the German Reich the public security and order are being significantly disturbed or endangered, the President can utilize the necessary measures to restore public security and order, if necessary with the aid of armed force. For this purpose, he may provisionally suspend, in whole or in part, the basic rights established in Articles 114, 115, 117, 118, 123, 124, 153.
3. The President must inform the Reichstag without delay of all the measure instituted according to Section 1 or Section 2 of this Article. The measures must be set aside at the request of the Reichstag.
4. In the case of immediate danger, the Land government can institute for its territory the type of measures designated in the second section on an interim basis. The measures can be set aside at the demand of the President or the Reichstag.
5. A Reich statute determines the details.

Schmitt treats this article at length in a number of works, including not only *Constitutional Theory*, but also *Legality and Legitimacy*, *Political Theology*, *Der Hüter der Verfassung*, and *Die Diktatur*. According to his claim, Article 48 allowed the President to effect a fundamental alteration in the form of government. Despite the enumeration of only certain individual rights that could be suspended, the grant of the power to suspend implied a broader capacity to abrogate liberties; furthermore, the President’s capacity to interfere with the jurisdiction of the Länder fundamentally altered the constitutional structure of federalism; finally, allowing presidential measures the force of law rendered the President superior to the Reichstag, because “he unites in himself lawmaking and legal execution and can enforce directly the norms he establishes, which the ordinary legislature of the parliamentary legislative state cannot do, so long as it respects the separation of powers with its distinction between law and legal application so essential for the legislative state” (*Legality and Legitimacy* 70-83).
49 first endowed the President with the power of pardoning. This strategy is consistent with what Schmitt identifies as the grant of pseudo-monarchical capacities to the President within the bourgeois *Rechtsstaat* in order to generate a separation or balance of powers (*Constitutional Theory* 315-17). At the same time, however, the Weimar Constitution attempts to cabin even this allowance of authority rather than simply weighing other parliamentary powers against it. Distinguishing between “amnesty” and “pardon,” the document limits the President’s pardon by allocating amnesty to parliament. This strategy stands in contrast to Hamilton’s comments in *Federalist* 74 about the scope of the pardon power as well as the Supreme Court’s subsequent interpretation of the U.S. Constitution in United States v. Klein (1871), a decision insisting that “Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. . . . [I]t is clear that the legislature cannot change the effect of such a pardon any more than the executive can change a law” (United States v. Klein 147-48).

Pardoning (or *Begnadigung*) and amnesty (or *amnestie*) do differ substantially; whereas pardoning in its legal acceptation denotes “[a] remission, either free or conditional, of the legal consequences of crime,” amnesty consists in “forgetfulness, oblivion; an intentional overlooking” or “an act of oblivion, a general overlooking or pardoning of past offenses, by the ruling authority” (*OED*). While pardoning usually occurs after conviction and simply removes punishment, amnesty or oblivion encourages forgetting the entire set of underlying events and suspending the question of culpability or innocence. The pardon generally touches an individual, while an amnesty covers a collectivity. And since at least the seventeenth century, efforts have been made in
constitutional theory to restrict the pardon power of the King or chief executive by giving legislatures control over amnesty.\textsuperscript{24}

At the same time, however, the boundaries between pardoning and amnesty remain murky. As we have seen, Hannah Arendt associated forgiveness with forgetting—could pardoning sometimes also imply such amnesia? Likewise, general pardons were granted by the King well before any efforts to divide amnesty from pardon or Parliament from monarch\textsuperscript{25}—what, if anything, distinguishes a general pardon from an amnesty? Delineating the precise boundaries between the concepts itself requires a decision and may occasion conflict among the branches, as it did when Congress sparrd with Presidents Lincoln and Johnson about their authority to grant amnesty to members of the former Confederacy after the end of the Civil War. Article 49’s attempt to require a Reich statute for amnesty, while allowing the President to exercise the pardon power hence leaves open the further determination of the boundary between pardoning and amnesty; in this way, it resembles the political compromises within constitutional law that Schmitt identifies and seems to await the gloss upon its meaning provided by future practice.

As with the state of exception, the Weimar Constitution tried to circumscribe pardoning by placing it within a separation of powers framework. In Schmitt’s view, and in accord with his challenge elsewhere to the very possibility of separating powers,\textsuperscript{26} the

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\item [24] The legislative nature of the 1660 Act of Oblivion following the restoration of King Charles II to the English throne is considered in Chapter 6 below. A more recent episode involving a struggle between Congress and the President over amnesty in the U.S. context occurred in the aftermath of the Civil War and is detailed in Jonathan Dorris’ book \textit{Pardon and Amnesty under Lincoln and Johnson}.
\item [25] Krista Kesselring treats the dynamics of such general pardons in the sixteenth century at length in \textit{Mercy and Authority in the Tudor State} (56-90).
\item [26] Criticizing the pluralist theory of the state espoused in the Anglo-American context by G.D.H. Cole and Harold Laski, Schmitt contends in \textit{The Concept of the Political} that it cannot answer the essential question of “which social entity . . . decides the extreme case and determines the decisive friend-and-enemy
efforts of Article 48 to limit the president’s decision on the exception remained of only nominal efficacy:

According to article 48 of the German constitution of 1919, the exception is declared by the president of the Reich but is under the control of parliament, the Reichstag, which can at any time demand its suspension. This provision corresponds to the development and practice of the liberal constitutional state, which attempts to repress the question of sovereignty by a division and mutual control of competences. But only the arrangement of the precondition that governs the invocation of exceptional powers corresponds to the liberal constitutional tendency, not the content of article 48. Article 48 grants unlimited power (*Political Theology* 11). 27

The same might be said of Article 49; to the extent that the President is, in the first instance, entitled to exercise the pardon on behalf of the state, the restriction of his power in the case of amnesty appears only belated and itself subject to circumscription. The discretionary decision on the pardon, like that on the emergency, determines what constitutes a pardon as well as when it should be employed.

The connections between the pardon and the exception extend further than the proximity of Articles 48 and 49 of the Weimar Constitution. The decision on the exception and the determination to pardon resist circumscription by rule. Although

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*grouping* (*The Concept of the Political* 43). Likewise, as William Scheuerman demonstrates, Schmitt rejected the view that legislative and executive power could be definitively separated (*Carl Schmitt: The End of Law* 26-30, *Between the Norm and the Exception* 75-76).

Giorgio Agamben’s analysis in *State of Exception* illuminates the connection between the effacement of a strict separation of powers and the condition of emergency itself; according to Agamben, “In our discussion of the state of exception, we have encountered numerous examples of this confusion between acts of the executive power and acts of the legislative power; indeed, as we have seen, such a confusion defines one of the essential characteristics of the state of exception” (*State of Exception* 38). As Peter Lindseth explains in “The Paradox of Parliamentary Supremacy,” “For Schmitt, the traditional precepts of the separation of powers inherited from nineteenth-century European public law (at the core of which was the deliberative, elected parliament) simply could not be reconciled with the exigencies of modern governance and the interventionist demands of the ‘total state.’ . . . His basic argument was that, in the aftermath of World War I, developments not just in Germany and France but also in Britain and the United States (the four ‘Great Powers’ on which he chose to focus) reflected a similar breakdown in the constitutional boundary between legislative and executive power, to the obvious benefit of the latter. . . . [H]owever, only Germany had, in his view, taken this process to its logical conclusion by completely eliminating any semblance of ‘separation of powers,’ opting instead for a system of ‘governmental legislation’” (1358-59).

27 *Legality and Legitimacy*, composed in 1932, contains a more elaborated discussion of how exactly Article 48 shifts power to the executive over the legislative branch (70 ff.).
pards de cursu were often issued in a somewhat routinized manner, allowing for the mitigation of punishment of particular offenses deemed worthy of less severe punishment, the less predictable pardon has appeared in politics at least as long.28

Similarly, the specification of procedures for the declaration of emergency and the maintenance of restrictions on its scope have been notoriously insufficient in delineating the boundaries of states of exception.29 This is the case in part because what is perceived to be at stake is the very existence of the state itself; as Schmitt elaborates, “[t]he state suspends the law in the exception on the basis of its right of self-preservation” (Political Theology 12). Such a Hobbesian account of the exception finds an analogy in the pardon power as well. Seeking peace constituted, for Hobbes, the primary dictate of natural law, and pardoning furnished the principal way of achieving peace within an already constituted—although perhaps revolutionarily overturned—polity. Finally, both the exception and the pardon—like the other attributes of sovereignty—partake of theological roots. According to Schmitt, “[t]he exception in jurisprudence is analogous to the miracle in theology” (Political Theology 36). The pardon itself, as an act of free gift, or grace, is likewise associated with the sovereignty of a Christian god, whose mercy displays a power even greater than that of judgment.

Even Schmitt himself appears to acknowledge this connection in a passage furnishing his most suggestive remarks about pardoning. Resisting the notion that the liberal state had managed to efface its own agency through law, Schmitt claimed:

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28 In The King’s Pardon for Homicide before A.D. 1307, Naomi Hurnard demonstrated the general availability of a pardon de cursu in medieval England for someone who had killed in an excusable manner, for example, in self-defense. In the continental context, Natalie Zemon Davis examined the fictionalized narratives that would routinely ease the path to a pardon in Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France.

29 This phenomenon becomes apparent in Agamben’s “brief history of the state of exception” (State of Exception 11-22).
[W]hoever takes the trouble of examining the public law literature of positive jurisprudence for its basic concepts and arguments will see that the state intervenes everywhere. At times it does so as a deus ex machina, to decide according to positive statute a controversy that the independent act of juristic perception failed to bring to a generally plausible solution; at other times it does so as the graceful and merciful lord who proves by pardons and amnesties his supremacy over his own laws. There always exists the same inexplicable identity: lawgiver, executive power, police, pardoner, welfare institution. Thus to an observer who takes the trouble to look at the total picture of contemporary jurisprudence, there appears a huge cloak-and-dagger drama, in which the state acts in many disguises but always as the same invisible person. The ‘omnipotence’ of the modern lawgiver, of which one reads in every textbook on public law, is not only linguistically derived from theology. (Political Theology 38)

Here the state operates in dramatic terms, either serving as a deus ex machina or playing in a “cloak-and-dagger drama,” its many personae substituting for a single surreptitious power. The deus ex machina form of the decision assumes a place analogous to that of the pardon. Despite the seemingly automated quality of the positivist state, it reaches out in various characters to affect what would otherwise seem a uniform rule of law.

Late in his career, after the dire consequences of his theories had become all too evident under the Third Reich, Schmitt would turn to an actual play—Shakespeare’s Hamlet—to illuminate the relationship between aesthetics and history as well as between drama and sovereignty. A final intervention in the exchange between Schmitt and Walter Benjamin, and a response to the latter’s use of Schmitt’s thesis on sovereignty in his 1927 Origin of German Tragic Drama, Schmitt’s Hamlet or Hecuba: The Intrusion of Time Into the Play sees in the character Hamlet the formation of a myth, one that Jennifer Rust and Julia Lupton have aptly glossed as, in part, “the myth of sovereignty as presence” (“Schmitt and Shakespeare” xxviii; xxxvii). The identification of Hamlet with a Schmittian sovereign might, on first blush, appear strange; as Schmitt himself describes Hamlet, he is a “procrastinator and dreamer . . . who cannot take the decision to act,” an
incapacity that would seem to sit ill with the decisionism of Political Theology (Hamlet or Hecuba 9). It is not exactly Hamlet’s stance with respect to the decision, however, that renders him mythic, but rather what that postponement of the decision signals about his connection with the historical figure of King James I.

The failure of decision within Hamlet, or “the transformation of the figure of the avenger into a reflective, self-conscious melancholic,” itself indicates the “intrusion” [Einbruch] of history. As Schmitt writes:

The philosophizing and theologizing King James embodied namely the entire conflict of his age, a century of divided belief and religious civil war. The distortion that differentiates the Hamlet of this drama from all other avenger figures and that is otherwise inexplicable . . . —in short, the Hamletization of the avenger—finds a suitable explanation only here, in James. It is here that the connection between present history and tragedy emerges (Hamlet or Hecuba 26).

Just as James here manifests himself in Hamlet, the “conflict of his age” imposes on James. Hamlet may represent both James and this conflict, but the form of representation is “personalized” rather than “impersonated” (“Schmitt and Shakespeare” xl). The immediacy of the connection between Hamlet and James, and between James and the “conflict of his age” transcends “play” and renders Hamlet tragedy rather than Trauerspiel. Referring to the “unplayability [Unverspielbarkeit] of the tragic,” Schmitt therefore explains that, “in distinguishing Trauerspiel and tragedy, we can recognize that incontrovertible core of a singular historical reality that transcends every subjective invention and can then understand its elevation to myth” (Hamlet or Hecuba 40; 52). It is not just sovereign indecision, but rather the historical problem to which that sovereign indecision points that renders Hamlet a mythic figure for the future.

The nature of this historical problem, however, remains less than perspicuous. On one level, Schmitt insists upon a rather blunt comparison between Queen Mary Stuart’s
supposed culpability for the death of her husband—the future King James’ father—and Gertrude’s potential guilt in the demise of Hamlet’s father, both of which subjects are “taboo” (*Hamlet or Hecuba* 15-18). Likewise, he associates the treatment of the ghost in *Hamlet* with Catholic and Protestant debates about the demonic quality of such apparitions and, in particular, the adolescent James’ intervention in these debates with his 1597 *Daemonologie* (*Hamlet or Hecuba* 28). More broadly, however, the problem concerns not only the division between Catholics and Protestants—and among various types of Protestants—that plagued seventeenth-century England, but also the hypothesis of the “divine right of kings” which, in Schmitt’s view, furnished King James’ “true life’s task, his existential problem” (*Hamlet or Hecuba* 29).

When James was writing and ruling, the prelude to the English Revolution had, in Schmitt’s view, already commenced (*Hamlet or Hecuba* 62). Because James’ concerns would lead neither to the “state” characteristic of the continental European countries of the eighteenth century, nor to the maritime economic empire of England, which Schmitt analyzed in *The Nomos of the Earth*, he was destined “to disappear from the stage of world history” (*Hamlet or Hecuba* 65), and to remain in the modern consciousness only to the extent that the myth of Hamlet contains his relic. If the myth of Hamlet furnishes this remainder and reminder of James, another seventeenth-century myth—that of the Leviathan—carried forward greater consequences for European political development, somewhat to Schmitt’s chagrin.

In analyzing Hobbes’ image for the commonwealth in an earlier book from 1938, Schmitt claimed that the figure of the Leviathan gestured in two directions, the former a personalist vision unifying all of the components of the state into a single figure, and the
latter a mechanistic and machinic one (*The Leviathan in the State Theory of Thomas Hobbes* 34-35). Whereas the first interpretation connected back to James himself and the Stuarts more generally, the second pointed forward to the continental European theories of the state (*The Leviathan in the State Theory of Thomas Hobbes* 79-80; 86). As Victoria Kahn has persuasively argued, Schmitt’s disillusion with the Hobbesian image of the Leviathan, the doubleness of which prevented Hobbes’ philosophy from being received as decisionist and instead paved the path for the future liberal state, itself sent Schmitt back to search the seventeenth century for another hero of decisionism, which he ultimately located in Hamlet (Kahn 80). The passage from *Political Theology* quoted above, however, explaining the *deus ex machina* mode of the state’s intervention, indicates the potential return of the person—or at least the god—in even the machine of the liberal state. The drama therefore continues as the god is put back into the machine. The pardon and the *deus ex machina* subsist only as the residue of the personalist sovereign in Schmitt’s account though; rather than being identified with the divine right monarch, they are personae adopted by the otherwise mechanistic state. At the same time, however, their existence may hinder the closure of the liberal state.

Schmitt’s fascination with Hamlet and the Leviathan, images emanating from seventeenth-century England, might suggest a further engagement with the political developments of that century and the relationship of dramatic spectacle to what transpired. Oddly though, by positing the historical anomalousness of James’ theories and their lack of inheritors, as well as claiming that Hobbes influenced continental Europe more than England itself, Schmitt manages to gloss over the space between *Hamlet* and Hobbes and to ignore the contest over sovereignty contained there.
In what follows, I take up the possibility that we might be able to say “Sovereign is who pardons” as well as “Sovereign is he who decides on the exception,” and I examine shifts in figuring the location of the pardon power over the course of the seventeenth century in England. Whereas pardoning first seemed to remain securely in the grasp of the King, it gradually, in dramatic as well as political representations, shifted in part to Parliament. This struggle between powers, a moment in the pre-history of the separation of powers, involved the intervention of the judiciary as well. Whereas Schmitt’s analysis of the separation of powers concerns largely the opposition between legislative and executive branches, the King’s power of pardoning was, in the early seventeenth century, challenged by and itself challenged the regularity of common law decision-making. The pardon thereby became a site for staging conflicts among these three forms of authority in the state.

At the same time as acknowledging how sovereignty was inscribed and transferred through the pardon power, the analyses that follow explore how dramatic “theaters of pardoning” suggested possibilities for non-sovereign forgiveness and the reconstitution of a political sphere that would not simply substitute parliamentary for royal sovereignty. In particular, the chapters examine the way plays in the period leading up to the English Revolution helped to imagine a form of democratic openness that may still remain unrealized today. The pardons in tragicomic drama, by unsettling the expectations of the audience, allowed for a kind of political freedom more akin to that envisioned by Arendt than that contemplated by Schmitt. Although they did not provide a pattern for politics that would take effect immediately in history, they indicated alternate paths forward from revolutionary violence.