

## Article

# Giorgio Agamben—A Modern Sabbatian? Marranic Messianism and the Problem of Law

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**Abstract:** The article analyzes the influence of the kabbalistic doctrine of Sabbatianism on the messianic philosophy of Giorgio Agamben. I argue against Simon Critchley that Agamben's critique of the sovereign law is not inspired by Marcion's idea of the total annihilation of law but by Sabbatai Zevi's project of deactivating its repressive function. I further argue that Agamben also adopts the Sabbatian idea of Marranic messianism, which makes him repeatedly contaminate the Jewish tradition with foreign influences. Although this strategy is potentially fruitful, it eventually leads Agamben to overemphasize antinomianism and problematically associate all Jewish-based messianism with the radical critique of law. In the article, I demonstrate that things are more complex and even in the openly antinomian works of Walter Benjamin—Agamben's greatest philosophical inspiration—Jewish law is endowed with some emancipatory potential.

**Keywords:** Giorgio Agamben; Judaism; messianism; law; state of exception; Marcionism; Marranism; Sabbatianism

## 1. Introduction

In one of his most important early writings, titled *Theologisch-politisches Fragment* [Theologico-Political Fragment], Walter Benjamin famously confronted the problem of political theology. Against those who speak of the religious sense of human history, Benjamin argues that there is no direct ontological connection between the profane and the holy, and—consequently—“nothing historical can relate itself on its own account to anything Messianic” (Benjamin 1991d, p. 203).<sup>1</sup> Jacob Taubes (Taubes 1986) returned to Benjamin's powerful thesis in his polemic essay *Walter Benjamin—ein moderner Marcionit* [Walter Benjamin—A Modern Marcionite?],<sup>2</sup> where he argues that the idea of the ontological separation of creation and redemption bears a strong resemblance to the Gnostic doctrine of Marcionism. Although Marcion (c. 85–160) was “the most resolutely and undilutely ‘Christian’ of the Gnostics” (Jonas 2001, p. 137)<sup>3</sup> and his teachings were a heretical misreading of the Gospel, he, indeed, greatly influenced Benjamin's early speculations on Jewish messianism. The core of his antithetical doctrine was a thesis of two Gods: the malicious demiurge responsible for our entrapment in this fallen world and the unknown Redeemer who will combat the world-god and liberate humans from

<sup>1</sup> Benjamin's piece, dated 1920 or 1921, is clearly inspired by the reading of Ernst Bloch's *Geist der Utopie* [The Spirit of Utopia] (first published in German in 1918), where the thesis of the unbridgeable gap between the historical and the messianic appears (Bloch 1980). Although Benjamin never mentioned reading Karl Barth, the Fragment also seems highly influenced by his “dialectical theology,” especially the argument of the absolute otherness of God (Barth 2010, pp. 111–59).

<sup>2</sup> Taubes's essay is not so much a polemic with the Fragment but with its “Judaic” interpretation pushed forward by Gershom Scholem (Scholem 1975, pp. 276–78).

<sup>3</sup> Marcion's misreading of the Gospel was, admittedly, very selective: of the New Testament, he only accepted the Gospel according to Luke along with the ten Paul's Epistles, although with considerable amendments.

the condition of imprisonment.<sup>4</sup> Inspired by the lecture of the Pauline Epistles, Marcion associated this demiurge with the Old Testament God of fierce justice and the Redeemer with the New Testament God of mercy, whose son and messenger is Jesus Christ. Needless to say, this anti-Jewish dualism was a radical oversimplification and distortion of Paul's message but its apocalyptic lure is hard to deny. That is probably why it inspired the early works of Benjamin, aptly diagnosed by Taubes as pricked with a Gnostic sting.

Adolf von Harnack ([Von Harnack 1924](#), pp. 106–17), perhaps the greatest investigator of Marcion's heresy, accentuates yet another property of his doctrine which every apocalyptic spirit might find alluring: the role of law. If the god of creation is a punisher, law must be conceived of as the form in which he reveals his nature. It means that any legal system is an instrument of the world-god's sovereign power over people and, as such, needs to be repudiated. This "retributive and vindictive" ([Jonas 2001](#), p. 142) understanding of law results in the association of redemption with the state of liberating lawlessness, necessary to overcome the earthly principle of sovereignty. In his recent book, *The Faith of the Faithless*, Simon Critchley ([Critchley 2013](#)) argues that today precisely this feature of Marcionism exerts a strong influence on the philosophy of Giorgio Agamben who follows Benjamin's early intuitions and assimilates the apocalyptic-messianic discourse to his critical theory. For Critchley, Agamben's messianism is a disavowal of the juridical apparatus, based on Marcion's radical opposition of law and redemption. Although he never quotes Marcion and rather appoints Paul as a patron of his messianic enterprise, "the way in which a certain ultra-Paulinism asserts itself in Agamben ( . . . ) might lead one to conclude that the contemporary return to Paul is really a return to Marcion" ([Critchley 2013](#), p. 195). Critchley is highly critical of this renaissance of "crypto-Marcionism" which, as he claims, brings about revolutionary tendencies to suspend law, understood as a domain of subjection and never emancipation. At the same time, the messianic anti-legalism must be a philosophy of "radical novelty, of an absolute or pure beginning", which makes Critchley conclude that Agamben's utopia of lawlessness is "a purist and slightly puerile dream" ([Critchley 2013](#), pp. 202–3).

Indeed, Critchley has a strong point in his critique of Marcionism, but I am going to argue that he wrongly positions Agamben as its follower. Whereas Marcion's doctrine was both antinomian and antithetical, Agamben's critique of law demonstrably breaks with dualistic thinking. Consequently, his messianic philosophy is not about a "new" world without law but about a structural transformation of the legal system so that this crucial apparatus is no longer an instrument of sovereign power.<sup>5</sup> I further argue against Critchley that—if we want to look for Gnostic inspirations in Agamben's work—his anti-dualism makes it much more accurate to call him a "modern Sabbatai," with reference to Sabbatai Zevi's (1626–76) kabbalistic doctrine. Although his catastrophic discourse bears a likeness to Marcionism, it also rejects antithetical remedies to propose instead an idiom of deactivation, clearly inspired by Sabbatai's teaching. Even more importantly, Agamben seems influenced not only by this kabbalistic ontology but also by the idea of Marranic messianism of which Sabbatai, the infamous apostate messiah, is a supreme figure. Agamben repeatedly "contaminates" his references to Jewish tradition with Christian ideas as if implying that betrayal is the necessary condition of redemption. At the same time, however, his Marranic disposition leads him to overemphasize antinomianism and problematically associate all Jewish messianism with a radical critique of law. I am going to argue that things are a bit more complicated: in Judaism, law has not infrequently been endowed with an emancipatory potential, not only in Halakhic, but also in the apparently antinomian messianic tradition. To show this, I will conclude with a reference to Benjamin's fragment on Kafka, in which this

<sup>4</sup> *The Antitheses* is the title of Marcion's only known work, in which he expounded on the core of his doctrine. The work has unfortunately been lost and Marcion's gospel has mostly been reconstructed from [Tertullian \(1972\)](#) polemic treaty.

<sup>5</sup> The term "apparatus" (or "dispositive"), borrowed from Michel Foucault ([Foucault 1980](#), pp. 194–96), refers in Agamben's philosophy to the social instruments which are supposed to produce human subjects but tend to transform into oppressive mechanisms of subjection. For [Agamben \(2009\)](#), the most important apparatuses are language and law—the dispositives which fundamentally determine human reference to the world.

greatest ally of Agamben's antinomian project surprisingly reveals himself as an astute advocate of Jewish law.

The Marranic and Sabbatian backgrounds of Agamben's critique of law have not yet been a subject of any systematic analyses. Also, the influence of Jewish messianism on his works has been relatively neglected as the literature is rather focused on Agamben's Pauline inspirations (Kaufman 2008; Kotsko 2013) and tends to disregard the role that kabbalistic conceptions play in his antinomian thinking. For instance, Colby Dickinson's *Agamben and Theology* (Dickinson 2011), being the most systematic analysis of the religious lineage of his works, is written from a Christian perspective while the only monograph fully devoted to Agamben's messianism, Vivian Liska's *Giorgio Agambens leerer Messianismus* (Liska 2008), fails to elaborate on the kabbalistic background of his critical theory. This background is elaborated throughout the essays contained in the edited collection *Benjamin-Agamben: Politik, Messianismus, Kabbala* (Borsò et al. 2010), but even they do not identify the Marranic and Sabbatian motives in Agamben's writings. The aim of my article is to fill this serious research gap and discuss Agamben's crypto-Sabbatianism in order to demonstrate its specific antinomian nature and use it against Critchley's "Marcionite hypothesis".

## 2. Against the Sovereign Law

Agamben's antinomian messianism stems from his diagnosis of law as a territory of sovereign power which he understands, after Carl Schmitt, as the "unlimited authority" (Schmitt 2004, p. 18) over life. He also follows the German jurist in claiming that the principle of sovereignty is inextricably linked to the state of exception [*Ausnahmezustand*] because "he who decides on exception" (Schmitt 2004, p. 13) and suspends the rule for an indefinite period of time is the only subject of sovereignty. Using Aristotelian terminology, one could say that the introduction of the state of exception is the moment when sovereign power moves from potentiality to actuality and establishes itself as independent of any norm. This "exceptional" structure of sovereignty makes Agamben argue that if there is an intimate relation of exception to the legal norm which establishes the institution of sovereign power, it is hard to maintain that the exception is inherently external to the rule (Agamben 2005a, pp. 17–19). Quite the opposite, exception reveals itself as the internal logic of any norm, necessary for its constitution as the opposite of abnormality. This paradox makes a framework for Agamben's radical thesis that the state of exception is not only the domain of sovereign power but also the structure which determines the validity of law as the supreme normative system (Agamben 2005a, p. 26).<sup>6</sup> Consequently, it is no longer possible to speak of the state of exception as anomaly or even widespread political practice but as the foundation on which juridical order—for Agamben, one of the most important apparatuses—is built.

To specify the fundamental structure of exception, Agamben proposes to call it the "inclusive exclusion" [*esclusione inclusiva*]. He argues that although exception is an individual case of exclusion from the scope of the general rule, it is still related to the rule by the relation of suspension. As we read in *Homo Sacer*, the work which investigates the nature of sovereign power, "the rule applies to the exception in no longer applying, in withdrawing from it" (Agamben 2005a, p. 18).<sup>7</sup> What is important, the withdrawal not only constitutes the exception but also asserts the rule and the territory where it is in force. As such, exception might be considered an instrument by means of which law excludes an element from the system only to subordinate it and make it subject to sovereign power. Consequently, although exception seems to escape the rule, it actually—just like the proverb says—proves it. This is not yet everything: another result of "inclusive exclusion" is the phenomenon which we might call topological indeterminacy. Agamben accentuates that once the difference between the rule and exception has been blurred, it is no longer possible to distinguish the inside of law from its outside,

<sup>6</sup> For more on this topic, see (Zartaloudis 2010, pp. 95–144) and (Gulli 2007). A representative selection of texts on the role of law in Agamben's philosophy can be found in (Zartaloudis 2016).

<sup>7</sup> Original emphasis.

the crucial opposition of *physis* and *nomos* is devalued and juridical order “coincides with reality itself” (Agamben 2005c, p. 105). At the same time, on the “threshold of indistinction” (Agamben 2005a, p. 18) between law and life, the latter is absorbed by the former, much more powerful and governed by the principle of sovereignty. What does it mean for living beings? According to Agamben (2005a, p. 53),<sup>8</sup> humans subjected to the power of omnipresent law are like inhabitants of the village at the foot of the Castle Hill in Franz Kafka’s *Das Schloß* (Kafka 1997): they fall victim to the tyrannical apparatus whose indeterminacy thwarts any strategy of resistance.

While Critchley attributes the Marcionite background to Agamben’s antinomianism, let us notice that Agamben’s radical critique of law consistently escapes antithetical thinking. Above all, at no point do we find in his work any anarchistic longing or a call to repudiate the legal system. Despite all his harsh criticism, the author of *Homo Sacer* is well aware that law is a crucial subject-making apparatus whose abrogation makes it impossible for a human being to turn into a proper subject (Agamben 2009, pp. 15–17). That is why instead of overcoming law and putting forward the utopia of lawlessness, Agamben chooses to think it anew by dismantling the logic of exception which founds the legal systems we know: “What opens a passage toward justice is not the erasure of law, but its deactivation and inactivity [*inoperosità*]” (Agamben 2005b, p. 64). The idiom of deactivation repeatedly applied by Agamben to his messianic philosophy is yet another argument why Marcionite associations fail. Agamben argues that as a consequence of the “inclusive exclusion,” there is no opposite of the state of exception which could be used as a stimulus for defiance. Rather, in the “zone of indistinction” generated by the state of exception, oppositions cannot help but be absorbed by sovereign power, which makes all antithetical strategies futile.<sup>9</sup> Any critical practice must thus be initiated inside the structure of exception in order to neutralize it “messianically,” using the divisions it generates against itself. Reminiscent as this strategy might be of Baron von Münchhausen pulling himself out of a mire by his hair, this is precisely how Agamben understands messianism, which makes him move away from Marcionism and brings him pretty close to the Sabbatian way of thinking.

What brings him even closer is the way in which Agamben conceives of the messianic law. Admittedly, at this point he is far from being precise and the elaborate strategies of deactivation<sup>10</sup> put forward in his writings are not counterbalanced by an in-depth analysis of their aftermath. However, even his scattered remarks make up an image equally distant from both the worlds of sovereign law and anarchistic utopia. Agamben directly addresses the problem in *The State of Exception* where he asks “what becomes of the law after its messianic fulfillment” (Agamben 2005b, p. 63) to enigmatically answer that “one day humanity will play with law just as children play with disused objects” (Agamben 2005b, p. 64).<sup>11</sup> Arguably, Agamben does not mean that in the messianic time law will become useless and thereby subject to abrogation; instead, it will be open to multiple uses which are nowadays hard to imagine. Figuratively speaking, humans will be like little kids who waste no time pondering the original function of documents found on the street but spontaneously make them into paper planes, thus initiating a completely new use of things. How to make it happen? The line of reasoning is like this: the legal apparatus as we know it is basically reduced to its normative aspect and, as such, cannot help but reinforce power over life. In order to think of a non-repressive law, there must be no instrumental attachment of the law to any goal because only the law which is not a means to an

<sup>8</sup> “We see in the impossibility of distinguishing law from life—that is, in the life lived in the village at the foot of the castle—the essential character of the state of exception.”

<sup>9</sup> That is precisely why Agamben is highly critical of Theodor Adorno’s negative dialectics, on which he comments in *The Time that Remains*. He follows there Jacob Taubes’s argument that Adorno’s theory is a “wishy-washy” aestheticization of messianic discourse which contemplates merely the pretense of redemption (Taubes 1993, p. 103). Agamben (2005c, p. 37) agrees with this objection and argues that once negativity is reinforced, it might prevent any messianic gesture of positivity from happening, which makes Adorno’s dialectical messianism eventually ineffective.

<sup>10</sup> Among the most significant, there are the strategies of profanation (Agamben 2007, pp. 73–92), pure means (Agamben 2000, p. 49–59) and the study of law (Agamben 2005b, p. 63–64).

<sup>11</sup> More detailed considerations on play are to be found in Agamben’s *Infancy and History*, in the chapter titled *In Playland: Reflections on History and Play* (Agamben 1993, pp. 65–87).

end can escape sovereign appropriation. To play with law thus means to “forget” its original function and celebrate its full potentiality, which Agamben makes pretty clear when he says that “what is found after law” is just “a new use” of the law (Agamben 2005b, p. 64).<sup>12</sup>

### 3. The Sabbatian Alternative

I believe Lorenzo Chiesa is right to claim that Agamben’s antinomian project aims at transforming the sovereign state of exception into the messianic one (Chiesa 2009, p. 154), which Agamben calls, following Benjamin, the “real” state of exception.<sup>13</sup> Agamben argues that a redemptive potential is hidden in a principal paradox of the state of exception: as a result of the indistinction between the rule and exception, it is impossible to tell the difference between the execution of law and its transgression. That is why, figuratively speaking, “a person who goes for a walk during the curfew is not transgressing the law any more than the soldier who kills him is executing it” (Agamben 2005a, p. 57). Agamben maintains that a similar paradox marks the coming of the Messiah in kabbalistic tradition, especially in the Sabbatian doctrine of the two Torahs. Although the doctrine dates back to the thirteenth-century holy Book of Zohar, it is only the Sabbatians who made it into the very core of their messianic teaching four centuries later. According to this mystical idea, the present Torah, which the Sabbatians called the Torah of *beriah* (“in the state of creation”), is only relevant to the fallen, unredeemed world as we know it. Once the Messiah has come, this rigorous set of commandments that Judaism is associated with will be replaced by the Torah of *atzilut* (“in the state of emanation”), freed from the burden of Adam’s original sin and thus liberating humans from the punitive function of law (Scholem 1995, pp. 287–324). Agamben argues that this messianic replacement bears a strong likeness to the logic of exception as it introduces the “threshold of indistinction” between law and lawlessness. What does it mean? At the moment when the Torah of *beriah* is consummated, its principles lose validity and give way to a totally new law which may violate the old principles but is also legitimized by the Messiah himself. Consequently, “the fulfillment of the Torah now coincides with its transgression” (Agamben 2005a, p. 57)—*bittulah shel torah zehu kiyamah*, in Sabbatai Zevi’s own words—which makes Agamben call this messianic moment the “real” state of exception that neutralizes mechanisms of “inclusive exclusion” and beats the paradigm of sovereign power with its own weapon.

Although such an operation, indeed, challenges the sovereign nature of law without falling into the utopia of lawlessness, it is not yet very distant from the Marcionite dualism that Critchley attributes to Agamben’s thought. After all, if the messianic act limited itself to the simple replacement of one law with another, it would be a highly antithetical, and somehow naïve, way of thinking. However, what Agamben finds appealing in the Sabbatian doctrine of the two Torahs is that it is actually much more nuanced: it never undermines the authority of the pre-messianic Torah, neither does it question the Thirteen Principles of Faith formulated by Moses Maimonides (Maimonides 2012, pp. 151–172), according to which the Torah is one and indivisible. How is that possible? In one of his most important messianic texts, titled *The Messiah and the Sovereign* (Agamben 1999), Agamben accentuates that unlike that which the name of the doctrine suggests, it is not about two separate Torahs with different commands and prohibitions, but about two different aspects—or understandings—of the one essential Torah. This highly mystical idea assumes that the historical Torah as we know it is a defined text, but the spiritual Torah as it existed in the sight of God before the process of its materialization was rather “the totality of possible combinations of the Hebrew alphabet” (Agamben 1999, p. 164). It is only

<sup>12</sup> In the same fragment of *The State of Exception*, Agamben defines the messianic law as “a figure of law after its nexus with violence and power has been deposed” (Agamben 2005b, p. 63), which proves that what will be invalidated in the messianic world is not the whole apparatus of law but rather its coercive properties.

<sup>13</sup> The concept of the “real” state of exception appears in the eighth thesis in Benjamin’s *Über den Begriff der Geschichte* [Theses on the Philosophy of History] where he writes: “The tradition of the oppressed teaches us that the ‘state of exception’ in which we live is the rule. We must arrive at a concept of history that corresponds to this fact. Then we will have the production of a *real* state of exception before us as a task” (Benjamin 1991, p. 697), original emphasis.



due to the fall of the first man that this original totality was limited to concrete words and sentences, and the full potentiality of law reduced to its penalizing function.

Gershom Scholem, perhaps the greatest twentieth-century theorist of Jewish kabbalah, whose works Agamben has thoroughly studied, argues that the Sabbatians' doctrine was highly inspired by the thirteenth-century conception of the cosmic cycles, or *shemittoth*. According to this early kabbalistic teaching, the absolute Torah has the power to manifest itself in various ways so "in every *shemittah* men will read something entirely different in the Torah, because in each one the divine wisdom of the primordial Torah appears under a different aspect" (Scholem 1969, p. 78). Although the innermost essence of the holy text must stay the same and not a single letter may be added or taken away, the combination of the letters keeps changing so that they present a different appearance to the reader depending on the cycle. A very similar view was expressed by Rabbi Eliyahu Kohen Ittamar of Smyrna (d. 1729) whose theology, as Scholem accentuates, was "strangely shot through with ideas that originated in the heretical Kabbalism of the followers of Sabbatai Zevi" (Scholem 1969, p. 74). In one of his writings, not surprisingly quoted by Agamben (1999, p. 165), we read that the Torah "*originally formed a heap of unarranged letters*" (Scholem 1969, p. 74)<sup>14</sup> which only had to be ordered when God's word was transmitted to the lower spheres of being. When the Messiah finally comes, he will "annul the present combination of letters" (Scholem 1969, p. 74), restore the primordial plasticity, and liberate humans from their subjection to punitive law. In other words, he will materialize what Agamben terms the "new use": a figure of law no longer reduced to a collection of obligations and prohibitions, in which the full potentiality of law can be manifested.

That, precisely, was supposed to be the role of Sabbatai Zevi, who in the seventeenth-century Ottoman Empire declared himself the long-awaited Jewish redeemer and initiated the most widespread heretical movement in the modern history of Judaism. His unique position on the map of Jewish heresies comes from the fact that Sabbatai's messianic mission ended up in his infamous conversion to Islam and outward renunciation of Jewish faith. However, self-destructive as it appears, Sabbatai's apostasy did not put an end to the activity of the movement which flourished among European Jewry long after the death of this "apostate messiah." Scholem, who is the author of Sabbatai's monumental biography, points out that the faithfulness of the Sabbatians to their master even after he was discredited is not unrelated to the fact that a large portion of Sephardic Jews were at that time descendants of the Marranos: "Had it not been for the unique psychology of these reconverts to Judaism, the new theology would never have found the fertile ground to flourish in that it did" (Scholem 1974, p. 95).<sup>15</sup> Thanks to the Marranic mentality of his followers, argues Scholem, Sabbatai's conversion soon originated the doctrine of the necessary apostasy of the Messiah, according to which messianic acts shall not be committed publicly but only in concealment, under the guise of treachery.<sup>16</sup> In light of this, his conversion could no longer be interpreted in terms of betrayal but rather fulfilment of the Jewish messianic idea, or—to put it more dialectically—fulfilment by means of betrayal, strictly in accordance with the formula *bittulah shel torah zehu kiyyamah* ("the fulfilment of the Torah is its transgression").

<sup>14</sup> Original emphasis. Although the manuscript of Rabbi Eliyahu's book has been lost, his words are known thanks to the quotation in Hayyim Joseph David Azulai (Azulai 1986).

<sup>15</sup> Scholem quotes, e.g., Abraham Cardozo, one of Sabbatai's followers, who argued that "it is ordained that the King Messiah don the garments of a Marrano and so go unrecognized by his fellow Jews" (Scholem 1974, p. 95). It is worth noting that Scholem's argument has been criticized by his disciple Moshe Idel (Idel 1998, pp. 183–84) who claims that a reference to "Marranic mentality" bears the hallmarks of psychologization and is not a reliable explanation of the movement's expansion, whose reasons are much more complex.

<sup>16</sup> This doctrine is a reinterpretation of the Lurianic kabbalah, on which most of the Sabbatian cosmology was based. In the teachings of Isaac Luria and his disciples, the messianic mission involves collecting holy sparks which—due to the original cosmic catastrophe—have been entrapped by the forces of evil. According to the Sabbatian corrective, the imprisoned sparks can only be rescued if the Redeemer descends into the realm of impurity to destroy it from within; that means that the world is going to be redeemed through sinful and treacherous actions, no more, no less (Scholem 2016, pp. 801–2). For a recapitulation of the Lurianic cosmological doctrine, see (Fine 2003).

Let us notice that this Marranic nature of Sabbatianism perfectly corresponds to the messianic conception of the two aspects of the Torah. The supreme Torah of *atzilut*, which stayed in concealment for almost the whole existence of the material world, can only be actualized if the Torah of *beriah* is first “betrayed” by its violation. However, tampering with the commandments leads to the consummation of the pre-messianic Torah and prepares the ground for a new, liberating understanding of law, which makes one conclude that the apparent infidelity is actually necessary for the messianic mission to succeed. For someone like Agamben, whose messianic thinking is located on the borderline between Judaism, Christianity, and Islam, such a conclusion—although potentially nihilistic<sup>17</sup>—must sound philosophically fertile. I believe it is precisely his “crypto-Sabbatian” disposition which makes him repeatedly contaminate one religious tradition with another, as if intellectual purity could not help but degenerate into an instrument of oppression. Philosophical and theological crossovers, on the contrary, invigorate critical thinking and may serve as powerful allies of any emancipatory project, which is why Agamben persistently violates religious canons and explores their heterodox undercurrents.

#### 4. The Marranic Abuse

Admittedly, Agamben has a strong point here, but the idea that a true messianic project lives on transgression and betrayal puts him in a convenient position to repel any philosophical attack and thus opens room for intellectual abuse. I would like to point now to at least one abusive consequence of such a Marranic position. As previously stated, all of Agamben’s antinomian project is founded upon the thesis that “in Judaism as in Christianity and Shiite Islam, the messianic event above all signifies a crisis and radical transformation of the entire order of law” (Agamben 1999, pp. 162–63). In such a (mis)reading, the present law is firmly opposed to divine justice, and true redemption may only come about through deactivation of its repressive function. Although Agamben attributes antinomianism to the whole messianic tradition, his focus is constantly on Judaism as the religion most commonly associated with law. Even at times when he works on the Halakhic tradition, he reads it in a highly antinomian way, the holy day of Sabbath being a good example. In the essay *Hunger of an Ox*, Agamben pushes forward with a thesis that the Saturday suspension of works has a similar effect on daily activities as the coming of the Messiah has on the works of law: it nullifies them not through undoing but through making them inoperative, which in Hebrew is called *menuchah* (Agamben 2011, p. 104). What does that mean? When pious Jews refrain from work on the Sabbath, it is the scrupulous observance of *mitzvot* which strictly demand workweek labour and Saturday repose. At the same time, however, by respecting the Torah of *beriah*, Jews bring forward the arrival of the Messiah, who—as the Sabbatians believed—will render its commandments definitively inoperative (Agamben 2011, p. 110). Thereby, the fulfilment of the law is its transgression, which makes Agamben describe the logic of the Sabbath as parallel to the “real” state of exception.<sup>18</sup> No wonder, he adds, that in the antinomian tradition the Saturday rest is called the anticipation of *olam ha-ba*, the future world where legal orders will not just be temporarily suspended, but permanently invalidated.

This is precisely the abuse that I ascribe to Agamben: he reinforces the polarizing schema in which the law as we know it is reduced to its coercive and repressive properties in order to trade it against the messianic promise of liberation through “another use of the law.” Such a crypto-Sabbatian position might escape the Marcionite utopia of anarchism, but it still denies the present juridical apparatus any emancipatory function. Jayne Svenungsson is right to contend in her recent article that although Agamben keeps distance from the dualism of law and lawlessness and is careful not to repeat anti-Jewish stereotypes, he nevertheless ends up making “a typical supersessionist gesture” of “counterposing law to liberation” (Svenungsson 2017, p. 69). Conspicuous as they are in their radicality,

<sup>17</sup> Nihilistic consequences of the doctrine of “redemption through sin” are especially visible in the activity of Jacob Frank (1726–91) and his followers; see (Maciejko 2011).

<sup>18</sup> For more on this topic, see (Kaufman 2008).

antinomian currents are hardly representative of the messianic idea in Judaism, where law has not infrequently been viewed as a progressive power and not an obstacle on the path to redemption. For instance, in Maimonides (and in most rational tendencies of Jewish philosophy) we find a highly affirmative view of law as a means of moral self-betterment which also has a significant role to play in the work of salvation. In *The Book of Judges*, his extensive codification of the Jewish law, we read that it is precisely the moral progress achieved through the observance of the law that will make it easier for the Messiah to arrive. That is why there is no need to transform the function of law in the messianic times, the only difference being the elimination of external constraints in its contemplation (Maimonides 1949, pp. 238–42). If we realize that this view is much more central to Judaism than antinomian critiques, the stress Agamben puts on the negative aspects of law to play it off against emancipation will seem a considerable distortion of the Jewish messianic tradition, which may be in accordance with his Marranic disposition but does not cease to be intellectually abusive.

Svenungsson speculates that this antinomian hyperbole is connected with Agamben's philosophical background, especially the establishment of Benjamin as a patron of his messianic project (Svenungsson 2017, p. 72). Indeed, a little glimpse into such works as *Zur Kritik der Gewalt* [Critique of Violence] (Benjamin 1991g) or *Schicksal und Charakter* [Fate and Character] (Benjamin 1991c) will suffice to conclude that Benjamin is equally uncompromising in exposing the sovereign, repressive nature of law. Striking similarities between the two authors become even more visible after the reading of Benjamin's essay *Franz Kafka: Zur zehnten Wiederkehr seines Todestages* [Franz Kafka: For the Tenth Anniversary of His Death] where he argues that the gloomy atmosphere of Kafka's novels stems not only from the tyranny of the legal apparatus, but also from the paradoxical coexistence of omnipresent law and absolute lawlessness (Benjamin 1991a, p. 412), which immediately brings to mind Agamben's notion of the state of exception.<sup>19</sup> However, despite these unquestionable parallels, things are a little more complex than Svenungsson suggests. In another piece on Kafka, a very short and elliptic fragment titled *Versuch eines Schemas zu Kafka* [Tentative Outline on Kafka], Benjamin powerfully describes Kafka's pre-historic "swamp world" [*Sumpfwelt*] only to conclude that some "defensive measures" [*Abwehrmaßnahmen*] against its sovereign powers are offered by the Halakhic tradition (Benjamin 1991f, p. 1192). This surprising statement makes it clear that Benjamin—at least at this point—is careful to distinguish between political and theological understanding of law, which is not to be found in any of Agamben's works. Rather, the author of *Homo Sacer* conflates secular legal systems of the modern state with the religious law of Judaism to counterpose them against the liberating promise of messianism. It is hard to deny that this operation boosts his antinomian argument, but at the same time makes him diverge from Benjamin who turns out a much greater advocate of Halakha than Agamben would like to admit.<sup>20</sup>

## 5. Conclusions

Having discussed Agamben's critique of law, let us now draw some final conclusions. Above all, Critchley's interpretation of his approach in terms of "crypto-Marcionism" seems mistaken. Unlike Marcion's heresy, what is at stake in Agamben's messianic enterprise is not the annihilation of the juridical order but its deep, structural transformation so that the authority of law is no longer founded on violence and subjection. What is more, he is clearly against the antithetical *modus* of thinking and puts forward the idea that due to its intricate mechanisms of "inclusive exclusion," the sovereign law can only be dismantled from within. That is why, as I tried to demonstrate, Agamben seeks inspiration in the Sabbatians' antinomianism, especially in their conception of the messianic deactivation of legal system, represented by the doctrine of the two Torahs. Although philosophically fruitful, I have argued that this "elective affinity" to the Marranic messianism has at least two problematic consequences:

<sup>19</sup> See also (Benjamin 1991b).

<sup>20</sup> For more on this topic, see (Liska 2017) and (Weiss 2014).



first, it allows Agamben to don the costume of a Marrano himself and repeatedly contaminate the Jewish tradition with Christian influences, e.g., hide his kabbalistic inspirations under the guise of Pauline Christianity;<sup>21</sup> second, and even more importantly, it leads to a serious distortion of the Jewish messianic idea which is in its essence much less antinomian than Agamben would like it to be. Irrelevant as it is to criticize Agamben for misreading the tradition he never claimed to represent, one should bear in mind that—at least at times—his Marranic position makes Agamben refer to it too carelessly. By no means does this carelessness discredit his use of the messianic discourse which should be read, however, in terms of an invigorating pastiche rather than a faithful continuation of the Jewish messianic idea. As such, it still makes a valuable contribution to untying the knot which links law and sovereign power; and if it involves the risk of intellectual abuse, may it not be the price that any Marranic enterprise eventually needs to pay?

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<sup>21</sup> This Marranic tactic is best visible in *The Time that Remains*, where Agamben repeatedly applies the Lurianic conceptual apparatus (“contraction,” “the void,” “the remnant”) to the analysis of Paul’s Epistles, but never reveals its kabbalistic lineage; see (Sawczyński 2018).

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