



AV

Komparatistik

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der Deutschen Gesellschaft
für Allgemeine und Vergleichende
Literaturwissenschaft

2017

Aus dem Inhalt: Joachim Harst, Christian Moser, Linda Simonis: Languages of Theory. Introduction • Maria Boletsi: Towards a Visual Middle Voice. Crisis, Dispossession, and Spectrality in Spain's Hologram Protest • Peter Brandes: Poetics of the Bed. Narrated Everydayness as Language of Theory • Annette Simonis: Stephen Greenblatt and the Making of a New Philology of Culture • Dagmar Reichardt: Creating Notions of Transculturality. The Work of Fernando Ortiz and his Impact on Europe • Michael Eggers: Topics of Theory and the Rhetoric of Bruno Latour • Nicolas Pethes: Philological Paperwork. The Question of Theory within a Praxeological Perspective on Literary Scholarship • Achim Geisenhanslüke: Philological Understanding in the Era After Theory • Joachim Harst: Borges: Philology as Poetry • Regine Strätling: The ›Love of words‹ and the Anti-Philological Stance in Roland Barthes' »S/Z« • Markus Winkler: Genealogy and Philology • Christian Moser: Language and Liability in Eighteenth-Century Theories of the Origin of Culture and Society (Goguet, Smith, Rousseau) • Linda Simonis: The Language of Commitment. The Oath and its Implications for Literary Theory • Kathrin Schödel: Political Speech Acts? Jacques Rancière's Theories and a Political Philology of Current Discourses of Migration • Helmut Pillau: »Ein großer weltlicher Staatsmann wider alle Wahrscheinlichkeiten.« Gertrud Kolmar und Jean-Clément Martin über Robespierre • Pauline Preisler: Die abstrakte Illustration. Paul Klees »Hoffmanneske Märchenszene« und E.T.A. Hoffmanns »Der Goldene Topf« • Nachruf, Rezensionen.

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von Joachim Harst, Christian Moser und Linda Simonis

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Linda Simonis

The Language of Commitment

The Oath and its Implications for Literary Theory¹

In recent times a whole range of theoretical approaches in literary and cultural studies have been inspired by linguistic and philological issues, by questions concerning the functioning of language as well as the conceptual history of cardinal terms of our cultural heritage. Among these approaches the work of the Italian philosopher Giorgio Agamben stands out as a particularly interesting case. Indeed, Agamben's approach can serve to illustrate how a concern with language animates the making of theory. This becomes perhaps most evident in one of Agamben's less widely read texts, namely his *Sacrament of language*², an investigation of the historical genealogy and cultural significance of the oath.

Agamben's study offers a revealing example of a theoretical perspective arising from a deepened inquiry into a linguistic phenomenon, i. e. the operation of oath-taking. The way in which Agamben approaches this subject matter can duly be called a linguistic one in so far as it relies to a large extent on methods and observations borrowed from the study of Indo-European languages. Agamben proposes what he calls an 'archeology' of the oath: Drawing on Emile Benveniste's seminal work on *The Vocabulary of the Indo-European Institutions*³, he undertakes a reconstruction of the historical forms of the word 'oath' and its cognates in the Indo-European languages. Agamben assumes that the oath forms part of this repertory of Indo-European institutional language and that it is, in fact, one of these institutions.

But the scope and significance of Agamben's project are not confined to a purely historical interest. According to his view, the oath is not merely a historical ritual and conventional mode of speech handed down to us from ancient and medieval times. Rather, the oath and its genealogy are bound up with matters of a wider and more far-reaching relevance: in particular, they raise the question of how social bonds and obligations can be introduced into and guaranteed by a culture or society.

1 I would like to thank Joachim Harst whose pertinent comments and valuable advice helped to work out and improve the argument of this paper.

2 Giorgio Agamben. *The Sacrament of Language: An Archaeology of the Oath (Homo Sacer II. 3)*. Trans. Adam Kotsko. Stanford, CA: Stanford University Press, 2011 [SL]. Italian edition: *Il sacramento del linguaggio. Archeologia del giuramento*. Bari: Laterza, 2008. For convenience I shall quote from the English translation in the course of my explanations; references will be given in brackets following the quotation. The corresponding passages from the original Italian text will be cited in the footnotes.

3 Émile Benveniste. *Le vocabulaire des institutions indo-européennes*. 2 vols. Paris: Éditions de Minuit, 1969.

Agamben takes his inspiration from the seminal work of the Italian jurist Paolo Prodi *Il sacramento del potere* (*The sacrament of power*)⁴ which presents a vast historical survey of the emergence and career of the oath in the occidental tradition. Indeed, Agamben noticeably relies on Prodi's investigations and partly borrows his title from Prodi's book transforming the phrase "Il sacramento del potere" into "Il sacramento del linguaggio" ("The sacrament of language"). This modification is significant. Although it certainly does not deny the oath's implication in relations of power, it foregrounds the dimension of language. The oath—so the title suggests—is powerful only by means of language and in so far as it succeeds in establishing a certain relation between language and action. Following this suggestion, we can already deduce what is Agamben's guiding idea and principal concern: in his inquiry into the genealogy of the 'sacramento' he seeks to find out how the oath functions as a linguistic procedure and what issues are involved in this operation.

In the following explanations I will proceed in three steps: First, I will retrace Agamben's historical and linguistic analysis of the oath and try to expose the basic lines and principal thrust of his reasoning (I). In a second step, I will then turn to a concrete literary example, i. e. the oath-taking scene in Shakespeare's *Hamlet* (II). In an attempt to re-interpret this famous scene, the proposed analysis aims to unfold, in the light of Agamben's approach, some of its less obvious aspects of meaning and implications. To conclude, I will finally ask what insights and conclusions can be drawn from this analysis with regard to Agamben's theoretical approach and in how far the latter can be said to gain from its linguistic awareness and its concern with commissive speech (III).

I.

In accord with Agamben's philosophical and linguistic inclinations and predilections it appears to be appropriate to begin the reconstruction of his genealogy by a reflection on the history of his title word 'sacramento.' This term bears a double meaning: while in the modern sense it refers to a religious act, the sacrament, its etymology goes back to the Latin word 'sacramentum' meaning oath. Indeed, the Italian word 'sacramento' still retained this original meaning in early modern times⁵, as, for instance, Machiavelli's use of the word in *Dell'arte della guerra*⁶ testifies. The history of the term 'sacramento' thus appears to suggest that the oath is somehow related to or has an affinity to the religious sphere—a supposition which is further supported by the cognation of 'sacramento' with the Latin adjective 'sacer' meaning 'holy' or 'consecrated to the gods.' This observation, however, should not lead us to overestimate the religious affiliations of

4 Paolo Prodi. *Il sacramento del potere. Il giuramento politico nella storia costituzionale dell'Occidente*. Bologna: Il mulino, 1992.

5 Cf. *Vocabolario dell'Accademia della Crusca*. 3rd edition. 1691. Vol. 3, p. 1423, s.v. sacramento. <<http://www.lessicografia.it>> (last visited September 15, 2017).

6 Cf. Niccolò Machiavelli. *Dell'arte della guerra*. A cura di Mario Martelli. Florence: Sansoni, 1971. <http://www.letteraturaitaliana.net/pdf/Volume_4/t92.pdf>, p. 13.

the oath. As Agamben argues, the institution of the oath, as he calls it, is much more closely connected with language and law than with religion (cf. SL 18-19).⁷ To confirm this claim, Agamben first refutes the idea of the supposed religious origins of the oath. Although in ancient times gods and goddesses are invoked as witnesses of the utterance, its main impetus, Agamben argues, is not a religious one. It is important to note, he continues, that already at an early stage of history, the oath equally appears in legal and political contexts (SL 31-32). Its genealogy goes back, Agamben claims, to an archaic phase of history prior to the differentiation of law and religion and thus points to an older and more fundamental layer of human culture, which in some respects can be identified with language itself. In other words, what is at stake in the oath has to do with man's relation to language. Alluding to Aristotle's famous definition, Agamben here evokes the specific quality of man as a *zōon lōgon échon*, as a living being capable of speech and that is to say: as a political being (cf. SL 69).

To further expound this idea and to bring to the fore what he holds to be the linguistic and, at the same time, the political dimension of the oath, Agamben takes his cue from a passage of Cicero's influential treatise *De officiis*, which he cites and comments in detail. In particular, he quotes Cicero's famous definition of the oath which takes us into the heart of the question (SL 3):

Sed in iure iurando non qui metus, sed quae vis sit, debet intellegi. Est enim ius iurandum affirmatio religiosa; quod autem affirmate et quasi deo teste promiseris, id tenendum est. Iam enim non ad iram deorum quae nulla est, sed ad iustitiam et ad fidem pertinent (*De officiis*, III, 29, 10).

But in taking an oath we need to consider not what one may have to fear but wherein its force lies: an oath is an affirmation in a religious mode; what has thus been confirmed and promised, as before God as one's witness, must be kept. For it does not concern the wrath of the gods (which does not exist) but appertains to justice and good faith.⁸

According to Cicero, then, it is not fear that constitutes the power of the oath but something of a different kind, a specific force. This force has nothing to do with the anger of the gods but relates to justice and *fides*, faith. In ancient Rome, *fides* was not only the name of the goddess of loyalty or good faith, but it also refers to a legal and political institution of the Roman state. The temple of the goddess Fides on the Capitol was the place where the Roman Senate signed and kept state treaties with foreign countries.⁹ Thus, Fides was imagined presiding

7 For further arguments against the alleged religious origins of the oath cf. Joachim Harst. "Homerisches Recht? Eid, Ehe und Verbindlichkeit im griechischen Epos." *Recht und Literatur im Zwischenraum / Law and Literature In-Between*. Ed. Christian Hiebaum, Susanne Knaller and Doris Pichler. Bielefeld: transcript, 2015, pp. 225-258, see pp. 234-235.

8 My translation.

9 Cf. Francesca Prescendi/Gottfried Schieman/Jörg Büchli. "Fides." *Brill's New Pauly*, Antiquity. Ed. Hubert Cancik and Helmuth Schneider. Consulted online on

over these acts of creating contracts and protecting them. Like the contract, the oath is a mode of speech which belongs to the domain of *fides*. Apparently, it is an utterance of a specific kind. It does not merely convey information or describe a given circumstance, but it *does* something, it is a linguistic action capable of intervening in the social and political world (cf. SL 54). We can here recall the notion of linguistic utterances as speech acts or performatives which has been proposed by John Austin in his famous lecture series *How to Do Things with Words*¹⁰ and which subsequently has been elaborated and refined by John Searle.¹¹ What Agamben shares with these philosophers of language is the guiding idea that language is not just a means to observe and describe the world, but is endowed with a power to act and thereby create and change the world.

It is worth noting that, according to this analysis, the oath is not just an addendum, a figure of speech conjoined or added to the contract, but rather it is the constitutive and founding element, the crucial operation which makes possible and brings about the contract. Thus, Agamben addresses the oath not so much in its moral dimension, but in its performative force, its faculty to create and establish social relations and legal conditions. It is this ability to re-found and redefine social and political relations that distinguishes the oath. Furthermore, Agamben highlights another specific feature of the oath, namely its commissive aspect. In the act of taking an oath, language serves as a means by which the speaker engages in a commitment or assumes an obligation. As indicated above, the oath plays a fundamental and leading part in creating and shaping the commitment; it is the central figure which at once generates the engagement and holds together the participants involved in it. Apparently, it is this commissive dimension of language that interests Agamben, i.e. its ability to create a social bond and to oblige the speaker to a certain manner of behaviour or course of action.¹²

But the presence of *Fides* on the Roman Capitol does not only celebrate the power of contractual and commissive language, but also points to its vulnerability. It reveals a need for protection which accompanies the creation and preservation of oaths and contracts. A commissive speech act is vulnerable in two respects: first, it is the linguistic utterance itself that can fail (i.e. be infelicitous) if the promise is not kept or the proposition remains unfulfilled. In this case, it is language that proves to be fragile and precarious in so far as it may be disregarded or violated. But in addition, there is a second dimension of fragility which concerns the subject or speaker of the utterance: the speaker who swears an oath takes a risk. He limits the range of his future possibilities of action; he

14 September 2017. <http://dx.doi.org/10.1163/1574-9347_bnp_e411430>

10 John Langshaw Austin. *How to Do Things with Words*. The William James Lectures Delivered at Harvard University in 1955. Oxford: Oxford University Press, 1985.

11 Cf. John Searle. *Speech Acts. An Essay in the Philosophy of Language*. Cambridge: Cambridge University Press, 1969.

12 This binding potency of the oath is a distinctive feature that can be traced back to its early historical manifestations in Ancient Greece. Cf. Alan H. Sommerstein/Isabelle C. Torrance. *Oaths and Swearing in Ancient Greece*. Berlin/Boston: de Gruyter, 2014, pp. 281-287.

even can find himself being tied down to a single course of action without alternative.¹³ In the extreme case this closure of possibilities can mean that he forfeits his life.

In order to illustrate the precarious and risky character of the oath, Agamben (cf. SL 22-23) takes up one of the examples Cicero mentions in his treatise, namely, the story of Atilius Regulus (cf. *De officiis*, III, 26-27), a Roman consul and general during the First Punic war, who, being taken prisoner by the Carthaginians, was sent back to Rome with a task of negotiation after having taken an oath that he would return. Having accomplished his mission, Regulus decides to return to the Carthaginians although he knows that he will be put to death.

Let us first take note that Agamben does not quote this case as a model of moral conscientiousness. To Agamben, what Regulus does, is not so much an ethical choice but a juridically and philosophically consistent one. Regulus is true to his oath because otherwise he would undermine the ground on which he himself is standing. In not going, he would violate *fides* and thereby the foundation on which the institutions of Rome as well as the conventions of war and peace are based. Moreover, in following his oath, Regulus attempts to establish a congruity between words and deeds, he wants to make words and doings fit together¹⁴ and thus prevent or counteract a potential gap that threatens to open up between the signifier and the signified, between language and the world. In an archaeological perspective, we might argue with Agamben, Regulus, in keeping his word, acts in accordance with a decision in favour of truthfulness that has been taken at a certain point in the history or prehistory of human society.¹⁵ The case of Regulus is illuminating because it not only shows the danger by which the oath is accompanied, the way it is closely linked with matters of life and death, but also elucidates the linguistic and juristic issues involved in this type of speech. Thus the figure of Regulus exemplifies a juridical and philosophical cause, not primarily a moral one.

But Agamben also chooses this story because it reveals a profound ambivalence which distinguishes the oath as its characteristic feature. The case of

13 Cf. Torsten Hahn. *Das schwarze Unternehmen. Zur Funktion der Verschwörung bei Friedrich Schiller und Heinrich von Kleist*. Heidelberg: Winter, 2008, p. 232.

14 According to the proponents of speech act theory, speech acts in general can be assumed to be prompted by an impetus to make words and doings (or things) match each other. Hence the famous concept of the 'direction of fit.' Cf. John Searle. "A taxonomy of Illocutionary Acts." *Minnesota Studies in the Philosophy of Science* 7 (1975), pp. 344-369, pp. 346-349.

15 Cf. Agamben. *Il sacramento* (note 2), p. 94: "Qualcosa come una lingua umana ha potuto, infatti, prodursi solo nel momento in cui il vivente, che si è trovato cooriginariamente esposto tanto alla possibilità della verità che a quella della menzogna, si è impegnato a rispondere con la sua vita delle sue parole, a testimoniare in prima persona per esse". English translation: "Something like a human language was in fact only able to be produced in the moment in which the living being, who found itself co-originarily exposed to the possibility of both truth and lie, committed itself to respond with its life for its words, to testify in the first person for them" (SL, p. 69).

Regulus is ambivalent in that he is both hero and victim of the tale. There are two sides to the story. To set off the heroic side, one might argue that Regulus is free to choose whether to go or not. In a sense, he returns to his enemies voluntarily, there is no physical force or constraint that compels him to do so. Yet this account of Regulus as an autonomous actor is not wholly satisfying. It immediately invites the objection that Regulus is no longer free to choose because he has given his word. Thus, he has entered into the machinery of commissive speech; he has become part of a more powerful agency, which takes its own course according to its inner logic. It is the oath, then, not Regulus, which turns out to be the agent of the events unfolding in the story. It sets out the course of motion to be followed and thus gains power over the subject. But what, we might ask, is the specific feature that enables or disposes the oath to function as an agency of power?

This disposition appears to have to do with a peculiar claim of inclusion proper to the oath. Apparently, the latter is not merely a verbal utterance, but, in addition, exacts an input of a different kind. It demands that the speaker engage himself in person, with his whole existence. In other words, there is a procedure of inclusion at work in the oath, an operation by which the speaker includes himself in his speech. Agamben describes this figure of inclusion as follows:¹⁶

The decisive element that confers on human language its peculiar virtue is not in the tool itself but in the place it leaves to the speaker, in the fact that it prepares within itself a hollowed-out form that the speaker must always assume in order to speak—that is to say, in the ethical relation that is established between the speaker and his language. The human being is that living being that, in order to speak, must say “I,” must “take the word,” assume it and make it his own. (SL 71)

What the passage just quoted proposes is the idea that the speaker enters into his utterance and in a sense becomes part of it. As the imagery suggests, it is language, that is, the linguistic structure itself which provides a place for the subject, offering to him, as Agamben says, a “hollowed-out form,” thereby inviting him to take place and lodge himself within it. This idea of a place prepared for the subject within the linguistic form is not merely a mystical assumption. Nor is it just a metaphor. The notion of the “hollowed-out form” refers to the personal pronoun ‘I’ which is a constitutive part of the linguistic formula of the commissive speech act.¹⁷ The pronoun ‘I’ is a deictic expression, a word that can only be fully meaningful with regard to a specific context, to a concrete situation in which it is uttered. The pronoun ‘I’, then, evokes a situation, a framework of

16 “L’elemento decisivo che conferisce al linguaggio umano le sue virtù peculiari non è nello strumento in se stesso, ma nel posto che esso lascia al parlante, nel suo predisporre dentro di sé una forma in cavo che il locutore deve ogni volta assumere per parlare. Cioè: nella relazione etica che si stabilisce fra il parlante e la sua lingua. L’uomo è quel vivente che, per parlare deve dire ‘io’, deve, cioè, ‘prendere la parola’, assumerla e farla propria” (Agamben, *Il sacramento* [note 2], p. 97).

17 We should take note that the subject of the speech act could also be the first person plural pronoun (“we”) if the utterance in question is a collective oath.

interaction in which the utterance takes place. It is the part of speech that establishes a link between the utterance and the speech situation. In conjunction with a suitable verbal form (i.e. promise, swear etc.), the deictic impetus of the first person pronoun creates a link between the speaker and his word and engages him to pronounce and redefine his identity by what he says. This figure of linking is what makes the commitment, what creates the bond.

As we can further observe, the operation at work here establishes a twofold relation. It not only relates the speaker to his word, but also to the person or community he addresses by his utterance. This capacity to install a double relation constitutes the oath's specific mode of operating, its thrust to include within its scope the speaker and his future actions as well as the person or community it addresses. The figure of inclusion at work here conveys to the oath its strength and efficacy, but according to Agamben it is also a profoundly ambivalent gesture. On the one hand, there is the promise that the subject may enter into its communication and merge with his speech. This promise of inclusion suggested by the oath, however, appears to point to a state of being that can hardly be attained. Already the rhetorical idea of the orator using language as a means of persuasion¹⁸ implies that the speaking person is distinct from his speech and that this distinction is a constitutive element of the linguistic operation. In a similar vein and more pointedly, the theory of social systems¹⁹ has put forth the notion of a gap between human beings and their (linguistic) utterances. According to this sociological approach, the human being remains outside communication and outside society, as far as it is built on communication.

As has recently been suggested by Joachim Harst²⁰, the problem of a disjunction between language and human being which is raised by Agamben's analysis of the oath also needs to be seen in relation to the distinction of (oral) speech and writing. As Harst argues, the divide between language and life appears to be less a property or disposition inherent in language as such but rather a problem that arises with the invention of writing.²¹ It is writing that creates distance and drives a wedge between the human being and his words. In this context we should also take into account the peculiar case of the written oath for which Harst offers a range of examples from Greek antiquity.²² In these cases, writing does not simply substitute speech; it is rather a complex interplay between the written and the oral mode which underlies and brings forth the oath.

As we have noted above, on Agamben's analysis, the oath is endowed with a promise of inclusion, an offer to bridge the gap between words and life. This promise of inclusion may also explain the appealing quality of the oath, the

18 Cf. Aristotle. *Ars rhetorica*, book I, chapter 2.

19 Cf. Niklas Luhmann. "Individuum, Individualität, Individualismus." *Gesellschaftsstruktur und Semantik. Studien zur Wissenssoziologie der modernen Gesellschaft*. Bd. 3, Frankfurt a. M. 1989, pp. 149-258.

20 Joachim Harst. "Schwören, schriftlich. Liebe und Recht bei Ovid." *PhiN-Beiheft* 12/2017, pp. 159-181.

21 Cf. *ibid.*, pp. 162-163.

22 Cf. *ibid.*, pp. 163-165.

power of attraction it exerted and to a certain extent still exerts on humans as speaking (or writing) beings. At the same time, as we can argue with Agamben, the figure of inclusion is what makes the oath precarious. For by inviting the subject to enter into the “hollowed-out form” prepared for him in the linguistic formula and to confide himself to the machinery of this operation, the oath, at least potentially, becomes an instrument of power. In other words, the place provided for the subject within the linguistic structure may turn into a prison from which there is no escape. For by accepting to enter into this position, as Agamben puts it, with his person, with his existence, the subject is drawn into a condition of fragility, exposed to the influence or control of an external power. In this respect, the oath is not just a means to ensure or guarantee a specific obligation, for instance the promise of a certain object or future action, it potentially gives access to the speaker’s person, maybe to his life.

If we look at this position of exposure from the view-point of Agamben’s philosophic approach, if we try to describe it in terms of the concepts developed in his earlier studies, we can observe a parallel between the condition of the oath-taker and the status of the *homo sacer* in ancient Roman law according to Agamben.²³ According to Roman law, a *homo sacer* was a person who, having committed a certain type of crime, was banned from society and deprived of his rights as a citizen. In consequence, he could be killed by anybody, but, being held ‘sacred,’ could not be sacrificed in a ritual ceremony. In a sense, the oath-taker can be considered to be a kind of *homo sacer*-figure, because he enters into a state of exception where the normal linguistic distinction and separation between the person and his speech does no longer hold, a condition in which, under certain circumstances, he may suffer the predicament of being included and at the same time excluded from the usual procedures of law.

To summarize Agamben’s argument, we can note that the oath is a double-edged instrument comprising both a utopian dimension and a threat. On the one hand, the oath implies a utopian project, the idea of a *communitas* build on *fides*, on trust. On the other hand, there is the danger of the oath being used as a vehicle of power. I cannot treat all the implications and questions raised by Agamben’s analysis here. We might ask, for example, if the oath is precarious, why not simply dispense with it? Why does not a promise or just a simple verbal affirmation suffice? Indeed, as we know from Austin’s and Searle’s analyses of speech acts²⁴, a promise (which belongs to the same category of speech, i. e. commissive speech) can to a large extent serve as an equivalent of the oath and—in principle—substitute it. The reason why Agamben, in his analysis, gives preference to the oath is due to the circumstance that, compared to a promise or simple assurance, it presents the stronger and more effective form of commissive speech and thus the more pertinent and significant case. Agamben’s reappraisal of the oath, then, is not just the expression of a nostalgic looking back at an ancient cultural practice in danger of decline. Rather, the issue of the oath raised by Agamben points to the larger and more fundamental question of how

23 Cf. Agamben. *Homo sacer. Il potere sovrano e la nuda vita*. Torino: Einaudi, 2005.

24 Cf. Searle. “A Taxonomy of Illocutionary Acts” (note 14), p. 356.

obligations and commitments are not merely described and analysed, but created and defined by language. This latter issue has not only preoccupied philosophers of language, but has also been recognized as a central concern of legal theory, as recent juristic investigations of the language of obligations testify.²⁵

In accord with his philosophical aspirations, Agamben, however, pushes his evaluation of the oath a step further, beyond the boundaries of a linguistic or legal analysis. In his view, the ability to use commissive speech, to take an oath, is a fundamental anthropological characteristic and the specific habit that distinguishes human beings. Man's relation to language, on this account, does not exhaust itself in an epistemic and cognitive dimension. Rather, human language becomes the vehicle and means to create a specific ethos, an ethical and political order: "Uniquely among living things, man [...] opposing his language to his actions, can put himself at stake in language, can promise himself to the logos [...] to put its nature at stake in language and to bind together in an ethical and political connection words, things, and actions" (SL 68-69).²⁶

II.

Let us, then, for the moment, abandon Agamben's theoretical investigations and turn to literature. Apparently, scenes of oath-taking present a wide-spread and prominent literary motif²⁷ which suggests itself as a rewarding object of investigation in the context of an interdisciplinary research field of law and literature that has recently received closer attention in literary and cultural studies.²⁸ The specific appeal the oath appears to have for literature probably stems, at least in part, from its aesthetic qualities, its disposition to achieve heightened rhetorical or dramatic effects. Drawing on literature, then, appears to be fruitful in two respects: While on the one hand, the recourse to a concrete literary example will enable us to explore the performative dimension and aesthetic potential of the oath, it may, on the other, allow us to further examine the particularities of commissive speech and to put to the test the basic ideas and claims of Agamben's argument. If we look for an example suitable to respond to both aspirations, the probing of the concept of the oath and the assessment of its literary effects, it may

25 Cf. for instance Martin Hogg, *Obligations: Law and Language*. Cambridge: Cambridge University Press, 2017. See also Sanford Schane, *Language and the Law*. New York: Bloomsbury Academic, 2006, pp. 138-161.

26 "Unico fra i viventi, l'uomo [...] opponendo la sua lingua alle sue azioni, può mettersi in gioco in essa, può promettersi al logos [...], mettere in gioco nel linguaggio la sua natura e di legare insieme in un nesso etico e politico le parole, le cose e le azioni" (Agamben, *Il sacramento* [note 2], p. 94-95).

27 As literary occurrences of the motif we might evoke, to mention only a few more or less idiosyncratically chosen examples, Homer's *Iliad*, Sophocles' *Oedipus Rex*, Chrétien de Troyes' *Yvain*, Racine's *Phèdre*, Marivaux' *Les serments indiscrets* and Chateaubriand's *René et Atala*.

28 Cf. for instance *English Law and Literature, 1500-1700*. Ed. Lorna Hutson. Oxford: Oxford University Press, 2017.

be useful to turn to Shakespeare's plays which display a particularly wide range of commissive speech acts. As John Kerrigan has amply demonstrated in an important monograph²⁹, oaths, vows, pledges and promises constitute a major theme in Shakespeare that can be traced all through the canon of his works. Among the numerous instances in his plays where the binding power of language is evoked, the oath-taking scene in *Hamlet* presents a particularly interesting case.

After his encounter with his father's ghost, Hamlet re-joins his companions, Horatio and Marcellus who have been waiting for him. But instead of telling them what he has learned from the ghost, Hamlet asks them to promise that they will keep secret what they have seen and experienced that night:³⁰

Hamlet. Give me one poor request.
 Horatio. What is't, my lord? We will.
 Hamlet. Never make known what you have seen to-night.
 Marcellus and Horatio. My lord, we will not.
 Hamlet. Nay, but swear't.
 Horatio. In faith, my lord, not I.
 Marcellus. Nor I, my lord, in faith.
 (Act I, v, 148-153)

What is interesting about this scene is that the speech act in question is performed not only once, but several times. Each time it is repeated it takes on a more ceremonial and solemn form. First, Horatio and Marcellus respond by affirming what Hamlet demands: "My lord, we will not." This phrase can already count as a promise, a verbal affirmation by which the speakers assure to keep secret what has happened. But apparently, this promise does not suffice to Hamlet. He demands a stronger form of commitment: "Nay, but swear't." Again Horatio and Marcellus comply with Hamlet, by giving their promise a more formal expression: "In faith, My lord, not I." As the formula "in faith" indicates, this utterance takes the form of an oath. With regard to its etymology, the expression "in faith" derives from *fides* and thus evokes, as has been pointed out above, a key notion of Roman legal and political thought. But still, Hamlet is not content with the oath pronounced by his companions. He insists on an even stronger and more solemn mode of speech:

Hamlet. Upon my sword.
 Marcellus. We have sworn, my lord, already.
 Hamlet. Indeed, upon my sword, indeed.
 Ghost *cries under the stage*. Swear.
 [...]
 Horatio. Propose the oath, my lord.
 Hamlet. Never to speak of this that you have seen.

29 Cf. John Kerrigan. *Shakespeare's Binding Language*. Oxford: Oxford University Press, 2016.

30 In my quotations from Shakespeare's *Hamlet*, I refer to the Arden edition: Shakespeare. *Hamlet*. Ed. Harold Jenkins. London/New York: Methuen, 1982.

Swear by my sword.

Ghost. Swear. [They swear.]

Hamlet. Hic et ubique? then we'll shift our ground.

Come hither, gentlemen,

And lay your hands again upon my sword.

Swear by my sword

Never to speak of this that you have heard.

Ghost. Swear by his sword. [They swear.] (Act I, v, 154-169)

As becomes apparent even at a first and superficial survey of the scene and has often been pointed out in Shakespearean criticism³¹, the passages cited above are disposed to achieve remarkable dramatic and theatrical effects. The imagined nightly scenery on the battlements of Elsinore, the heightened vigilance and attentiveness of the companions, Hamlet's insistence on secrecy together with the archaic ritual of oath-taking do not only conjoin to create an ambiance of fear and strangeness, but also contribute to build up a dramatic tension which gradually mounts to the highest pitch. This effect is reinforced by the uncanny presence of the ghost who accompanies the scene from below the stage. It may be worth noting that, apart from his function as a means of creating theatrical effect and his role in the overall plot of the play, the ghost also plays a specific part with regard to the operation of the oath. He has indeed a double role in the unfolding of this procedure in which he serves both as a witness (like the gods in classical antiquity) and as a participant in so far as he invites and admonishes Hamlet's companions to perform the act of oath-taking.³²

On the whole, the dramatic development of the scene displays a movement of crescendo, the gradual increase of the formality and solemnity of the speech acts goes hand in hand with the gradual rise of dramatic tension. The oath thus proves to be a dramatically and theatrically effective device to enact the need for secrecy and concealment and at the same time to expose the precarious situation Hamlet and his companions have entered into.

The figure of the oath, we may then provisionally summarise, can be seen as a vehicle of theatricality, as a means to induce tension and to set forth the dramatic significance of the scene. Yet the function and purport of the oath does not exhaust itself in this dramaturgical aspect, but reaches further. As Dymphna Callaghan rightly points out, "to swear an oath was a very serious form of verbal

31 Cf. for instance John Dover Wilson. *What Happens in Hamlet*, Cambridge: Cambridge University Press, 1951, pp.72-73.

32 With regard to the ghost's role in this scene, Samuel Weber (*Theatricality as Medium*. New York: Fordham University Press, 2004, pp. 181-189) has proposed an alternative interpretation which at first glance stands in contrast to the one suggested above. Weber primarily considers the ghost as a disturbing figure who, by his obtrusive presence and his ongoing re-iteration of Hamlet's injunction interrupts the process of oath-taking and threatens to prevent it altogether. At a closer look, however, these different readings of the ghost's role are not necessarily mutually exclusive. For although the ghost's interventions cause trouble, they also contribute to give more prominence to the oath and to underscore its dramatic significance.

assurance, one that had profound implications in early modern England.³³ Moreover, the oath gains further prominence by the circumstance that it recalls another oath, namely the oath sworn by Hamlet earlier in the same scene.³⁴ In this context, Hamlet's demand that his companions swear upon his sword is revealing. The sword is an emblematic object invested with a range of symbolic meanings which would, in particular, have strongly suggested themselves to early modern readers and audiences. Thus, an immediate connotation the shape of the sword will have evoked in the minds of a historical audience is the image of a cross, i. e. the most important emblem of Christian religion. But apart from the religious connotations which underlie the symbolic structure of the scene, there is another and, in our context, perhaps more important overtone of meaning attached to the sword. In its prime and essential function the sword is a weapon and consequently, in a physical as well as a figurative sense, an instrument of power. To an early modern reader or onlooker, this image would have brought to mind that the authority to employ this instrument was not accessible to everybody, but a restricted competence. In the course of the transition from a late medieval feudal order to the early modern state this competence was passing on from the hands of an aristocratic elite to become a prerogative of the monarch or prince who henceforth claimed the monopoly on the legitimate use of force. The sword thus evokes the sovereign power to decide over life and death and thereby draws attention to the political dimension of the scene and the relations of power implied in the act of oath-taking. In urging his companions to swear upon his sword, we might further argue, Hamlet makes use of an element of supreme power which, apart from being a highly effective device, may at the same time interfere with the presumed sovereign of the State of Denmark and his exclusive claim to power. This reminds us of the key idea of the 'sacramento del potere' promoted by both Prodi and Agamben, namely that the oath is not just a figure of speech, a dignified and solemn mode of expression, but rather an instrument of power, which can prove to be a double-edged weapon to those who use it. In *Hamlet*, however, the implications of power involved in the operation of the oath remain ambivalent. On the one hand, it is true that in the oath-taking scene, Hamlet exercises power over his companions in so far as he commands them to take the oath. But, on the other hand, as we know from the preceding scenes, in relation to Claudius and the court, Hamlet finds himself in a fragile position, in a state of disempowerment. Moreover at the end of the scene, by evoking the notions of love and friendship, Hamlet indicates that he interacts with his companions on equal terms.

33 Dympna Callaghan. *Hamlet. Language and Writing*. London/New Delhi/New York: Bloomsbury, 2015, p. 76. Oaths were a wide-spread practice of early modern legal and political culture and became a constitutive element of the emerging professional law courts. Cf. Barbara Shapiro. "Law and the evidentiary environment." *English Law and Literature* (note 24), pp. 257-276, pp. 258-260.

34 Cf. "Hamlet. Now to my word./ It is 'Adieu, adieu, remember me'./ I have sworn't." (I, v, 110-112.)

If, then, as we have seen, the scene discussed here exploits to its full extent the rhetorical and theatrical potential of the oath, this aesthetic concern goes hand in hand with a deepened awareness of the political and judicial dimensions implied in this speech act. Indeed, the dramaturgy of the scene, its structural arrangement and development foreground the oath as a political issue. The most remarkable aspect of the way this speech act is presented in the scene lies in its collective dimension. What is going on in the scene, can be described as a *coniuratio* (to borrow a term from the language of medieval law³⁵), a collective oath by which the participants constitute a group or community. This collective or communal effect brought about by the oath is perhaps most clearly articulated in the final line of the scene, where Hamlet invites his companions to join him: “Nay, come, let’s go together” (I, v, 198). Remarkably, this is the first instance in the scene where the first person pronoun “we” or “us” is used to include all three companions Hamlet, Horatio and Marcellus. What becomes manifest here in the linguistic form of the phrase is the formation of a collective identity, the constitution of a group capable of doing something together, of pursuing a shared goal. It is a group agency³⁶ that we find emerging from this encounter and, in particular, from the oath-taking scene. The oath creates a social tie, a bond between Hamlet and his companions. These three dramatic *personae* are united by the knowledge of the ghost’s nightly visit to Elsinore and the obligation that this knowledge must not be disclosed. It is not by chance that this complicity and shared agency of the companions arises and constitutes itself apart from and outside the established regime. The group takes its stand outside the court of Elsinore and potentially in opposition to it. The oath-taking scene is then not only the vehicle of constituting a group, but at the same time the germ of a counter action which sets in motion the dramatic plot of the play.

III.

The observations on the oath scene in *Hamlet* developed above now allow us to better understand the interest and fascination which underlie Agamben’s preoccupation with the oath. The principal motif and main impulse of his inquiry apparently consists in his concern with the binding force of language which becomes manifest and effective in the oath. Although this potency of the oath is, as Agamben concedes, deeply ambivalent, he nonetheless gives more emphasis to its positive and productive power.

35 For a detailed explanation of the term *coniuratio* cf. Otto Gerhard Oexle. “Peace through conspiracy.” *Ordering Medieval Society: Perspectives on Intellectual and Practical Modes of Shaping Social Relations*. Ed. Bernhard Jussen. Trans. Pamela Selwyn. Philadelphia: University of Pennsylvania Press, 2001, pp. 285-321, in particular pp. 289-294.

36 For an elaborate account and comprehensive analysis of the concept cf. Christian List and Philip Pettit. *Group Agency: The Possibility, Design, and Status of Corporate Agents*. Oxford: Oxford University Press, 2011.

What, to him, is remarkable about the oath and of greater significance than its downsides is its potential of constitution, its ability to create associations and to inaugurate and re-establish social relationships. In his attempt to bring to the fore this potency of commissive speech, Agamben engages with language in a double sense. First, in choosing the oath as theme and topic of his study, he is concerned with a linguistic phenomenon and, in a certain sense, makes language the object of his investigation. At the same time, this attempt to explore the oath and to assess its genealogy also provides the philosopher with a means to develop his own language, to refine and differentiate his repertory of conceptual and theoretical analysis. Thus, as the argument of *Sacramento del linguaggio* unfolds, the examination of the linguistic phenomenon goes hand in hand with the search for a language of theory appropriate to account for the historical findings and observations in question. As we have seen, in his endeavors to elaborate an adequate terminology, Agamben chiefly draws on two traditions which constitute the main sources of his theoretical design: on the one hand, there is Émile Benveniste's *Vocabulaire des institutions indo-européennes* which offers a valuable reference for tracing the genealogy of the fundamental terms and key concepts of the Indo-European languages, while at the same time, it seeks to open up the institutional and conceptual framework of the sociocultural worlds underlying these terms and their linguistic evolution. A second and perhaps more important source, however, which lends itself as a point of reference to Agamben's analysis, is the tradition of Roman law. The latter does not only furnish a tool to better understand the history and genealogy of the oath, but with its complex and elaborate terminology it also provides Agamben with a set of terms and concepts suited to develop a theoretically rigorous and fine-grained analysis of his subject-matter. In other words, Agamben's interest in the language of commitment, his concern with the genesis of social ties and their linguistic foundations, leads him to explore an inventory of legal concepts which, in its turn, enables him to refine his own style of analysis and thus supports him in his aim to work towards a language suited to meet the demands of his theoretical aspirations.

There is another, in our context perhaps even more important insight that can be gathered from Agamben's investigations. Apparently, the oath or, in an extended sense, the entire semantic field of commissive language reveals itself as a particularly promising object of study which invites further exploration. Indeed, the language of commitment does not only call for a deepened linguistic analysis, but also solicits the attention of the literary historian. As some of Agamben's observations adumbrate and as I hope to have shown by my analysis of the scene from Shakespeare's *Hamlet*, the oath, together with its cognates such as the promise or the pledge, presents a recurrent and prominent literary theme which occupies a pivotal place in a wide range of major literary texts.³⁷ Agamben's genealogy can then also be read as an injunction to further explore, by means of a theoretically informed as well as historically sensitive approach,

37 Cf. note 27.

the career of the oath as a literary motif.³⁸ Following the methodological intuitions articulated in Agamben's study, such a venture would, however, need to go beyond the level of a mere thematic analysis trying to grasp the operative force of the commissive speech act, its function as both a linguistic procedure and a literary device. The project of a poetics of the oath emerging from these reflections then embarks on a double task: it would need to uncover the literary and dramatic dimensions of commissive speech and, at the same time, to disclose its juridic and political significance.

38 An interesting advance in this direction, with regard to a German-speaking 18th century context, has been made by Marcus Twellmann. "Über die Eide." *Zucht und Kritik im Preußen der Aufklärung*. Konstanz: Konstanz University Press, 2010.