Without Sovereign Guarantee: Reading Schleitheim on the Oath with Giorgio Agamben

MARIUS VAN HOOGSTRATEN*

Abstract: This article relates Giorgio Agamben's interpretation of the oath to one Anabaptist critique of oath swearing, namely the one found in the final article of the 1527 Schleitheim Confession. How might Agamben's philosophical interpretation shed light on Schleitheim's instruction to refuse oath swearing? And where might Schleitheim's formulation challenge Agamben's argument? Reading Schleitheim in light of Agamben's formulation, we come to see how the confession's refusal of oath swearing can be read as a critique of sovereignty and a re-envisioning of certitude and trust in a community without such enforced guarantees. This means oath refusal is far from an afterthought to more central Anabaptist concerns. Indeed, oath refusal can be seen as integral to, perhaps even exemplary of, the attempt to build a community under a sovereignty of a radically different kind.

In his short study *The Sacrament of Language,* Italian philosopher Giorgio Agamben investigates the practice of oath swearing.[1] It is not his most well-known or most-discussed work, and its argumentation is often speculative: Agamben identifies a kind of originary oath structure not only at the root of Western conceptions of political authority, but at the dawn of humanity's very relation to language. Though we rarely pay attention to them anymore, he suggests that rituals of oath swearing as we know them throughout history show us something about the way our thinking binds together human beings, words, things, and actions. Yet it is a violent kind of binding, because in swearing, language asserts its dominion over the world and names whatever escapes this claim—perjury—as cursed. If the oath thus provides a ground for the Western structure of sovereignty, as the final authority of a ruler or system over the life of the subjects or citizens, this ground is deeply ambiguous. An alternative might be possible, Agamben suggests.

* Marius van Hoogstraten, PhD, served as pastor to the Mennonite congregation of Hamburg, Germany, until 2022. He currently works as a research associate at the Amsterdam Mennonite Seminary (Vrije Universiteit).

[1] Giorgio Agamben, *The Sacrament of Language* (Redwood City, CA: Stanford University Press, 2011).

Agamben's study does not take note of the critique and refusal of oath swearing enunciated in the Anabaptist movement of the sixteenth century. Inversely, interpreters of Anabaptism do not yet appear to have engaged with Agamben's thinking on the oath.[2] In this article I will therefore relate Agamben's reading of the oath to one Anabaptist critique of oath swearing: the one found in the final article of the 1527 Schleitheim Confession.[3]

I will begin with a brief discussion of oath swearing in general and Anabaptist oath refusal in particular, followed by an initial reading of Schleitheim's instruction on the oath. After this I will turn to Agamben's interpretation, before returning to the text of Schleitheim for a second reading and discussion. Of course, in placing Schleitheim alongside a

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[2] In drawing on Agamben, I do not mean to endorse or trivialize his pandemic writings, which remain deeply problematic three years on. In early 2020, as the coronavirus was beginning to claim significant numbers of victims in Italy, Agamben published a series of apparently ad-hoc texts opposing the Italian government's emergency measures. As an exertion of state power in a state of emergency, he considered these not only an indefensible breach of personal freedoms, but also akin to the totalitarian logic of concentration camps. Obviously, this was not only grossly inaccurate but also enormously irresponsible at a time of such crisis, and it placed Agamben knowingly in the camp of antidemocratic forces. Agamben was sharply attacked by other thinkers, notably Jean-Luc Nancy, for his callous disregard of human vulnerability in the face of disease and his unwillingness to consider any kind of collective protective measures as legitimate.

A precise estimation of Agamben's legacy in light of these texts is not the purpose of this article. Nevertheless, they perhaps indicate the way Agamben's singular focus on the dangers of unlimited state power is, in Adam Kotsko's words, "missing a great deal," and inhibits his capacity to envision any kind of collective action, even in the face of a pandemic. Toward the end of this article my reading of Schleitheim will challenge Agamben exactly on this point. For this is where Schleitheim's critique of the oath diverges most clearly from Agamben's: it is embedded in the effort to build and shape a community. The (ecclesio)political body envisioned by Schleitheim is without the sovereign structure of force that Agamben considers so dangerous, yet it is nevertheless capable of shared deliberation and action out of concern for others' well-being. See the final note in this article.

For a careful and nuanced, but by no means apologetic, interpretation of Agamben's pandemic writings, see Adam Kotsko, "What Happened to Giorgio Agamben?" *Slate*, 20 February 20, 2022, https://slate.com/human-interest/2022/02/giorgio-agamben-covid-holocaust-comparison-right-wing-protest.html. Parts of this article draw on Marius van Hoogstraten, "The Root of Sovereignty: The Anabaptist Refusal of the Oath," in Anne Hege Grung, Yaser Ellethy, Henry Jansen, and Matthew Ryan Robinson, eds, *Sacred Protest* (Leiden: Brill. Forthcoming).

[3] Though the Schleitheim Confession is sometimes taken as *the* representative document for unadulterated Anabaptist concerns, this is accurate neither for historical nor for contemporary Anabaptism. C. Arnold Snyder thus argues that while the Schleitheim Articles certainly played "a crucial role in defining the Anabaptist movement," their importance has been "overrated by modern Mennonite interpreters: they *do not* represent the defining moment for Anabaptism as a whole." C. Arnold Snyder, "The Schleitheim Articles in Light of the Revolution of the Common Man: Continuation or Departure?," *The Sixteenth Century Journal* 16, no. 4 (1985): 420.

work of contemporary philosophy, I do not mean to suggest that philosophical critique was a main concern to those gathered at Schleitheim. Presumably, for them the simplicity of the Gospel command to "not swear at all" (Matt 5:33–37) was sufficient. Yet, as I hope to show, the text they have left us nevertheless lays out the beginnings of an argument with significant philosophical implications. Schleitheim's argumentation, brief though it may be, shares with Agamben both the emphasis that oath swearing seems to produce, not eliminate, perjury, and the sense that oaths attempt to bring the world under the dominion of one's words in a way not appropriate for human beings. For both Agamben and Schleitheim, overcoming the oath is therefore an essential component of constructing a togetherness not governed by worldly sovereignty—even if the ways they envision such an alternative togetherness diverge. Thus despite the apparent strangeness of contemporary philosophy to the Schleitheim Anabaptists, perhaps what I will finally argue is not so far removed from what they sought: the possibility of trust and shared life in a persistently ambiguous world, and of church as a kind of collective body that is never definitively achieved or guaranteed but must be restaged interminably.

The Root of Sovereignty

Though oath swearing is, of course, subject to historical and cultural variation, an oath can be defined as a solemnly given and in some sense institutionalized guarantee for a statement or promise by appeal to a divine or sacred force. Structural linguist Émile Benveniste describes an oath as "a rite which guarantees and makes sacred a declaration."[4] The swearer "stakes something that is essential to him, some material possession, his kin, even his own life, in order to guarantee the veracity of his affirmation."[5] As legal scholar Helen Silving notes, the most original shape this takes is as a "self-curse, uttered in conditional form,"[6] in which the swearer invites the wrath of the gods, or some other negative consequence, should they commit perjury or fail to live up to their sworn commitment.[7]

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[4] Émile Benveniste, *Dictionary of Indo-European Concepts and Society* (Chicago: Hau, 2016), 440.

[5] Benveniste, *Dictionary*, 440.

[6] Helen Silving, "The Oath: I," *Yale Law Journal* 68, no. 7 (June 1959), 1330; Silving here draws on Richard Lasch, *Der Eid: Seine Entstehung und Beziehung zu Glaube und Brauch der Naturvölker—eine ethnologische Studie* (Stuttgart: Strecker & Schröder, 1908).

[7] A distinction is often made between oaths that assert or testify to a truth (as a witness might swear to having seen the accused, for example), and oaths in which the swearer promises or binds themselves to certain actions in the future (as a vassal might swear

Historian Paolo Prodi has especially stressed the significance of oath swearing in Western political life. In swearing an oath, one pledges one's life, Prodi notes, grounding a bond to the collective body in which the oath takes place.[8] Oath swearing is thus a "junction of the relation of politics and the sphere of the sacred."[9] In this function, the oath comes to anchor political and legal order throughout Western history. This is true both for vertical relations of obedience (such as feudal loyalties) and for more lateral civil orders (such as in free cities or the Swiss commonwealth), which are likewise constituted by collective oaths.[10] Prodi describes the role of oath swearing in medieval Europe as "the basis of every authority and normative force, the metapolitical root of law, the connecting point between the invisible and human worlds."[11] In modernity, oath swearing transformed, becoming more oriented toward the nation, to which the pledging of one's life was now demanded. In the twentieth century, however, oath swearing fell into decline. For Prodi, this decline is deeply troubling: "We are the first generation" to live without the constitutive and comprehensive bond provided by the oath. Without noticing it, we are thereby experiencing "a crisis that has seized the human being itself as a *zoon politikon* [political animal], . . . which threatens the entire development of the western political system."[12]

Perhaps not all readers will quite share Prodi's sense of the severity of this crisis. Yet given the function of oath swearing as a constitutive political and legal practice, it is not hard to understand why Prodi

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allegiance to their feudal lord). This distinction between assertory and promissory oaths is especially noted by Edmund Pries in *Anabaptist Oath Refusal: Basel, Bern, and Strasbourg, 1525–1538* (Thunder Bay, ON: Pandora, 2023). However, Silving suggests that the distinction may not be so elementary. At least in the premodern contexts she discusses, supposedly assertory oaths were sworn not to establish truth in "accordance with objective facts," but to bind the swearer to *a* truth—that is, to one of the disputing parties. At least in these contexts, Silving concludes, oaths were "not means of establishing a fact but expressions of solidarity with the group which the oath taker wished to prevail." The ability to keep one's word, to not become a perjurer, was here not primarily a matter of fact but one of virtue and strength—and thus not so different from promissory oaths. Silving, "Oath," 1334. Agamben also notes that the "difference concerns, in fact, not the act of the oath, which is identical in the two cases, but the semantic content of the *dictum*." Agamben, *Sacrament,* 6.

[8] Paolo Prodi, "Der Eid in der europäischen Verfassungsgeschichte: Zur Einführung, "in Paolo Prodi and Elisabeth Müller-Luckner, eds., *Glaube und Eid,* (Munich: R. Oldenbourg, 1993), viii.

[9] Prodi, "Eid," xxviii.

[10] Prodi, "Eid," xv–xvi.

[11] Prodi, "Eid," xii. Pries, following Heinrich Bullinger, more benignly calls oath swearing the "button which fastened together the various social and political structures of sixteenth century society." Pries, *Anabaptist Oath Refusal*, 1.

[12] Prodi, "Eid," vii.

considers the Anabaptist refusal to swear a comprehensive "rebellion against the state order" that seeks to "attack the heart of power in its sacrality."[13] For centuries, perhaps even millennia, and in a variety of Western political and legal cultures, oath swearing functioned as an anchoring point for truth, forming both the metapolitical and a metaphysical root of sovereignty. In attacking the legitimacy of oath swearing, the Anabaptists were therefore not just formulating nonparticipation in one practice among others, but in one of the constitutive institutions in the legal, economic, and political systems of their time.[14]

Edmund Pries, whose seminal study on Anabaptist oath refusal in the early sixteenth century has recently become more widely available, seems to agree: "The Anabaptist refusal to swear oaths was the most radical political act that could have been undertaken by anyone . . . short of declaring war against one's overlords."[15] From the perspective of the authorities, "oath refusal made society ungovernable; the means of exercising control . . . had been sabotaged."[16] In an important sense, refusing to swear oaths meant refusing the control of the authorities, which significantly functioned by means of various kinds of oaths; Pries thus described the Anabaptists (at least in some cases) as "religiously-anarchistic."[17] At the same time, "more than any other action," oath refusal signified the separation of nascent Anabaptist communities from the social and political structures around them and their commitment to constructing alternative communities with alternative loyalties. Pries particularly notes the significance of baptism, in some Anabaptist arguments, as a comprehensive covenant and commitment that "replaced the civil oath ceremony."[18] In baptism, Christians are *already* "sworn," we might say, and no other loyalty may bind them. The alternative communities they formed, Pries argues, were "not places for withdrawal" but "activist conventicles."[19]

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[13] Prodi, "Eid," xix.

[14] This is not to say that oath refusal originated with the Anabaptist movement; Silving notes that in the early church, "acceptance of the oath in Christianity was achieved only after a considerable struggle, and even then the acceptance was not unqualified." Silving, "Oath," 1344. Prodi likewise discusses the "radical change of opinion" in the church in its first centuries, from initial rejection of the oath to its integration into the Christian worldview. Prodi, "Eid," xi; see also Pries, *Anabaptist Oath Refusal*, 5–33.

[15] Pries, *Anabaptist Oath Refusal*, 385.

[16] Pries, *Anabaptist Oath Refusal*, 386.

[17] Pries, *Anabaptist Oath Refusal*, 164.

[18] Pries, *Anabaptist Oath Refusal*, 3.

[19] Pries, *Anabaptist Oath Refusal*, 4.

C. Arnold Snyder is more cautious in his assessment. At least in the case of the Anabaptists of Schleitheim, a détente with the state order was quite conceivable, he argues. Writing in the wake of the catastrophic failure of the peasants' war, Schleitheim's authors were less interested in rebellion than in withdrawal, more in building alternative structures of community than in overthrowing or attacking state power.[20] This is not to say such a détente with worldly rule was immediately realistic in Schleitheim's historical context: Snyder describes the effects of the refusal to swear as "catastrophic. . . . Those who refused to swear any and all oaths were placing themselves outside the margins of acceptable civil society."[21]

Schleitheim on the Oath: First Reading

Between Prodi, Pries, and Snyder, a plausible interpretation of Anabaptist oath refusal thus begins to take shape. Though they disagree on the precise modality in which oath refusal engages with, rebels against, or withdraws from the political and civil order, they seem to agree that the refusal to swear is best understood in its political and civil significance, as refusal to give allegiance. Oath refusal appears to be a principled and fundamental kind of nonparticipation: an antipolitical or metapolitical assertion of the primacy of the Christian's allegiance to Christ and the church community, contesting the validity of worldly sovereignty precisely at the junction between political rule and the sacred. God requires direct loyalty from Christians, we might say, and even if worldly government might be part of God's ordained plan for now, calling on God to guarantee one's obedience to that government is wholly inappropriate. On this reading, oath refusal sharpens the way Anabaptism and the Schleitheim group seek to dissociate themselves from worldly political rule—and, in the same stroke, comprehensive revolution—while underlining their exclusive loyalty to the sovereignty of Jesus Christ.

Yet something about this reading remains unsatisfying, not because it is inaccurate, but because it seems too limited. This interpretation appears to limit oath refusal to a matter of content and degree: given that Christians *are* bound by an oath in baptism, the question is merely *which* oath to *which* sovereign takes precedence. Yet the text of Schleitheim's final article goes far beyond this: it asks not merely which oath and which sovereignty may be binding to baptized Christians, but whether the world

[20] Snyder, "Schleitheim Articles." I discuss the apparent dialectic between rebellion (Prodi) and withdrawal (Snyder) in greater length, again with reference to Agamben, in Van Hoogstraten, "Root of Sovereignty."

[21] C. Arnold Snyder, *Anabaptist History and Theology: An Introduction* (Kitchener, ON: Pandora, 1995), 186.

structurally allows for the kinds of guarantees claimed by those who are swearing. Schleitheim's sixth article, on the sword, speaks clearly about participation in, and the legitimacy of, political rule. In the seventh article, Schleitheim calls into question the logic by which sovereign guarantees of oath swearing function. The reasoning is more antiphysical or metaphysical, fundamentally questioning the relation of human beings, their words, God, and reality embodied in the oath.

So let us take a closer look at the argument presented in the Schleitheim Articles.[22] Affirmed by a gathering in the Swiss town of Schleitheim in 1527, the document is sometimes referred to as a confession, but that seems a strange term. It does not prescribe theological positions requiring assent so much as it presents techniques or practices that work to gather the community together and to regulate its relation to the outside world. In its seven articles Schleitheim establishes the conditions under which baptism is to be performed, discusses how church discipline should be administered (notably with comprehensive excommunication, or the ban, as the ultimate sanction), and includes instructions on communion, separation from the world, the appointment of pastors, rejection of the sword (and thus of participation in the state), and—finally—refusal of the oath.

Schleitheim's regulations are mostly formal: they stress, for instance, that a baptizand must be taught and must be willing to "walk in the resurrection of Jesus Christ," but says little about *what* baptizands should be taught, or what precisely the ethical expectations of a renewed life are.[23] Likewise, the second article explains formally by what process sinners are to be reproached, but says little about what type of behavior should be considered sinful.[24]

The question of swearing oaths is addressed strictly and radically, formally rejecting all swearing:

> We are agreed as follows concerning the oath: The oath is a confirmation among those who are quarreling or making promises. In the Law it is commanded to be performed in God's Name, but only in truth, not falsely. Christ, who teaches the perfection of the Law, prohibits all swearing to His [followers], whether true or false,—neither by heaven, nor by the earth, nor by Jerusalem, nor by our head,—and that for the reason which He shortly thereafter gives, For

[22] I am drawing here on the English translation included in John C. Wenger, "The Schleitheim Confession of Faith," *The Mennonite Quarterly Review* 19, no. 4 (1945): 243–53.

[23] Wenger, "Schleitheim Confession," 248.

[24] Wenger, "Schleitheim Confession," 248.

> you are not able to make one hair white or black. So you see it is for this reason that all swearing is forbidden: we cannot fulfill that which we promise when we swear, for we cannot change [even] the very least thing on us.[25]

After some discussion of Old Testament instances of swearing (including by God), and of Peter and Paul apparently swearing in the New,[26] Schleitheim concludes:

> Christ also taught us along the same line when He said, Let your communication be Yea, yea; nay, nay; for whatsoever is more than these cometh of evil. . . . Christ is simply yea and nay, and all those who seek Him simply will understand His Word. Amen.[27]

Before anything else, we can therefore say that this injunction against swearing oaths must be read as a formal regulation. This is not a mere ethical instruction, one element of Christian morality among others. It must be understood in its ecclesiopolitical significance, as a practice (or nonpractice) by which the church's constitution, its primacy over worldly sovereignty, and the negotiation of its borders with the outside world are played out. Given the constitutive role of oath swearing for worldly political and legal systems, this ecclesiopolitical significance is only heightened. By this refusal to swear, fundamental questions of allegiance and sovereignty are decided. Yet to make this argument, the text does not discuss allegiance and sovereignty directly, and the sense that the loyalty given to Christ in baptism would supersede any sworn oaths, stressed by Pries, is entirely absent.

Instead, Schleitheim argues a much more fundamental point, questioning the capacity of human beings to make guarantees at all. It does this in two steps: First, it notes that oaths are sworn "among those who are quarreling." The act of swearing already suggests there is something amiss; a simply and transparently true or trustworthy

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[25] Wenger, "Schleitheim Confession," 251.

[26] Pries pays significant attention to the apparent distinction here made between swearing and testifying—that is, between promissory and assertory oaths. In discussing the cases of Peter and Paul, the text seems to argue that their apparent oaths do not fall under the general prohibition, because they follow a different logic, attesting to the past instead of swearing to future events. Pries may be right that this seems to imply that assertory oaths are permitted, or perhaps not considered to be oaths at all (*pace* Calvin). However, this remark is embedded in a particular discussion of biblical cases of apparent swearing, not as a self-contained point, so its status seems unclear. Either way, it seems doubtful that this would be the crucial question in understanding the logic of Schleitheim's argument. See Pries, *Anabaptist Oath Refusal,* 168–80.

[27] Wenger, "Schleitheim Confession," 252.

statement would have no need of an added oath. Swearing does not ascertain trust but is done by those who are *un*trustworthy. Second, Schleitheim cites the Gospel instruction to abstain from swearing: "So you see it is for this reason that all swearing is forbidden: we cannot fulfill that which we promise when we swear, for we cannot change the very least thing on us." As a guarantee for one's words, oath swearing is not only unnecessary, or in conflict with greater loyalties, but structurally impossible: We simply cannot offer the kind of certitude, the kind of assurance that we say we are giving. This is not simply because humans are dishonest and untrustworthy, but because we live in a world that is structurally not under the dominion of our words.

Schleitheim's critique of the guarantees given in oath swearing, and the political structures of allegiance anchored by such oaths, thus appears rooted in a fundamental questioning of the human capacity to make promises and give guarantees at all: in humanity's relation to language and to the world through language. To explicate this, I will now turn to Agamben.

A Binding Operation

As part of his project tracing the logic of sovereignty, Agamben has undertaken an analysis and archaeology of the oath in his short study *The Sacrament of Language*. In the opening pages he takes note of Prodi's concern about the oath's decline; he shares Prodi's sense of a comprehensive crisis. Agamben suggests that we must understand the oath as foundational to the way we use language and the mode in which we have become human. At the same time Agamben seems to indicate that this crisis is not entirely bad news, and that it may bring into view an alternative way of relating to truth and the world.

Agamben reads the various forms of oath we find throughout Western culture as institutional forms, or "technicalizations,"[28] of a single, more fundamental experience: the necessity of standing by the veracity of one's word. This, Agamben suggests, is as old as language itself, indeed as humanity itself. As soon as living human beings speak (and in so doing, in Agamben's analysis, become human), they are faced with the problem of truthfulness: "that is, of what can guarantee the original connection between names and things, and between the subject who has become a speaker—and, thus capable of asserting and promising—and his actions."[29] The possibility of untruth here encountered is not merely a result of the

[28] Agamben, *Sacrament*, 70.

[29] Agamben, *Sacrament*, 68.

moral character of the speaker but is "a weakness pertaining to language itself."[30] The bond between human beings, words, and things is not immediately clear; a kind of binding operation is required.

The oath, for Agamben, is the "historical testimony"[31] of exactly this binding operation at the dawn of humanity, or anthropogenesis.[32] He therefore describes oath swearing as the "anthropogenic operator by means of which the living being . . . has decided to be responsible for his words." It expresses "the demand . . . to bind together in an ethical and political connection words, things, and actions."[33] The binding that takes place in oath swearing is achieved by making a constitutive distinction between "truth and lie, oath and perjury, bene-diction and male-diction"[34]—in other words, between blessing (an oath kept)[35] and curse (an oath broken). Perjury, and the curse it implies, is therefore not a later problem with oath swearing caused by human unreliability, but part of the operation by which oath swearing performs its work.

So Agamben shares with Schleitheim the sense that swearing an oath cannot decidedly banish the possibility of perjury; indeed, in a sense it even produces that possibility. Further, he shares with Schleitheim the sense that oath swearing is quintessentially an attempt to bring the world under the dominion of one's words. More important, Agamben echoes and explicates the way Schleitheim connects the political significance of oaths, as a question of allegiance, to the fundamental question of humanity's capacity to make promises, as itself a question of dominion. For Agamben, the oath is therefore not merely a sacrament of power (that is, of political life, as Prodi argued), but more fundamentally a sacrament of language, exemplary of a particular way of relating to the world through language, which in turn grounds the political structures of sovereignty. As an already political operation at the dawn of humanity,

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[30] Agamben, *Sacrament*, 8.

[31] Agamben, *Sacrament*, 66.

[32] The point of Agamben's archaeology of the oath is not so much to argue that this is what historically happened at a certain point in time, but to trace the first principle of such a practice, the underlying structure that persists, while also fading from view, over the centuries. It especially hopes to bring into view points at which another road might have been taken.

[33] Agamben, *Sacrament*, 69.

[34] Agamben, *Sacrament*, 56.

[35] Blessing is here used both in the general sense of "the just relation between words and things," which an oath attempts to guarantee, but also more specifically: Agamben notes that the most archaic forms of oath swearing included a conditional blessing formula alongside the conditional curse. "What is essential, in every case, is the co-originarity of blessing and curse, which are constitutively copresent in the oath." Agamben, *Sacrament*, 36.

binding words, human beings, and things together by means of a constitutive distinction, oath swearing shapes the entire Western structure of sovereignty. The distinction made in oath swearing between blessing (an oath kept) and curse (an oath broken) sets the scene for the way a sovereign legal order operates. For in Agamben's analysis, sovereign political rule, be it Roman law, medieval monarchy, or a modern democracy, inevitably works by making just such a distinction: between citizens and noncitizens, between insiders and outsiders, between those lives that are protected (blessed) and those that are insignificant (cursed).

Agamben's argument here is certainly somewhat speculative, but not entirely without merit. Benveniste, had also noted the etymological link between the Latin term for *oath*, "sacramentum," and a particular Roman form of exile in which one is declared *sacer*. In Roman law, persons declared *sacer* were wholly stripped of significance and protection. As Benveniste concludes, "the 'oath' appears as an operation designed to make oneself sacer on certain conditions." Furthermore, "We recall that a man who is declared sacer may be killed by anyone whatsoever."[36] It is perhaps no surprise that Agamben considers exactly this archaic Roman form of exile exemplary for the kinds of exclusion that legal and sovereign power inevitably rely on—invariably producing, we might say, lives that do not matter, whether those of exiles, enslaved persons, or refugees.[37]

So in the distinction between truth and perjury effected by oath swearing, Agamben argues, there is a deeply violent moment that constitutes the analogous violence of the sovereign order. Swearing stands for the originary operation by which language lays a total claim on the world, declaring that anything that escapes that claim is cursed—and this in turn enables the political to lay a similarly total claim over life. As Adam Kotsko elucidates, if Agamben's reading is accurate, it "means that all of Western society is structured by the logic of the curse. All of Western society follows the model found in the human claim to make language correspond to reality—and to subject what escapes this claim to

[36] Benveniste, *Dictionary*, 444.

[37] See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Redwood City, CA: Stanford University Press, 1998). I have read Agamben's interpretation of this exilic structure in sovereign power with an Anabaptist argument for the ban as an alternative to violent sanction for heretics and unrepentant sinners. See Marius van Hoogstraten, "Anabaptist Biopolitics: Balthasar Hubmaier on Religious Noncoercion and Church Discipline," in *Free Speech in the Early Modern Period*, ed. Nina Schroeder et al., forthcoming. Agamben's (and Kotsko's) occasional qualifier that this analysis speaks mostly to the West seems primarily due to the source material Agamben considers. It certainly does little to make his reading less sweeping.

destruction."[38] Western sovereignty, be it democratic or otherwise, is impossible without this binding operation between human beings, language, and the world that is asserted in oath swearing. In Kotsko's words, "the oath is not simply parallel to the operation of the machinery of sovereignty but provides its ground."[39]

Schleitheim on the Oath: Second Reading

In light of Agamben's argument, perhaps the way Schleitheim makes its argument on oath swearing by pointing to the more fundamental relationship between human beings, God, words, and things is not so strange after all. Indeed, its brief argument seems to be peculiarly aware of an interdependence between the way oath swearing embodies the attempt to bring the world under the dominion of one's words and the kinds of sovereign dominion such oath swearing in turn guarantees. So let us return to Schleitheim for a closer reading.

As noted above, the first thing Schleitheim remarks on is that an oath is an assurance given "among those who are quarreling." For all its brevity, there is already a somewhat refined argument here: The oath, in seeking to guarantee the truth of an expression, presupposes that truth is already in question. In seeking to solidify and ascertain a statement or promise, it presupposes discord, presupposes (and so admits) the possibility that this promise may not be kept, or that the swearer is lying. In swearing to truth, one admits the possibility of perjury. So these few words already say a good deal: The oath does not guarantee anything, for it is sworn precisely when there is no other guarantee, where the truth or reliability of the swearer is not clear and cannot be ascertained other than by swearing. Baptized Christians, Schleitheim seems to be saying, have no need of such additional and counteractive guarantees.

If this is indeed how this little line is to be interpreted, it seems to tie into an apparently much older critique of the oath of which Agamben also takes note. For, as Benveniste remarks, the Greek etymology already indicates how ineffective oaths were at ensuring truth. The Greek word for *oath* is *horkos*, and the word for *perjury*, already found in the oldest texts, is *epiorkos*. Taken literally, this means "to add (to one's statement) an oath." Paradoxically, to "add an oath" is "to perjure oneself." As Benveniste comments, this "throws light on a fact of morals; it shows that all too lightly support was given by an oath to a promise which one had

[38] Colby Dickinson and Adam Kotsko, *Agamben's Coming Philosophy: Finding a New Use for Theology* (London: Rowman & Littlefield, 2015), 223.

[39] Dickinson and Kotsko, *Agamben's Coming Philosophy*, 223.

no intention of keeping or a statement which one knew to be false."[40] It seems to indicate that there was never a time that oaths were generally effective: to swear has always been a means to both stress the veracity of one's statement and to raise profound suspicions about that veracity. The sentiment uttered by Schleitheim, that oaths are ineffective because they are eminently sworn by those who are untrustworthy, therefore takes up and echoes a much older problem with oath swearing. In Agamben's words, "Already in the archaic epoch . . . the oath seems to constitutively imply the possibility of perjury. . . . As a guarantee of an oral contract or a promise, the oath appeared, according to all the evidence, from the very beginning to be completely inadequate to the task.[41] It is not hard to see why: The oath performs its binding operation precisely by calling into existence both truth and perjury. The possibility of perjury is not a later problem, but integral to the functioning of the oath in the first place.

Schleitheim then refers to the Gospel passage in which Jesus rejects all swearing: "But I say to you, do not swear at all, . . . for you cannot make one hair white or black" (Matt 5:34). First, it was suggested that the oath is not necessary for those who are trustworthy and not effective for those who are untrustworthy. Now Schleitheim seems to more profoundly claim that the oath, as a guarantee for one's words, is structurally impossible: quite independently of one's intentions, even "we" (baptized Christians, presumably) "cannot fulfill that which we promise when we swear." This seems to radicalize the first argument: we run the risk of perjury even if we are trustworthy, because the risk is there in spite of ourselves.

In seeking to guarantee the veracity of one's words or the outcome of one's promise by means of the oath, Schleitheim seems to argue, one is reaching for a kind of binding operation that is marked by structural contradictions. A human who swears an oath reaches for a kind of divinely guaranteed fixedness or certainty, indeed mastery and control, that fundamentally misunderstands the relationship between God, human beings, words, and things.[42] What is at stake in swearing oaths is therefore not just the particular obedience to which one is sworn, nor merely the risk of perjury or the superfluity of institutionalized guarantees for quintessentially trustworthy Christians, but humanity's relationship to the world through language, and the place for God in that relationship.

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[40] Benveniste, *Dictionary*, 445.

[41] Agamben, *Sacrament*, 7.

[42] This would also explain why God is able to swear, while human beings are not. Going only by the first part of the argument, this would be absurd: It would imply that God is so untrustworthy as to require supplementary guarantees of God's promises.

CONCLUSION: YES, YES; NO, NO

Perhaps we have now decisively moved beyond anything intended by those gathered at Schleitheim in any literal or historical sense. But perhaps, on the contrary, this conversation with Agamben has helped us unearth something of the radicality of this sixteenth-century text that otherwise might have remained hidden. Agamben seems to elaborate on and radicalize two key points from Schleitheim's critique of the oath: the interrelation of oath and perjury, and the way oath swearing reaches for a kind of dominion or mastery over the world. If Agamben suggests that in the oath a type of relation between human beings, words, and things is established in such a way that it grounds the entire Western sovereign order, Schleitheim's refusal of the oath might likewise stand for a radical reorientation of that relation and of the kind of community it grounds. It sees Christians invited into a fundamentally different kind of relation between human beings, God, words, and things: one marked not by sovereign guarantees of obedience, but by the simple everyday practice of community. In this light, Schleitheim's seventh article is far from an afterthought; it is the condition upon which the entire text takes its relevance.

Agamben's analysis suggests that the oath structure he identifies is not inevitable: an alternative human response to the problem of truthfulness would have been possible, perhaps preferable. Laying out such an alternative path, however, does not appear to be the main task of the study considered here (nor indeed of any of his published work). Agamben merely indicates that "a politics that has broken this original connection with the curse" might be possible, and that such a wholly different kind of shared life "will be able one day to make possible another use of speech and the law."[43] He says little about how this might be imagined. He further suggests that philosophy might be a way toward such a radical reorientation, declaring it "constitutively a critique of the oath: that is, it puts in question the sacramental bond that links the human being to its language, without for that reason simply speaking haphazardly, falling into the vanity of speech."[44] This description of philosophy will surely surprise most philosophers, and Agamben seems to envision philosophy as in some way dissolving the referential structure of language, thus

[43] Agamben, *Sacrament*, 66.
[44] Agamben, *Sacrament*, 72.

freeing it up for "another use." I trust I am not alone in finding it difficult to picture what Agamben means by this.[45]

Yet in suggesting this alternative path, Agamben, perhaps surprisingly for a secular thinker, again and again also returns to theological themes.[46] He suggests in a footnote that the logic of the cross in Paul's letters must be understood in the context of the close interrelation of law and curse grounded in the oath. After all, Jesus undergoes the curse of the cross (becomes, we might say, *sacer*) to break the hold of the Law over humanity.[47] Agamben further notes, in a brief aside, that Jesus's instruction to refuse oaths and instead to "let your word be yes, yes, no, no" (Greek: *nai nai*, *ou ou*) seems to dissolve or fragment the Greek formula for oath swearing, which likewise begins with *nai* or *ou*.[48] And finally, he identifies, as "the central contradiction of the church,"[49] the tension between the codification of *belief* (as "the profession of faith as dogma" in creedal confessions) and the experience of faith (which carries the memory of the original performative force of standing-for-one's-word to which oath swearing also attests).[50] Most of these remarks seem to be occasional asides, and it is not always clear how Agamben intends them to relate to his larger argument. Yet they suggest the possibility of an expressly theological or confessional path to a "politics that has broken this original connection with the curse."

And this is where, in turn, Schleitheim may challenge and radicalize Agamben. For while Agamben's suggested path to overcoming the oath structure remains profoundly vague, Schleitheim's critique of the oath is embedded in the entirely concrete effort to construct and shape the life of

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[45] Kotsko imagines Agamben's "other use of speech and the law" as akin to the rabbinic treatment of biblical texts, which is unconcerned with their referential or prima facie meaning. This is not an image Agamben uses, however. See Dickinson and Kotsko, *Agamben's Coming Philosophy*, 233.

[46] Perhaps to underscore his secularity despite his return to theological themes, Agamben ultimately concludes that while the reference to God in oath swearing may seem essential, *God* merely refers to the memory of the performative force of the original anthropogenic binding operation between humans and language. This is even the forgotten origin of our very idea of God. It is therefore not the oath that refers to God, but *God* that refers to the oath. Agamben, *Sacrament*, 65.

[47] Agamben suggests it is Greco-Roman law, not the Torah, that Paul has in mind. Agamben, *Sacrament*, 38. A more elaborate treatment of Agamben's theological remarks would also consider his use of the language of the messianic, which he takes from a reading of Walter Benjamin. For a more elaborate discussion, see Dickinson and Kotsko, *Agamben's Coming Philosophy*, esp. 111–24, 219–36, and 245–54.

[48] Agamben, *Sacrament*, 42.

[49] Agamben, *Sacrament*, 66.

[50] Agamben, *Sacrament*, 58.

a community.[51] It is in the repeated practices of this community—and not, as Agamben has it, in the dissolution of the referential structure of language—that it envisions its alternative to the sovereign guarantees of oath swearing. Certainly, Schleitheim's vision of disciplined and somewhat sober community is not one all contemporary readers will find appealing. Yet in envisioning a collective life apart from the structures of sovereignty, it begins to upend exactly what Agamben hopes to dissolve. For this is a confession that isn't a confession; it does not describe the propositional content of creed ("faith as dogma"), but points toward faith as a form of life, and sees its truth manifested in the relationships shaped by its repeated practice. This is a togetherness that cannot be ascertained or guaranteed, is never finally given or achieved, but must interminably be restaged and reasserted.

Assurance and trust, for Schleitheim, are given not in linguistic performatives or binding operations, but in repetition: in the interminable process of gathering, which is never quite decisively achieved. Of course, this can only be loosely sketched here at the close of this article, but we may find this sense of repetition oddly illustrated in the words of Jesus that Schleitheim cites in its closing lines: "Let your words be yes, yes, no, no" (Matt 5:37). Of course, I do not mean to suggest that these Gospel words or indeed their citation in Schleitheim would intend this in any literal or historical sense, yet speculatively we might notice a strange affinity between the "yes, *yes*" and the kind of repeated practices that Schleitheim proposes as the basis of assurance and trust without sovereign guarantees. Yes, *yes*: If you say yes, once will not be enough. Faith as practice must be affirmed and reaffirmed. This originary *yes*, not beholden to the oath structure, does not guarantee or seek to seize or dominate a relation to the world, but admits to its own incompleteness; another *yes* will always be required. Likewise no, *no*. If you say no, once will not be enough. Resistance must be reasserted interminably. Let your words, Jesus seems to be saying, not gather into themselves, but open up into the future, for you live in a world structurally not under their dominion.

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[51] Returning briefly to the concerns of footnote 2, above, we can also see how Schleitheim challenges Agamben precisely on the point at which his thinking proves unable to think collective action as anything other than a totalitarian overreach. For Agamben, staying indoors during a pandemic could only be thought in terms of the state's exertion of force over its citizens (and the supposed reduction of their life to bare survival). For Schleitheim, or at least the interpretation I have been developing, it was simply the expression of the kind of care and mutual responsibility a community must be willing to take for one another. In this view, the problem during the pandemic was not that citizens of democracies meekly obeyed their government's orders; the problem was that so many of us were not able to envision collective action as anything other than state-ordered.