

IMMANUEL KANT AND THE THEORY
OF RADICAL DEMOCRACY

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To Jennifer, always.

To my parents. For their patience and their love.

To Gregg and Idit, for showing me the way.

To my graduate school friends and colleagues.

To John, Rachel, and Tonya, without whose support
this project could not have been completed.

TABLE OF CONTENTS

DEDICATION.....	iii
Chapter	
I. THE SHOALS OF RADICAL DEMOCRACY.....	1
II. KANT, REVOLUTION, AND THE STATE.....	42
III. CIVIC CULTURE AND TASTE.....	98
IV. LOVE, WAR, AND THE <i>PANTHEISMUSSTREIT</i> : A LESSON FOR THE THEORY OF (RADICAL) DEMOCRACY.....	137
BIBLIOGRAPHY.....	171

CHAPTER I

THE SHOALS OF RADICAL DEMOCRACY

A definition of the political can be obtained only by discovering and defining the specifically political categories. In contrast to the various relatively independent endeavours of human thought and action, particularly the moral, aesthetic, and economic, the political has its own criteria which express themselves in a characteristic way. The political must therefore rest on its own ultimate distinctions, to which all action with a specifically political meaning can be traced. Let us assume that in the realm of morality the final distinctions are between good and evil, in aesthetics beautiful and ugly, in economics profitable and unprofitable. The question then is whether there is also a special distinction which can serve as a simple criterion of the political and of what it consists. The nature of such a political distinction is surely different from that of the others. It is independent of them and as such can speak clearly for itself.

The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.¹

Recent years have seen an explosion of interest in the German theorist Carl Schmitt; Schmitt has become a kind of *homo sacer* to the theorists of the political left, in that his position is anathema - he is excluded from the scene of political debate tout court - yet his work contains challenges that, ostensibly, must be met by any theorist of democracy, be it radical, participatory, or other. He cannot simply be

¹ Carl Schmitt, *The Concept of the Political*, trans., George Schwab (Chicago: University of Chicago Press, 1996). pp. 25-6

condemned or elided, but must be considered by proponents of any democratic theory - before he is ultimately reviled and rejected. This is an ironic fate, to say the least, for a thinker who until recently was simply seen as an appendage of totalitarian barbarism: a fascist, pure and simple. He therefore has been a kind of shadow-figure of that other famous dallier with the Nazis, Martin Heidegger, whose thinking has always been too intimately embedded within the broader project of philosophy, and too much the subtle philosophical integral on its own account, to suffer precisely the same fate: where Heidegger has been the unexpellable irritant, never settled nor removed, Schmitt has been much easier to dismember in the name of fruitful dialog. He has been made to fit all too easily on a philosophical Procrustean bed: the vitality of his challenge to democracy is excised, preserved, taken up so as to test and strengthen the theory of radical democracy, while the fascist heart is left to serve as a horrific warning to liberalism's complacency.

Chantal Mouffe, who, along with Ernesto Laclau, is probably most responsible for the recovery of Schmitt by theorists of radical democracy, says that "I am convinced that a confrontation with his thought will allow us to acknowledge - and therefore, be in a better position to try to negotiate - an important paradox inscribed in the very nature of liberal democracy."² Mouffe thereby performs a theoretical amputation of

² Chantal Mouffe, "Carl Schmitt and the Paradox of Liberal Democracy," in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999). p. 38.

Schmitt: his political metaphysic is separated from his fascist normative politics, in the hopes that each can survive on its own and so reveal the connection between them to have been inessential, rather than bearing the internal relation that Schmitt thought them to have. The Schmittian political metaphysic is in turn transplanted into Mouffe and Laclau's radical democratic theory as its own proper heart; the same maneuver shows the truth of Schmitt's original critique, that liberalism is chimerical, holding within itself an irresolvable *aporia* which always threatens to overtake it and transform it in practice into barbarism.

I thoroughly disagree; it's my contention that when Schmitt would not have thought his criticisms any less applicable to radical vs. liberal democracy, and I think Mouffe and Laclau are wrong to attempt to graft his political metaphysic onto any democratic theory whatsoever, for it is anti-democratic to its core. As the progenitors of radical democratic theory, they have thereby produced a construct which cannot bear its philosophical burden, and which cannot offer normative prescriptions for a more democratic polity.

Schmitt, in *The Concept of the Political*, attends to the specificity of the political in a metaphysical register, discovering what he believes is the constitutive distinction that is special to its substance: that between friend and enemy.³ For an enemy to be an enemy it is necessary only that the enemy be recognized as what is alien or different: the enemy is the

³ Schmitt. p. 26.

stranger. The enemy is not constituted by an disinterested normative judgment; it is "sufficient for his nature that he is, in a specially intense way, existentially different and alien".⁴ This is a judgment that can be made only internally, within and by the political grouping, and it is made on the basis of the enemy's appearing, in its difference, as a threat to what the group itself is. This constitutes the "intensity" of the conflict between friend and enemy, that the enemy is always a potential destroyer. For Schmitt, the life-and-death confrontation is politics, and it is at the moment at which the threat is faced as a threat to existence, to life, that the situation reaches its "most political".⁵ "To the enemy concept belongs the ever-present possibility of combat,"⁶ of what Schmitt calls, curiously, "physical killing"⁷

Because it defines the enemy on a principle of ultimately threatening difference, a political group must define its internal bonds of friendship by this shared, peaceable sameness, the sameness of the unit of defense. My friend is she or he with whom I stand against the threat posed by the dangerously different enemy, against whose difference the person with whom I am standing comes to appear to me as the same. The group defines itself according to qualities that come into relief as fundamental similarities precisely because they are the qualities against

⁴ Ibid. p. 27.

⁵ Ibid. p. 29

⁶ Ibid. p. 32

⁷ Ibid. p. 33.

which the enemy is seen to differ⁸ the collectivity of friends has no concrete being without the collectivity of enemies against which it stands.

This sense of the political, because primordial and constitutive, is ineliminable. It is both the lie and tragedy of liberal democracy that it cannot realize this, that what liberalism aims at is to erase its own identity as collectivity of friends of an enemy, instead seeing itself as a neutral space, a container, defined by the values of egalitarian tolerance and general respect for the law. Schmitt notes that this is essentially a will to peaceful co-existence among competing subject-positions. But the liberal state is simultaneously a political ideal that defines a relationship of friends and enemies, and therefore cannot avoid constituting itself on a principle of homogeneity over and against threatening outsiders. A political group that holds as a value the will to peace and tolerance is a contradiction, and, worse, it is in a state of contradiction that it cannot recognize. The will to peaceful co-existence, the ending of intergroup violence, is, in fact, the will to depoliticization of the world - but such a will is doomed. Liberal democracy discloses its own political character by revealing a covered-over will to destroy the warlike: "if the will to abolish war is so strong that it no longer shuns war, then it has become a political motive".⁹The war to end war, however, must be an inhuman war,

⁸ Ibid. p. 30

⁹ Ibid. p. 36.

the most intense, because putatively final, conflict, and thereby the most destructive imaginable moment of political engagement: the most hideous and base possible form of conflict. To Schmitt, then, the liberal, cosmopolitan will to peace hides within itself an impetus to the worst, most barbaric violence. Liberalism is a will to total war.

Chantal Mouffe, in enunciating her critique of liberalism, invokes Schmitt on this point: in covering over the ways in which liberalism still requires modes of terrible, even genocidal, conflict with those whom it constitutes as outsiders to its own project, liberal democracy is always engaged in the betrayal of its own ideal. Mouffe identifies the paradox of liberal democracy in its inability to recognize its own need for constructing a hostile frontier between the interior and the exterior¹⁰ - between those included and those excluded. A liberal-democratic nation-state will, of course, have "others" in the form of aliens and strangers - enemies - and if it contains such aliens and strangers within its borders, it must be justified by its own political logic in silencing, binding, disenfranchising, or expelling them, since they, simply by virtue of their threatening differences with liberal values, are the enemy that liberalism cannot recognize as such and deal with in forthright confrontation. And because this conflict cannot be brought to the surface and made visible as what it is, as constitutive of the political project as such, it cannot be

¹⁰ Mouffe, p. 43

mediated or transformed in a conscious fashion. At best it can be repressively displaced.

There are a number of ways to cash out the claim that liberalism must always create an excluded "other" and a concomitant frontier between the interior space of friendship and the exterior space of dangerous enemies. In this way, Schmitt and Mouffe have struck on a unifying theme among many critics of liberal democracy. What Mouffe calls the "Schmitt Paradox" has been elaborated over the last generation of political theory: the critics of liberal democracy have been almost of one voice in pressing this point, in numerous guises. Herbert Marcuse, writing in "Repressive Tolerance: A Critique of Pure Tolerance"¹¹, has noted the contradiction inherent in any liberal democracy between the virtue of egalitarian tolerance for other points of view, and the necessity for maintenance of that liberal democracy as a positive value in itself. "Tolerance cannot be indiscriminate and equal with respect to the contents of expression, neither in word nor in deed: it cannot protect false words and wrong deeds which demonstrate that they contradict the possibilities of liberation".¹² This "repressive tolerance" takes several forms: first, there is the danger of tolerating opinions and cabals, which aim at the destruction of the liberal project itself. This is the most obvious level. Just as importantly, however, "indiscriminate toleration"

¹¹ Herbert Marcuse, "Repressive Tolerance," in *A Critique of Pure Tolerance*, ed. Robert Paul Wolff (Boston: Beacon Press, 1969).

¹² *Ibid.* p. 88.

mimics the commodity form of the market, in which, in the immortal words of Marx, "all that is solid melts into the air": the market-relation, holds Marcuse, is inherently reactionary, in that the very forms of political cohesion which are constitutive of liberatory projects generally are melted in the overall form of commodified indifference. And third, the way in which liberal democracy requires the withdrawal of tolerance from anti-liberal projects - as in the first form of unallowable "indiscriminate toleration" I noted above - becomes, in the administered State, a formal equivalence between the intolerability of illiberal notions that are reactionary and those that are liberating, resulting in the destruction of possibilities for liberation at the very moment that liberalism is at its strongest in dealing with destructive, reactionary tendencies. In each of these cases, liberal democracy is in the business of forming an inside and an outside to itself, and is further required, by its own internal needs, to administer the boundaries of groups of subjects within its purview: that is, it turns out that liberal democracy not only must create a frontier between its own interior and exterior out of its own particular political logic, it also must do so in the name of its own ability to exist; and, further, it must do the same for all subjectivities that constitute the *demos* itself. On this analysis, the liberal state achieves its monism only by the roughest sort of extortion.

We might take up another similar challenge to liberal democracy, this time from Michael Walzer. Walzer, in "Welfare, Membership, and

Need,"¹³ notes that there is a similar difficulty regarding the "inner and outer" of liberal democracy when approached from the point of view of distributive justice. One way to analyze the legitimacy of the liberal state is by its success as a distributive economy, in meeting the needs of its constituent groups and individuals - material needs, needs for recognition, etc. But, as Walzer notes, even material needs, and certainly needs for recognition, are coded by political values which are not necessarily - indeed, never actually are, in a pluralistic democracy - held in common; and because "distribution" within the context of a single state always means "redistribution," these values will come into conflict over the very function of meeting citizen's needs. Even what gets recognized as what Walzer terms a "socially-recognized need,"¹⁴ (Walzer, 214-215) will require that the state make executive decisions that will exclude from the field some needs that are as keenly felt by those who hold them as are any others; again, even in the distributive project, most basic to contractarian theories of the liberal state, there is always an included inside and a rejected outside.

The problematic dimension of political recognition is fully thematized in Axel Honneth's *The Struggle for Recognition*.¹⁵ Honneth notes that struggles for recognition - the development of and insistence

¹³ Michael Walzer, "Welfare, Membership, and Need," in *Liberalism and Its Critics*, ed. Michael J. Sandel (New York: New York University Press, 1984).

¹⁴ Ibid. pp. 214-215.

¹⁵ Axel Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts* (Cambridge, MA: Blackwell, 1995).

upon new forms of individual and group identity - is an ineliminable element of the political life of democracies; Honneth notes that the advancement of new claims of identity formation results in new claims of need upon the polity, which will inevitably be systematically misrepresented by the executive ruler; it is the process of advancing these claims of need and getting them "socially recognized," in Walzer's terminology, that the very forms of subjectivity that make up the varying perspectives over which constitute democratic polities and over and against which liberal democratic governments must take an officially neutral point of view are constituted; thus, the continual struggle for the inside and the outside of the democratic polity is not just ineliminable, it is constitutive of the very pluralism against which liberal democracy is meant to be the guarantor of justice.¹⁶ In each attempt to provide for socially recognized needs of recognition, therefore, the government will be carving out socially-unrecognized and officially mis-recognized frontiers of discrimination, the experience of which continually produces the forms of subjectivity which liberal democracy continually fails to domesticate.

Iris Marion Young, in her "Polity and Group Difference, a Critique of the Ideal of Universal Citizenship"¹⁷, arguing against Rawls' model of the veil of ignorance, takes the analysis to the individual level. The motto

¹⁶ Axel Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts* (Cambridge, Mass.: Polity Press, 1995). pp. 163-165.

¹⁷ Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *Feminism & Political Theory*, ed. Cass R. Sunstein (Chicago: University of Chicago Press, 1990).

for liberal democracy, to Young, is "citizenship for everyone, and for everyone *qua* citizen."¹⁸ In a few brief pages, Young indicates that this logic is a logic not so much of partial but of complete exclusion of subjectivity from the public realm. What "counts" for a liberal democratic government are universal rights, but what count for individuals are particular interests and identities. If a liberal democratic state is constituted both by egalitarianism - political equality - and by taking up the project of distributive justice, the result will be, for most people in at least some respect, a situation of perpetual exclusion.

"Distributive equity requires everyone to be measured according to the same norms of desert, but in fact there are no "neutral" norms of behavior and performance."¹⁹ Where group differences in capacities, cognitive styles, behavior, and values exist, equal treatment in the allocation of reward according to rules of merit will reinforce and perpetuate systematic disadvantage.

Simon Critchley, in his book on political commitment, *Infinitely Demanding*²⁰, notes that the distinction between the inner and the outer, the friend and the enemy, is necessary even for political action. Critchley holds that the question of intra-group "binding,"²¹ the way subjects bound to their own particular identities and projects come to attach

¹⁸ Ibid. p.117.

¹⁹ Ibid. p. 136.

²⁰ Simon Critchley, *Infinitely Demanding : Ethics of Commitment, Politics of Resistance* (New York: Verso, 2008).

²¹ Ibid. p. 8-9.

themselves to, to take on as identity and as project, the affirmation and preservation of a political project, poses another problem for liberalism. The deliberately unlimited, anti-particularist, impartial "space" of liberal political deliberation, the zone in which a thousand schools of thought contend, is simply too indefinite to serve as such a binding locus. The very featurelessness of such a space seems to preclude it as an object of passionate cathexis; indeed, as a space of deliberation, it is not meant to be a cathected set of interests or a subject-position in its own right. It is that neutrality which enfolds subject-positions with their own specificity. Critchley begins by wondering what future such a liberalism, with all its slackness and "drift"²² could possibly possess against anti-democratic religious fundamentalisms and "other forms of revolutionary vanguardism,"²³ as he puts it.

Slavoj Žižek's *In Defense of Lost Causes*²⁴, puts the point most succinctly: "The democratic empty place and the discourse of totalitarian fullness are strictly correlative, two sides of the same coin"²⁵ The space of liberal democracy is constituted like a bureaucratic overseer, making certain the rules are obeyed evenhandedly, even when the specific content of the propositions and movements passing before its unjudging gaze are outrageous: precisely at this point is the demand at its height.

²² Ibid. p. 9.

²³ Ibid. p. 6.

²⁴ Slavoj Žižek, *In Defense of Lost Causes* (New York: Verso, 2008).

²⁵ Ibid. p. 101

This is not a space of joy or of attachment of any kind; to experience "binding" to the liberal-democratic project means that one has gotten the project wrong. It is here, though, that both Critchley and Žižek locate the collapsing, slackening tendency of European democracy: if the Negrian slogan is "no politics without specific movements," there is an *aporia* in the project itself: liberal democracy is precisely that which cannot see itself as a movement. Its preservation and extension cannot therefore be taken up as a project for political action per se; it degenerates immediately into a project of mere administration of the status quo.

It is at the point that the theorists of radical democracy make their interventions. In Laclau and Mouffe's *Hegemony and Socialist Strategy*²⁶, the concept of the political proposed is simply that political life is constituted by a network of power-relations which "escape structural determination": hegemony, a concept which means to Laclau and Mouffe almost the exact opposite of its usual meaning, that of systematic domination²⁷. Authoritarian politics are simply those which attempt to manipulate, seize, fix, and override the changing, mobile, contingent, contested relations of power as they actually are - to freeze

²⁶ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy : Towards a Radical Democratic Politics* (London: Verso, 1985).

²⁷ Ibid. p. 34-36.

the fluidity of power by the imposition of a schema of power-relations to which agents, in the activity, must defer²⁸. This is, of course, an impossibility, and in the attempt a dictatorial authority can only resort to terror and force - and in so doing reveals its limitations. Radical democracy, rather, is the bringing into being of a form of politics which takes hegemony as its first principle, as the foundation and constitutive logic for "articulatory practices" which determine the "very principle of social division"²⁹, and in turn lead to the formation of political antagonisms and identities which are "overdetermined"³⁰ by the sheer plenitude of the valence of social space: the changing, mobile, contingent, contested, and displaced claims of selfhood and otherness that make up individual and group subject-positions which, once exposed to the new logic of radical pluralism, can never be subsumed once more under any "positive and unitary founding principle."³¹

This is why Laclau and Mouffe's extensive discussion of George Sorel is so revealing. For Sorel, the general strike is to serve as an enabling myth, a myth which, as myth, cannot be disconfirmed, and so will ineluctably clarify both the true distinction between proletariat and bourgeoisie and the unity of the proletariat against the bourgeoisie, even the face of ostensibly humanitarian economic gestures by a bourgeois

²⁸ Ibid. p. 59.

²⁹ Ibid. p.151.

³⁰ Ibid. p.165.

³¹ Ibid. p. 167.

government. In this way the idea of the general strike will be the impulse to the final confrontation between proletariat and capitalist interests, a confrontation that may or may not take the form of an actual general strike. Where Marx held that capitalism's contradictions would inevitably come to the fore, Sorel has a kind of regretful faith that capitalism, in its degenerate aspect, can continually cover up the reality of class conflict.³² But Marx and Sorel are united on the belief of that conflict's absolute reality; the only question is one of the formation of class consciousness. Laclau and Mouffe, by contrast, see Marx's "scientific history" and Sorel's myth of the general strike as having the same status, as simply two ways of going about the reintroduction of a "totality"³³ which, in Marx, only appeared to occupy the register of science, and which in Sorel is revealed as pure totalizing fiction.

Indeed, it is in Sorel's use of the general strike as a myth opposed to the authoritarians, whose myth was that of the State, that Laclau and Mouffe see the danger: as merely fictive points of identity "agglutination", they are fungible - there is "no theoretical reason why the mythical reconstitution should not move in the direction of fascism."³⁴ That may be true: but it is the emphasis on "theoretical" that is strange, as if there being no **logical** backstop in the theory is what really creates the danger

³² Georges Sorel, *Reflections on Violence*, Cambridge Texts in the History of Political Thought (New York: Cambridge University Press, 1999).

³³ Laclau and Mouffe. p. 40.

³⁴ *Ibid.* p. 41.

of a political practice falling into error, of the left's conflating with the authoritarian right. Of course, Laclau and Mouffe aren't seeking for such a theoretical backstop, because it is their belief that the logic of hegemony permits no such; in fact, what it permits is the recognition that all articulations of identity are, in a sense, fungible fictions. The danger is for an articulation to appear as a fixity, as entirely "real," which Marx's class struggle, Sorel's general strike, and the fascist State are all intended to be. And yet it is precisely the theory - the deconstructive and genealogical logic of articulation, applied to the subject's and the group's processes of identity formation - that is to prevent the antagonisms and contradictions of society from degenerating into mere violence. As Laclau and Mouffe put it - the endlessly unstable network of hegemony is the "real reality", such that the descriptions of discursive articulation they give in their work are what we might call "the really real politics".

Radical democracy therefore has two simultaneous aims: first, to make of democracy again a movement, a site of passionate attachment on its own terms; and second, to abolish the liberal "structuring space" or "field" within which the various groupings of identity and interest operate according to shared assumptions and rules. These rules are instead themselves to become sites of attachment or repulsion for subjects; the rules of the game are to be determined non-aoristically, as part of the political *agon* itself, revisably, and even without the assumption that the rules of the game will be more than local in extent

or even translatable across boundaries. Indeed, the communicability of political standards is the political problem *sine qua non*. As Laclau puts it, recruiting Gramsci, the spaces various subjectivities can be said to occupy are themselves originated in acts of articulation by those subjects, and their growth and ramification becomes a process of internal and external negotiation of not-necessarily-translatable utterances. "In Gramsci, politics is finally conceived as articulation, and through his concept of historical bloc a profound and radical complexity is introduced into the theorization of the social"³⁵. Yet even Gramsci does not go far enough: "the ultimate core of the hegemonic subject's identity is [still] constituted at a point external to the space it articulates."³⁶ It is to "deconstruct" this last "redoubt" of class-reductionism, that will allow the opening-out of classical Marxism into something much more "subversive": "Unfixity becomes the condition of every social identity...the sense of every social identity appears constantly deferred"³⁷

This, then, is the fundamental radical democratic project: Within Schmitt's overall understanding of "the political", solidaristic political groups are to engage with one another without preconceptions, in an indefinite - because always renegotiable - practice of articulation. In essence, the Schmittian political reality is to be conjoined with the discursive logic of deconstruction, in such a way that claims of identity

³⁵ Ibid. p. 85.

³⁶ Ibid. p. 85.

³⁷ Ibid. pp. 85-86.

themselves, which, for Schmitt, are defined determinately and immediately by the confrontation with the dangerous enemy, become instead issues for doubt, contestation, and revision - both externally and internally. The bonds of friendship become themselves subject to the same forces of imminent critique that problematize both the self-understanding of political agents within a group and the overall status of the polity. The effect, at least putatively, is to dissolve the very "logic of 'the people'"³⁸ which Schmitt's distinction of friend and enemy ultimately inscribes: if "I" and "we" are continually in the process of articulating what "I" and "we" are, are continually generating the discursive space in which "I" and "we" are negotiated, never achieving closure of identity or subject-position...what is left of the distinction "friend" and "enemy," of the "fullness" which is the counterpart of the emptiness of the liberal-democratic space?

In a recent essay on Schmitt's theory of the "partisan", Laclau brings his thesis to bear. What Schmitt got wrong was not that the political is essentially structured by the antagonism between friend and enemy³⁹ (11), even that what is most to be feared from liberal democracy is depoliticization⁴⁰, but that Schmitt did not understand that the boundary between the terms (and Laclau does see them as terms) must

³⁸ Chantal Mouffe, *The Democratic Paradox* (London ; New York: Verso, 2000). p. 50.

³⁹ Ernesto Laclau, "On "Real" and "Absolute" Enemies," *The New Centennial Review* 5, no. 1 (2005). p. 11.

⁴⁰ *Ibid.* p. 7.

be porous: it is precisely the rigidity with which he posits this distinction that is at the root of the limitations [of Schmitt]⁴¹. For Laclau, the exemplary figure of this porousness on the field of antagonism (here, outright war) is the partisan - the way in which the partisan, in interrupting the distinction between enemy and civilian - between, therefore, combatant and noncombatant, between enemy and nonenemy - sets up a "break between two principles"⁴² in the identity of the power at war with the partisan - an identity, recall, brought into being not autochthonously but in the confrontation with the enemy, whose dangerous unity brings about the corresponding unity of the friends.

It is difficult to see, however, how this can be more than formally true: certainly the battle against partisans and fifth columns does not itself significantly interrupt the practice of making war; the history of the 20th century is the history of war conducted in the face of this "break" but without acknowledgement of it. The difficulty was posed to the legal order of war, instead: an order that must be wholly irrelevant to Schmitt's notion of the political, which is simply the scene of groups in mortally significant battle with other groups; it is precisely the attempt to have an overarching law to regulate such antagonisms which is the disaster of liberalism. Laclau seems to confuse the two: that by making the legal order of battle unstable, he imagines that the partisan has

⁴¹ Ibid. p.11.

⁴² Ibid. p. 5.

crumbled the rigidity of the distinction between friend and enemy, and so established that the true logic of the political, even on Schmitt's assumptions, must be hegemonic, and therefore tend away from the moment of decision rather than hastening it. On this analysis war must really be, as Laclau says, "some sort of mobile metaphor"⁴³.

Schmitt certainly didn't think it was, and for a very precise reason. Laclau opines that the articulatory overturning of the ideal of the subject as "a unitary, transparent and sutured entity"⁴⁴ - the subject's genealogical deconstruction, in other words, as in the case of in which the subject faces the enemy partisan - "opens the way to the recognition of the specificity of the antagonisms constituted on the bases of different subject positions, and...the possibility of the deepening of a pluralist and democratic conception".⁴⁵ But Schmitt had no difficulty with what he saw as the multiple and contingent commitments of the subject: these are not moments that suspend and problematize the moment of decision, but on the contrary are its origin: a multiplicity of divergent demands cannot all be sovereign over the individual, and so they force the political moment of choice, which materializes in the affirmation of political violence and "physical killing"⁴⁶. To Schmitt, these are exactly the moments of threat that show to us what is worth dying - and killing - for.

⁴³ Ibid. p. 3.

⁴⁴ Laclau and Mouffe, *Hegemony and Socialist Strategy : Towards a Radical Democratic Politics*. p. 166.

⁴⁵ Ibid.

⁴⁶ Schmitt. p. 33.

The moment that Laclau holds to be exemplary of the process of destabilizing the subject is, to Schmitt, just the opposite.

In his brilliant commentary on Schmitt's *The Concept of the Political*, Leo Strauss⁴⁷ finds a deep *aporia* at this point in Schmitt's analysis, one that can best be seen by tracking Schmitt's debt to Hobbes. In essence, according to Strauss, Schmitt has undone the polemical character of Hobbes' description of the *bellum omnium contra omnes* - for Hobbes, it is what both justifies and demands that individuals leave the state of nature and give up its freedoms in favor of living beneath the authority of the absolute sovereign. In Schmitt, the *bellum omnium* is reduced to a simple description of the way human subjects and groups of subjects are, as a necessary destiny; the nature of political culture, therefore, is merely the organized expression of this nature. In doing this, says Strauss, Schmitt shows what it is he is really trying to preserve; not the political as such, but seriousness within politics. For Schmitt "serious" means, ultimately, "mortal,"⁴⁸ and political life without mortal danger is simply competition - the economization of politics, and the replacement of matters that are at least potentially of life and death with matters that can never be such, that are mere "entertainment."⁴⁹ For if there is no principle left over which one could even conceive of

⁴⁷ Leo Strauss, "Notes on the Concept of the Political," in *The Concept of the Political*, ed. George Schwab (Chicago: University of Chicago Press, 1996).

⁴⁸ *Ibid.* pp. 100-101.

⁴⁹ *Ibid.*

fighting to the death with an enemy, there is nothing left but entertainment and talk about entertainment: the boring expression of genuine but utterly nonthreatening disagreement about mere "aesthetic"⁵⁰ preferences. When Schmitt dashes liberal, humanitarian morality to pieces, in order to expose the pre-moral, originary political distinction of friend vs. enemy, he does so in the name of another morality, that in fact quietly subtends his primordial distinction - the **serious**, mortally important, search for the ends of political life, ends which are themselves of mortal significance.

But it is at this point that Schmitt's theory reveals a fundamental incapacity, entailing an opening to fascism. Schmitt's continual polemic against the primacy of humanitarian morality over politics⁵¹, his insistence that friends and enemies are not defined by universalizing concepts but by sheer threatening difference, one from the other, disables the possibility of any political principle in particular filling the role. What is left is merely the need that a political principle - a principle revealed comparatively, insofar as the enemy brings it into view by exhibiting its contrary - be taken seriously enough to serve as a potential motivation for "physical killing." For this, one principle is as good as another; what matters is that it become the origin of an

⁵⁰ Ibid. p. 54

⁵¹ Schmitt. p. 104.

intergroup crisis, an emergency that threatens violence. The ultimate principle of such politics, then, is the simple affirmation of violence itself.

He who affirms the political as such respects all who want to fight; he is just as tolerant as the liberals - but with the opposite intention: whereas the liberal respects and tolerates all "honest" convictions so long as they merely acknowledge the legal order, peace, as sacrosanct, he who affirms the political as such respects and tolerates all "serious" convictions, that is, all decisions oriented to the real possibility of war. Thus the affirmation of the political as such proves to be a liberalism with the opposite polarity.⁵²

What becomes sacrosanct is war: not discursive antagonism, but actual, "physical" barbarism. Schmitt's politics reveals itself as the politics of the group in continual need of mere violence to create and maintain its identity.

It is my contention that this problematic is inherited by theorists of radical democracy who base their views on those of Schmitt: their assimilation of Schmitt's metaphysic *hors de combat* reduces radical democracy's affirmation of the political to the affirmation of mere violence, and the attempt to invigorate within the Schmittian space of "the political" a practice of continual destabilizing articulation only makes matters worse. The proposed defense, recall, was to break down and dissolve the putative unity of the political grouping, "the people," through deployment of deconstructive or genealogical tropes of identity critique, as in this quotation from Derrida:

⁵² Ibid. p. 10.

through this genealogical deconstruction of the political (and through it to the democratic), one would seek to think, interpret, and implement another politics, another democracy...It would concern confidence, credit, credence, doxa or eudoxia, opinion or right opinion, the approbation given to filiation, at birth and at the origin, to generation, to the familiarity of the family, the proximity of the neighbour - to what axioms quickly inscribe under these words. This is not to wage war on them and to see evil therein but to think and live a politics, a friendship, a justice which being by breaking with their naturalness or their homogeneity...⁵³

But the turning point within Schmitt's theory, the moment of political practice, of action, is precisely a decision about all these things, and ultimately, a decision that the crisis-point has been reached, that the forms of identity that confrontation with the other have elicited are now grounds for violence - because these difference appear precisely in the moment of moral danger, and they appear the more forthrightly the more the danger is dangerous. There is explicitly no other determining ground of identity formation; the problem is thereby not the posited unity of "the people" which Mouffe and Laclau seek to undo with new discursive practices, it is the lack of it, the way in which the traumatic looming-up of physical danger, not the freezing of otherwise-fluid discourse, is the origin-scene of politically relevant difference in the first place. Identity formation in this scene is therefore predicated not on articulation but on its opposite, barbarism. And it can be met only by

⁵³ Jacques Derrida, *Politics of Friendship*, Phronesis (London ; New York: Verso, 1997). p. 105.

barbarism: discourse about, and thereby deferral of, the decision to fight is structurally foreclosed. It is only in the moment that war begins that difference becomes concretely articulated, but then, as it were, it is too late for talk; the subject "does not have the will...to the avoidance of decision at all costs, but in fact is eager for decision; an eagerness for any decision regardless of content".⁵⁴ Not just does not, but cannot have, the will - for the presence of the mortal threat whose visible difference defines the group of friends is logically prior to the concretization of the felt sameness of the friends; the very first mode of that group's self consciousness is the decision to fight and kill. Any possible discussion of identity and motives is posterior to the declaration of hostilities, while the decision is arrived-at prior to all articulation. While liberalism cannot articulate for its own part its involuntary construction of inside and outside, radical democratic politics, insofar as it uses Schmitt's political metaphysic to interrupt liberalism, produces a politics that cannot contain articulation at all. Yet these were to be the problematics of politics *sine qua non!*

The effect is horribly ironic. Liberalism, recall, was paradoxical in its inability to see itself as founded upon an antagonistic relation of inside and outside; it thereby attempted a depoliticization which could only be a deflection of primordial antagonisms that must return to haunt liberal politics. Schmitt diagnosed in this problematic a tendency toward

⁵⁴ Schmitt, p. 105.

rarer, but more horrifically inhuman, modes of exclusion and warfare. Laclau and Mouffe agree with this diagnosis. But the gesture of depoliticization in radical democracy is even more dramatic. Laclau and Mouffe hope to deploy tropes of discursive instability such that the primordial antagonisms will not, in fact, appear as such, as the essential mode of the political, except in a modality that will require continual war. If the risk of liberalism is total war, the risk of radical democracy is fascism: a polity that can constitute itself only by continual "physical killing" of the stranger. In attempting to have Schmitt without Schmitt's barbarous politics, Laclau and Mouffe have produced a theory of "the political" in which barbarism cannot but gobble up the very thing that was to restrain it.

A quite different approach to radical democracy, one that re-orientes the question of decision, of binding one's self to what is good, is undertaken by Simon Critchley in *Infinitely Demanding*. Rather than organizing the political field around antagonistic subject-positions that find their common identity in the recognition of the danger posed by the other, Critchley wants to invoke a Levinasian notion of ethical subjectivity in order to undercut the idea that a hegemonic constellation of political blocs must necessarily be founded upon the mortal distinction of friend and enemy. Instead, the moment of ethical decision is constituted by a confrontation with a neighbor who appears to the subject in the form of a radical demand, a demand which the subject can

only approve; in enunciating its approval of the neighbor's demand, the subject orients itself toward that demand as the source and delineator of its ethical comportment⁵⁵. The appearance of the radical demand is an appearance of a face, a face that simultaneously expresses need for and resistance to the subject it confronts. It is not that I feel responsible because I see myself in the face; it is that the face faces me with the simultaneous appearance of a common humanity and a sheer, material opacity. As a surface, it both bodies forth a subject in need, and hides its interiority behind a mask of matter, and so is to me an other - something that is like me but that exceeds me in a way I cannot grasp; the face is that which is present before me but which is nevertheless the appearance of something unrepresentable. The emergence of this face from the shadows becomes for me a kind of inescapable center of gravity to which I must respond but which I cannot touch; the demand of the face is that which pulls my own subjectivity into relief, yet simultaneously, in its excess, pulls my subjectivity inside-out. I am ethically constituted and destabilized by the appearance of the face in a simultaneous double gesture.⁵⁶

Thus it is not a matter of, as for Laclau and Mouffe, the subject and the group being constituted by an originary antagonism with a dangerous enemy, the appearance of which marks and solidifies the

⁵⁵ Critchley, p. 20.

⁵⁶ Ibid. pp. 56-59.

identity of the group, which is only then subject to deconstructive analysis and discovered to be questionable, contingent, and porous. The subject and the group only come into being in the mode of their being destabilized, even traumatized, by the other that faces them. The "hegemonic" moment of the constitution of the ethical subject is actively constitutive of it, not merely discovered in a moment of intersubjective articulation across boundaries.

At first glance, this would seem decisively and usefully to interrupt the Schmittian logic of the political, and reconstitute the project of radical democracy on firmer - ironically, constitutively shifting - ground. But as Critchley presses his analysis of what might be called "Levinasian radical democracy" forward, a strange consequence emerges, as Critchley proposes his theory of political practice. When the confrontation with the face of the other that pulls me into an ethical comportment is applied as a model for politics, what emerges is a kind of quietism. Because the originary moment of ethical commitment is something I undergo, and continually undergo as I pass through the "social manifold," I am continually "undone" by "affective undergoing."⁵⁷ The organization of the political group is not a matter of becoming a unity in confrontation with an enemy; still less is it a matter of its own spontaneity; it is never sovereign over itself, never in the position of

⁵⁷ Ibid. p. 120.

affirming itself as a unity.⁵⁸ The relationship of the group to the state, then, can only be one of self-conscious distancing; insofar as a state is able to parse political demands made to it, they must be specific, whether they are material or recognitive; an indefinite demand is unintelligible, or, perhaps, is simply the demand for the overcoming or surpassing of the state without any concomitant notion of how this is to be achieved or what is to be done after. Žižek, for one, criticizes Critchley for precisely this mistake, though I think Žižek misreads Critchley here: Critchley is not asserting that the political subject or group withdraw from the state and make impossible, infinite demands before which the state is seen as endlessly guilty⁵⁹; Critchley is simply unconcerned with interaction with the state as a political factor at all. The point, rather, is to generate new forms of political subjectivity wholly outside the state, through the endless process of "affective undergoing"; in retreat from the state, groups challenge each other with Levinasian demands, such that subjectivity is in a continual flux, a state - if we can call it that - of being always pulled inside-out.⁶⁰ It's for this reason that Critchley valorizes the Zapatistas, whose response to the vicious neoliberal policies of the central government have been continual, clever re-articulations of subjectivity, designed to draw us out of ourselves. Not

⁵⁸ Ibid. pp. 120-122.

⁵⁹ Žižek. pp. 337-339.

⁶⁰ Critchley. pp. 129-132.

because they fulfill any of the traditional political roles of popular organization and directed action.

Critchley tellingly only introduces the question "how might [such a politics] be effective?" in his conclusion⁶¹; the question is simply not answered, except with the disquieting admission, that contemporary politics - the whole field, not just the liberal state - is in a "massive deadlock", and that, in consequence, "we are on our own"⁶².

Slavoj Žižek, in his *In Defense of Lost Causes*, makes this mordant joke about babies and baths:

One should be careful not to throw out the baby with the dirty water - although one is tempted to turn this metaphor around, and [not forget] that the water was originally pure, that all the dirt in it comes from the baby. What one should do, rather, is to throw out the baby before it spoils the crystalline water with its excretions.⁶³

As usual, Žižek is introducing a serious point with this trope-play: we have come to a point in contemporary politics where liberal humanism is now the amanuensis of the most vicious capitalist oppression all over the world. The way in which this has happened has been described by too many authors to count, but Žižek's reconstruction is especially perspicuous. The problem, say the liberal humanists, has always been too much purity in political aims; sincere devotion to causes

⁶¹ Ibid. p. 131.

⁶² Ibid. pp. 131-132.

⁶³ Žižek. p. 7.

requires averting one's eyes from the suffering of individuals; the result is barbarism, precisely the opposite of revolution's utopian aim. The original archetype for all such descents into barbarism, be they Stalinism, Hitlerism, The Shining Path, or the Khmer Rouge, is the Terror that followed the French Revolution; the arch-fiend of monstrous purity is therefore Robespierre. His faith in the purity of the revolution was precisely the act of keeping the water in favor of the baby, the ultimate gesture of inhuman cruelty.

The project lying before political philosophers after Robespierre, it would seem, is to be impure, to be tolerant of the baby's propensity continually to dirty the water of political idealism; this is realized in a range of political philosophies which seek to unwind all moments of theoretical purity, while recommending as the best logic of the political regime a kind of irresolute humanitarian pragmatics: politics becomes a matter of instrumental, administrative management of society - what must be excluded is any view of politics as a matter of powerful antagonisms among enemy ideologies. The result has been a deeply ironic alliance between contemporary liberal political philosophy and the capitalist administrative state. It has been radical democracy's project to break this alliance. It has tried to retain the former style in political philosophy, with its suspicion of purity taken as its anti-authoritarian orientation, while simultaneously insisting upon a more essentially democratic political *praxis* that does not yield to the state the mandate

over participatory forms of democratic decision-making. (By now I think I have enunciated some reasons why this operation is foreclosed.)

Žižek 's project is utterly different: he really does want to throw out the baby and keep the water, the pure water of terror. "There is, however, [an alternative] usually left aside: the choice "humanism or terror," but with terror, not humanism, as a positive term".⁶⁴ What could this mean? Not "the obscene madness of...a terrorist and inhuman politics," but a politics that lives with, even cultivates, the terror inherent in any revolutionary project: rather than rejecting such a project as an inhuman abstraction.⁶⁵ The inhuman dimension of politics is to be understood here as a confrontation with the face of the other: but not the Levinasian other, in its dual moment of appearing both as a human in need and as 'other' that, as a mask, as a surface of matter, resists one's gaze, hides its interiority from one, and thus exceeds one's capacity to help and even to understand - for Žižek the face is that which appears only in that latter, obdurate, fully material mode. This is the face that appears not as a subject, but as flesh, as matter, even as dead substance⁶⁶. To confront this face is to be confronted with what cannot be loved, what cannot be helped, what cannot, in other words, pull me out of myself in that primordial moment which radically fractures my self-sovereignty: it is, in fact, that which throws me back upon myself

⁶⁴ Ibid. p. 165.

⁶⁵ Ibid.

⁶⁶ Ibid.

most fully, and so confirms me in my agency to the greatest degree. This is the moment of revolutionary potency: the gaze that takes the political field as a hecatomb, as already history, rather than a space of engagement of subject-positions that destabilize one another. As Lukács put it, the ideal is "organized action in terms of the lessons it contain[s] for the future," as if the present is already the past, thereby overcoming the post-*festum* quality of proletarian self-consciousness.⁶⁷ And, as revolutionary, it is to see one's self that way as well: as simultaneously acting and as a dead thing, an object of history. This is Robespierre's sublime gesture: in his famed speech to the National Assembly on 11 Germinal Year II, the day after Danton had been carried off, Robespierre says to the assembly that any of **us** may be next, that this is right, that to fear being carried to the guillotine in the name of the Revolution *ipso facto* makes one guilty. Nor does Robespierre except himself: he may indeed be claimed by the forces he has unleashed, but this is proper; he is the object of the Revolution now, not the subjectivity that guides it and stands outside it - as is all the Assembly, as is all France.

To view the people as already being history - to see them as already having served their purpose - is, says Žižek, to give the inhuman dimension of politics its due. The passage deserves quotation at length:

⁶⁷ György Lukács, *History and Class Consciousness; Studies in Marxist Dialectics* (Cambridge, Mass.: MIT Press, 1971). p. 317.

"Perhaps, then the time has come to render problematic the standard *topos*, shared by practically all "postmodern" leftists, according to which political "totalitarianism" ... somehow results from the predominance of material production and technology over intersubjective communication and/or symbolic practice...What if it is the exact opposite which holds? What if political "terror" signals precisely that the sphere of (material) production is denied its autonomy and subordinated to political logic?"⁶⁸

The disaster of the Terror or of the Cultural Revolution and of so many other projects appears to be that they unleashed hideous violence in the name of structural transformation, but were either unable or unwilling to make the structural transformations of material relationships that would actually be liberating. "Crazy, tasteless even, as it might sound, ...Hitler...was not violent enough...[he] did not dare to disturb the basic structure of the modern capitalist social space."⁶⁹ Instead Nazism could focus only on an all-too-human, and therefore wholly fantastic, enemy: the Jews. Similarly, the moment at which the French Revolution was a failure was not the rise of Robespierre but his destruction, along with Danton; this was a sign that the Terror had reached a maniacal pitch in the face of its own inability to disturb the economic order of everyday life and thus solve the genuine problems faced by France (174).⁷⁰

⁶⁸ Žižek. p. 174.

⁶⁹ Ibid. p. 151.

⁷⁰ Ibid. p. 174.

Žižek is not calling for a re-staging of the French Revolution, or the October Revolution, or of any other outburst of revolutionary fanaticism. Yet he is precisely taking issue with Critchley's ruling out of all such moments as pure fundamentalisms, as though the Maoists, the Nazis, the Communists, the Khmer Rouge, Christian Identity, and the Islamists are all equally terrible as agencies of undemocratic "revolutionary vanguardism." The French Revolution, the Haitian Revolution, the October Revolution - each these has been in some, or many, respects, a horror and a failure, Žižek admits, but still, through each of them a "utopian dimension shines through"⁷¹ which cannot be understood as a fascist or religious-fundamentalist movement: these are oriented, as Schmitt diagnoses, toward nothing but the maintenance of the capitalist economic *status quo* within the overall state of war. For Žižek, what is needed is, rather than the simplistic rejection of all revolutionary projects as disastrous barbarism, the recovery of the "virtual moment"⁷² of revolutionary, liberating possibility within them: their orientation not toward war but toward the reconstitution of the everyday, economic, material relations among people. But this requires asking a double question: what are the productive, material relations in society supposed to look like, and who will be the representatives of the people responsible for carrying through their transformation? And this is

⁷¹ Ibid. p. 160.

⁷² Ibid. p. 374.

the moment at which the question of working-class ideology returns to the fore. The question is to take up the moment of revolutionary excess, but also to domesticate it, to produce both a theoretical understanding and a functional politics of material transformation. Neither dimension can be ignored. The revolutionary situation must be given a coherent shape, a shape that respects the revolutionary event's "rational kernel"⁷³ rather than simply attending to the immediate needs and demands of the inchoate event.

Critchley against Žižek is essentially the age-old question of revolutionary methodology; we've been here before. Just to take one example, I'd like to cite Georg Lukács against Rosa Luxemburg. The one-sided quarrel between Lukács and Luxemburg occurred against the background of Marxist historiography: the question was less the edmos} or the polity's relation to the state than than the relation of all three to the material processes of history. In accusing Luxemburg of a vulgar, undialectical understanding of the relation between party, class, and historical situation, Lukács' *History and Class Consciousness*} enunciated a critique that is still of value in contemporary debates.

According to Dick Howard, Luxemburg was the first great "democratic revolutionary,"⁷⁴ the fiercest critic of the anti-democratic aspects of Bolshevism and of any revolutionary movement which

⁷³ Ibid. p. 160.

⁷⁴ Dick Howard, "Rediscovering the Left," *Praxis International* 10, no. 3-4 (1991). p. 193.

regarded the vanguard party as essential to the process of overthrowing capitalism. The revolutionary vanguard party, with its necessarily democratic-centralist tendencies, its "esoteric" (in the Straussian sense) deployment of ideological rhetorics that expostulated vastly different versions of its self-understanding appropriate for party insiders, party rank-and-file, and the working class more generally, and its generally conspiratorial praxis, appeared purely antithetical to the authentic self-expression of the working class' demands, to the emergence of a coherent class-consciousness on the part of the workers themselves.⁷⁵ The debate continues today, as more orthodox Marxist parties continue to argue for the necessity of vanguard-party activity against the anarchic autonomism of such famed standard-bearers as Hardt and Negri.

But the debate over the vanguard party's ability to manipulate or obscure authentic, organic working-class consciousness, for Lukács, mystified the vital question of where such consciousness was supposed to come from in the first place. This, of course, is the question of ideology: of the systematic understanding of history, economics, and politics in the interest of a particular class. Leaving aside the enormous debate, beyond my scope, of whether there is any understanding of history, economics, or politics that is non-ideological, suffice to say that any such understanding which is partial - interested - and indexed by

⁷⁵ Rosa Luxemburg, *The Russian Revolution, and Leninism or Marxism?*, Ann Arbor Paperbacks, Aa57 ([Ann Arbor]: University of Michigan Press, 1961). Chapter vi.

that partiality to the practical point of view of a particular class and set of class aspirations is *eo ipso* ideology, whether it is false or true: there is no requirement in Marxian analysis that "ideology" be composed of lies; indeed, within the sphere of working-class liberation, it is the truth - the theoretical truth about relations of domination and mystification which enslave the worker, and the practical truth about the means of overcoming such relations. Working-class consciousness not in possession of coherent ideology is dumb and blind.

It is therefore the very organicity and spontaneity of Luxemburg's democratic revolutionary consciousness that strikes Lukács as reified, an undialectical wish lodged in the theory, in the garb of an anti-reificatory program.⁷⁶ Undialectical in a specific sense: rather than a theoretical explication of the manner in which *demos* and ideology, theory and practice, meet, the relation is simply posited as a given unity somehow "discovered" in the very process of revolutionary agitation. For Luxemburg, it is precisely vanguard-party ideology that reifies the consciousness of the working class⁷⁷; Lukács, on the other hand, sees this very explanation as the ossification of an undigested mere hope. "Organisation," as he puts it, "is the form of mediation between theory and practice"⁷⁸ - here, specific party organization and the way in which the party mobilizes and organizes the working class, in which the very

⁷⁶ Lukács. p. 303.

⁷⁷ Luxemburg. p. 70.

⁷⁸ Lukács. p. 300.

form of this mobilization "objectif[ies] the roles played by...individuals, and their ability to determined organised action decisively"⁷⁹.

Without an analysis of party organization and the role of party organization in the creation and dissemination of ideology in a way that makes ideology practically efficacious - that is, by mobilization - Luxemburg can only aver that such effective understanding arises directly in the consciousness of the working class in and through the concrete reality of its historical situation as it appears at the moment of revolutionary crisis. This is a curious thing to say: that effective ideological coherence arises spontaneously from class-position, at the moment when history is most up for grabs and when class-position is most a welter of differentiated strata. This can only be so through a powerful reification of the category of history, such that it is able to punch through the confusion of the revolutionary situation to directly inform working-class consciousness. For Lukács, by contrast, the vanguard party is the working class' organ of self-consciousness, the "autonomous form of proletarian class consciousness serving the interests of the revolution"⁸⁰ Its ideological function is therefore the coming to conscious awareness of the working-class situation; this is the precondition of a conscious decision, a conscious action, of class autonomy and of freedom. Where Luxemburg intended to extirpate the

⁷⁹ Ibid. p. 301.

⁸⁰ Ibid. p. 330.

totalitarian tendency of Bolshevism, she does so by introducing into revolutionary politics a strange fatalism, even a quietism, whereby the organic, spontaneous unity of class is dictated by the originary unity of history itself. Expelling Bolshevism has been at the cost of re-introducing the most essentialist, or totalizing, ground of Marxist historiography: the pure causal inevitability of capitalist crisis creating proletarian revolution, at the expense of the autonomy of the specificity of working-class subjectivity as such.

This seems strikingly to track the debate between the radical democrats influenced by Schmitt and their critics, and clarifies what is at stake. What is at stake is ideology, or the coming to political self-consciousness that ideology permits. For Schmitt as for Laclau, for Mouffe as for Critchley, ideology is the enemy: it is the solidification of subjectivity, when what is wanted is rather for subjectivity to be pulled out of itself, defined, even called into being, by the Other. For Schmitt it was the Other as threat that defined by opposition the commonality shared by the group of friends; for Critchley the Other as ethical demand created the self in a situation of perpetual moral abasement. But in both cases what is apparently not wanted is even a temporary stabilization of subjectivity in a mode of coherent self-consciousness and practical orientation to political life. What is wanted in Critchley's case is an endless discourse about identity which makes no practical demand; for Schmitt, identity serves only as the ground of barbarous conflict which

makes only the infinite demand that the Other cease to exist. And in trying to transform the latter into the former, Laclau and Mouffe break their theoretical interventions on the shoals of ideology: neither able to neutralize nor expel the indigestible residuum of barbarous violence at the heart of the theory they incorporated from Schmitt, they are able only to conceal it with a deconstructive gesture.

What are we left with? A crossroads in contemporary theories of democracy:

CHAPTER II

KANT, REVOLUTION, AND THE STATE

One of the most extraordinary documents of the Enlightenment is – probably unsurprisingly – Kant's "Was ist Aufklärung," a work of considerable subtlety and sophistication, despite its being composed for a mass audience. Most readers have noted that the essay seems broken-backed; the first four paragraphs a clarion call to individual maturity, autonomy, and freedom, that could scarcely seem more modern; the remainder an absolutist screed seemingly out of the depths of the 18th century, relegating the hopeful passages of the first paragraphs to the status of merely formal, empty promises. The first half, plausibly radically-democratic; the second half, not merely liberal, but authoritarian, enjoining obedience to political authority, not its continual reconstruction and radicalization.

To explore the ways in which Kant's political theory is not simply one of the ur-texts of liberalism against which radical democracy arises and reacts, but can – and should – be read as an answer to and critique of radical democracy, I wish to turn initially to an extraordinarily fruitful attempt to suture the halves of the essay together: that of the German critical theorist Ingeborg Maus, scandalously under-read in the English-speaking world. In her magisterial *Zur Aufklärung der*

*Demokratiethorie*⁸¹, Maus is concerned to systematize and rejuvenate Kant as a democrat: not as a formally-liberal republican, but as a true radical democrat in his own right. It is a remarkable reading, and while in the end I find it is unsupportable, it is surely the most creative and suggestive reading of Kantian political philosophy in many years.

According to Maus, Kant is the victim of an under-reading, conditioned by the modern tendency toward the almost-metaphysical separation of the governmental/expert decision-making apparatus, from the "social base".⁸² But this separation is not necessary, contends Maus; it has emerged within a particular constellation of late-capitalism and been read back into liberal democratic theory on that basis. Proceeding on this assumption makes Kant's (and Rousseau's before him) analysis of the rational necessity of obedience to duly constituted authority – to the extent of absolutely denying a right of revolution or even a right of resistance to authority when its exercise is patently unjust – appear as a demand to genuflect before heteronomously-constituted power, and thus as a flat contradiction to the Enlightenment imperative to cast off tutelage and become autonomous. As Maus notes,

Through the example of Kant's political theory it can be demonstrated that the genuinely democratic thrust of the Enlightenment project is missed at present, because on it is placed the responsibility for that limited form of political

⁸¹ Ingeborg Maus, *Zur Aufklärung Der Demokratiethorie : Rechts- Und Demokratiethoretische Überlegungen Im Anschluss an Kant*, 1. Aufl. ed. (Frankfurt am Main: Suhrkamp, 1992).

⁸² *Ibid.* p. 9.

engagement which still appears possible today....it escapes notice that Kant negates the right of resistance neither in deference to ...absolutism nor of any other form of reform from above. Rather, **he waives the right of resistance in favor of the principle of popular sovereignty.**⁸³

This is an ingenious turn. Taking "What is Enlightenment" as the pole-star to interpretation of the second part of *the Metaphysics of Morals*, she finds that Kant's argument against the right of resistance against a monarch – that it is the attempt to set up a second sovereign, or even to construct each subject as politically sovereign, which is, on a transcendental analysis, the destruction of authority as such, and a return to the state of nature – is transformed when applied to popular sovereignty, the principle of democratic government. Popular sovereignty already assumes that each individual is, if not a monarch in themselves, at least a functioning element of the authoritative decision-making process; the right of resistance in this instance is, first, necessarily to make a claim for the contrary of popular sovereignty, which is by definition a gesture towards an absolutist formation, and, second, to claim resistance against one's very self as an element of the popular decision-making process, an out-and-out practical contradiction.

This is the political face of Kant's demand to cast off tutelage: the politics which emerge from it just are those of radical democracy. To assert that Kant's transcendental form of argument about political

⁸³ Ibid. Translation my own. Emphasis my own.

authority leads him not to his avowed republicanism but, properly, to radical democracy, is certainly a strong claim. For Maus this takes the form of a thorough anti-constitutionalism and an opposition to forms of liberal politics which take countervailance as their model: all these are extra-political structures that limit the scope of popular sovereignty.

But the heart of her argument is a re-reading of Kant's view of the formation of political rights. For Maus, rights properly speaking are not mere authorizations of access to spaces of non-interference carved out against others; they are rights of equity to be heard in the public space of articulation and renegotiation of political practices and norms. In this sense she sees in Kant a theory of "institutionalization, not of institutions," which she finds less in his explicit political theory than as a consequence of his account of the reflexivity of Reason in the First Critique.

No longer is the concern merely "reflection" in the sense of thinking about thinking, but "reflexivity," that is, [thinking] regarding the structuring principle of the independence of processes which are applied to one another.⁸⁴

What is up for grabs is less the completed structures of apperception and judgment, but the canons which make them determinate; within the political field, a politics of reflexivity is concerned with the structuring principles for the formation of institutions, but lacks the cognitive resources necessary to give finality or closure to the

⁸⁴ Ibid. p. 252. Translation my own.

constitution of institutions. What is left is a continuous process of reflexive institutionalizing: political institutions that are continually concerned with negotiating the basis of their own reconstruction.

This puts the radical democracy Maus finds in Kant on a different basis than the heirs of Schmitt. The primary objection I outlined to that scheme was that Schmitt's analysis, though taken by radical democrats to be the essential point of departure in critiquing liberal democracy, was founded on an a-rational moment of unanalyzed political violence, which in turn rested upon an undialectical reification of terms like "nation", "class", or "history" which were seen to organically or spontaneously give rise to the proper sort of consciousness for the active political group. What was lost was precisely self-consciousness. For Maus' Kant, that self-conscious autonomy is intended as the principle of radical democratic politics, not its antithesis. The question must therefore be, is Maus' reconstruction of a Kantian, Enlightened basis for radical democracy sustainable? Or, put differently, is she right to assert that the formal, countervailing structures inherent to Kantian liberalism, the very structures that militate against the rationality of the monism of the *demos*, are external to his commitment to democracy? Can the two be separated? Is there a radical democratic Kant alongside, or beneath, the liberal Kant, a radical democratic Kant upon whose politics we might reconstruct radical democracy that escapes the Schmittian surd?

It is my contention that she is not right to claim this, that Kant's countervailing liberalism is inherent to his commitment to autonomous political subjectivity within any democratic political practice. Radical democracy, **indeed democracy as such**, cannot be reconstructed on this basis: the quarrel is not merely one within philosophical historiography, but will be seen to constrain the democratic alternatives. But her attempt opens up the possibility of a reconsideration of the nature of Kantian liberal democracy that will make clear some of its surprisingly radical possibilities. To put the point more plainly, Kantian liberalism was always more coherent, more radical, more liberating, and very much more democratic, than those radical democracies founded on the Schmittian critique of classical liberalism which took the reaction against Kantian liberal republicanism as their touchstone.

I further contend that, in Kant, the essentially empty utopianism of "democratic political monism" – the metaphysical unity of state and people – receives its starkest repudiation. Kant is perhaps the most perspicuous, and surely the most forthright, theorist of the relation between authority and the people in a democracy; where his primary political principle for the individual is one of "throwing off all forms of tutelage," and his primary principle for the group one of maximum freedom for each consonant with the freedom of all others, he nevertheless sees no right of revolution or even of resistance against a political system which is unjustly or despotically constituted. This

apparent paradox, its sheer strangeness, has placed Kant "beyond the pale" for many who are seeking a more radical form of democracy, for it makes of him the arch-liberal, exhibiting in the strongest possible way the contradiction putatively inherent to any liberal democratic ontology. This is precisely why I turn to him. In his attempt to keep open the seemingly-paradoxical space between the claim, on the one hand, that individuals have a duty to achieve their own self-legislational autonomy (within a liberal order of maximum freedom for each consonant with the freedom of any other), and on the other hand, that the state (any state, even one hostile to autonomy) is absolutely sovereign, that he reaches the pressure-point vital to the theory and practice of democracy: that a democratic polity ought self-consciously to contain and continually to re-instantiate the duality between political authority and the civic culture that underlies it. The preservation and working-through of this separation is not an impediment to, but an essential constitutive feature of, any democratic polity worthy of the name. If radical democracy is to be understood as the overcoming of political dualities to produce a kind of monad, a union of state and people, of governance and governed, within which horizon the people can authoritatively rearticulate and reconstruct authority itself, it is a doomed project, doomed to turn into its other - fascism - and that the recognition of the ontological unfitness of the domains of liberal democracy - authority and civic culture - for one another, is in fact the hallmark of a genuine democracy. To put the point

more plainly, Kant foresaw the shoals of radical democracy, and understood that a critique along the lines of the one Schmitt would eventually advance bears down less upon liberalism as such, than any politics that seeks to constitute itself monadically: that the attempt to suture the cut between authority and civic culture simply produces the ghastly, unconscious politics of friend and enemy. It is in order to preserve the possibility of democracy – and, more than democracy, politics as such – from the maw of sacrosanct war.

Now, liberalism as usually conceived is a theory about the state and about the people's relation to the state; the state is determined to have an essential internal institutional structure, which enables it to carry out the people's will, in whatever way this is conceived, and which prevents it from becoming tyrannical, in whatever way that is conceived. The people are thought of as having duties of legal respect toward the state and rights of noninterference secured against it. In the liberal understanding, the purpose of the theory of democracy is to adumbrate those structures and those duties, which can be quite complex – but which will always form a set of limits and structuring relations which prevent monadic politics. It is against this understanding that radical democracy reacts.

Kant, by contrast, has only the most minimal theories of the state and of the relation between populace and state. While there is an account of the state's internal structure, it is a transcendental account,

and does not prescribe specific institutional arrangements that any state ought to reflect in order to be regarded as legitimate – indeed, there is no notion in Kant of political legitimacy at all; a state, in virtue of its being the actually existing authoritative power, is *eo ipso* legitimate and deserving of respect. Further, there is no set of rights that the people ought to secure against the state, in order to found a proper relation between people and state - indeed, the people have no prior or natural rights against the state at all, only an absolute duty of respect for the legal order and the authoritativeness of the state's decrees. Kant, in point of fact, simply does not regard the state - in whatever form! - as opposed to, or competitive with, the people in the first place; rather, it is constitutive of them. This reverses the traditional liberal order of precedence, in which the people's sovereignty and consent constitutes the state.

Of course, as we will see, Kant pays a price for this: the gap between the individual and the institutions of governance, or rather between the standpoint of the individual as political singular and the individual as political sovereign, or, in the register of the group, between civic culture and the state, rather than collapsing into a monad, yawns so widely that Kant is unable, in the end, to advance a coherent view of the phenomenal state. Rather, the theory of the state and the state's rights become, in Kant's hands, a retreating *noumenon*, its applicability,

even its commensurability, with any existing state or possible state, always radically in doubt.

I will begin with Kant's account of the impossibility of resistance against the state, for it sets up in starkest terms the commitments involved in his understanding of "the rightful or civic condition":

Subjects may indeed oppose injustice [that is, the sovereign's acting contrary to natural law, for example the law of equality] but by complaints, not by resistance... People cannot offer any resistance to the legislative head of state that would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to sedition, still less to rebellion, and least of all is there a right against the head of state as an individual person (the monarch); to attack his person or even his life on the pretext that he has abused his authority. Any attempt whatsoever at this is high treason... the reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution. For a people to be authorized to resist, there would have to be a public law permitting it to resist, that is, the highest legislation would have to contain a provision that it is not the highest, and that makes the people, as subject, by one and the same judgment sovereign over him to whom it is subject. This is self-contradictory, and the contradiction is evident as soon as one asks who is to be the judge...⁸⁵

Ostensibly, then, there is little to say about Kant and the right of resistance: he doesn't recognize one. The standard reading of Kant on this point is one I regard as implying a kind of resignation: that the

⁸⁵ Immanuel Kant, *The Metaphysics of Morals*, trans., Mary J. Gregor, Cambridge Texts in the History of Philosophy (Cambridge ; New York: Cambridge University Press, 1991). Pp. 130-131.

moral law rules out resistance by citizens against state power, and enjoins obedience to any and all states, no matter how appalling, not because of any particular immoral acts that may be committed as a part of a program of resistance, but because of a formal condition inherent to any state, what resistance to authority must always imply: a volition to destroy the authoritative unity of the lawful state by creating a nexus of contrary authority. For Kant, resistance seems to be incompatible with the rational conditions of civic order at all. How can such an understanding be seen to be democratic in any sense?

Let me begin with an analysis of the Kantian term *recht*. His use of it just in *the Metaphysics of Morals* is protean, almost untraceable; but, importantly, this is not a matter of mere vagueness, but is a problematic which arises from deep within the way Kant analyses political right. When Kant says that resistance is always unjust or always contrary to right, he always employs a particular terminology: that it is *unrecht*, contrary to *recht*, or contrary to the allied Latin with which it is used here virtually synonymous, *iustum*. On the one hand, *recht* refers to that which is ruled upon by practical reason, or by practical reason's political form: political principles discovered *a priori* by practical reason, what Kant will call - with some modifications, to be described below - "natural right". Yet it can also refer to the merely extant law of a state, which Kant calls "strictly positive right," and which he notes can easily be contrary to the dictates of both the natural and

the moral law. And still again it can refer to the progressive instantiation of natural right within the positive law: what Kant terms "public right." For Kant to designate resistance as "*unrecht*" is not thereby to say very much; what is contrary to strictly positive right is merely illegal, not necessary *unrech]* in the sense of violating natural law; still less may it be *unmoralisch*, unless it were the case that Kant thinks it absolutely obligatory to obey all positive laws in every possible instance, which, of course, he does not: one is strictly enjoined from violating the moral law simply to avoid punishment at the hands of the positive law. Indeed, it is quite possible to reconstruct a reading of Kant's account of the rights of and duties toward a state in which his exclusion of the right of resistance starts to seem viciously, or even slyly, circular.

Though the territory is complex, it is worth going over in some detail. As Leslie Mulholland points out in the Introduction to *Kant's System of Rights*⁸⁶, at least three senses of the term are at play in *the Metaphysics of Morals*, distinguished only by their article: *Recht, das Recht, ein Recht*. Quoting from the *Handschriftlicher Nachlass*:

"*Recht*" is that free action whose maxim can coexist with the freedom of everyone according to a universal law. -- "*Das Recht*" ...is the system of laws according to which what is "*Recht*" or "*Unrecht*" is determined. "*Ein Recht*" (of which someone can have several) is a capacity of the will to bind others rightfully.⁸⁷

⁸⁶ Leslie Arthur Mulholland, *Kant's System of Rights* (New York: Columbia University Press, 1990).

⁸⁷ Immanuel Kant and others, *Gesammelte Schriften* (Berlin: G. Reimer, 1902). (A A vol xxii p. 262)

The first concept, *Rect simpliciter*, corresponds to what Kant calls the Universal Law of Right: "So act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law."⁸⁸ As a principle for a lawgiving will, the Universal Law of Right yields the formal condition for lawgiving, the instantiation of which as a system of laws yields Public Right⁸⁹, embodied by a public constitution and authoritatively interpreted by lawfully sitting judges. Public right is the positive legal form that the Universal Law of Right takes in "the rightful condition": that situation in which every individual is able to attain a corresponding relation with every other in which everyone is able to enjoy their rights.⁹⁰

By contrast, "*das Recht*" is bivalent: Kant uses the term as the systematic adumbration of the laws of *Rect* as a system of *a priori* principles, Natural Right, but also uses the same term to describe the systematic legislative adumbration of positive law by the law-giving authority, which may or may not correspond to the principles of public right. Indeed, the former condition, in which the laws of a state "flow of themselves from concepts of external Right as such"⁹¹ is "*the state as Idea*, as it ought to be in accordance with pure principles",⁹² that is,

⁸⁸ Kant, *The Metaphysics of Morals*. p. 56.

⁸⁹ *Ibid.* p. 123.

⁹⁰ *Ibid.* p. 120.

⁹¹ *Ibid.* pp. 124-125.

⁹² *Ibid.* p. 125. Emphasis in original.

according to Natural Right, the principles of just political association, discovered rationally. This is a norm, not a description of any actually existing state. The actual will of the legislator is positive, or merely statutory, right.

So, regarding *das Recht*, the system of laws, either arising *a priori* and giving the content to public right, or considered positively, as the will of the extant legislative authority, it would seem we ought to find that the ground of obligation with respect to each to be wholly different. And indeed we do. There is, of course, only one internal ground of practical duty: the unconditioned *a priori* moral law, that determining ground of the will according to which a proposed deed becomes either obligatory or forbidden according to its suitability to universalization on the basis of its mere form.

The external ground of duty is *das Recht*, in one of its possible forms. First, if lawgiving is moral, that is, if the law is an instantiation of a moral imperative, or if it creates a lawful category of relation among individuals which embodies a moral imperative, that law is an ethical law⁹³ and the grounds for obedience to it is simply moral duty itself; positive law which is entirely in agreement with moral lawgiving is simultaneously positive and ethical law. Second, those laws that proceed analytically from the Universal Law of Right, which give form to the civil condition obtaining among individuals, and the rightful relation between

⁹³ Ibid. p. 46.

state and people, are "external natural laws"⁹⁴, and are seen as binding on any community even without any external positive lawgiving; to cause the scaffold of positive law to approach full agreement with this position is the rational duty of positive lawgiving authority. Third, those laws that are merely given by legislative authority and which would not otherwise in any way be binding are "strictly positive laws"⁹⁵. Strictly positive laws hand down external obligations that, in the absence of the positive law, would not be binding on the moral subject, and which the subject would not recognize as binding. Such laws have a merely juridical character: the determining ground of choice is the subject's general respect for the authority and majesty of the state, rather than the subject's own realization that the external rule resonates with either morality or any objective necessity of public justice. Kant nevertheless describes violations of strictly positive law as *unrecht*, and he describes obedience to them as *rechtlich*: what is unjust is what is illegal with respect to the law, whatever the law's ground of duty.

In these later two cases, Kant is concerned less with the principles of action as such as determined by the pure subject, but by the universal principle of *Recht's* capacity for instantiation as a grounds for a civic constitution. He says something remarkable:

⁹⁴ Ibid. p. 51.

⁹⁵ Ibid.

Thus the Universal Law of Right...lays an obligation on me, but it does not at all expect, far less demand, that I myself should limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom is limited to those conditions in conformity with the Idea of it...and it says this as a postulate that is incapable of further proof.⁹⁶ (K, *Metaph*, 231)

Kant's account of duty toward, and respect of, the state is not, then, a description of moral duty, in which respect for the moral law just is the determining ground of political obligation; rather, Kant is here giving an analytic definition of what freedom is in a political association, and the shape that political institutions ought to have in respect to this freedom. But as an account of the duties of the individual in a political association, natural right is **not** necessarily congruent with the moral law, and as a ground of obligation operates in a totally different way. It amounts to an inherent principle of tolerance within the very notion of freedom: As Mary Gregor has pointed out, much of what Kant talks about in the *Rechtslehre* has to do with enunciating a permissive principle for end-setting by subjects⁹⁷. While Kant of course thinks that actions can be classified as right and wrong according to the categorical imperative (at least, actions with any moral content at all), end-setting, that is, taking up and identifying one's self with particular projects, is slipperier. Where such projects do not directly require actions contrary

⁹⁶ Immanuel Kant, *The Metaphysics of Morals*, trans., Mary J. Gregor, Cambridge Texts in the History of Philosophy (Cambridge ; New York: Cambridge University Press, 1996). p. 56.

⁹⁷ Mary J. Gregor, *Laws of Freedom; a Study of Kant's Method of Applying the Categorical Imperative in the Metaphysik Der Sitten* (New York: Barnes & Noble, 1963). p. 23 *passim*.

to the moral law, the bias toward them should be permissive, such that they can be allowed to define spheres of property and operation over which the subject should have an exclusive right as essential to the realization of their end. Projects, and the type of end-setting proper to them, are an essential part of human personhood. It is in this sphere that the Universal Law of Right has its greatest influence, for it is here that it says that what does not interfere with the corresponding freedom of others ought to be permitted.

There is something of a threatened antinomy: if what is *unrecht* is what is illegal on any grounds, it will immediately be objected that the moral law within and the strictly positive law without will inevitably come into conflict; indeed, it is scarcely possible to conceive of a genuinely political order, that is, short of the kingdom of ends, in which the gap between natural and positive right will not gape open. Why should the concept of political right contain within it the necessity of obedience, both within natural right and within strictly positive right? The answer lies in Kant's peculiar form of anti-consequentialist contractarianism, the compliment to his peculiar notion of the state of nature. What Kant calls "private right" - for example, the right to enjoy a possession, or land that one owns, as essential to the realization of one's projects - fully exists in the state of Nature, indeed, characterizes it; the having of projects of one's own, then, is a part of human identity that is pre-political. This is not a Hobbsean account in which right can be said to exist only insofar

as there is a power which guarantees it; here, it is precisely the pure "mineness" of the right which makes it constitutive of the state of nature. When it comes to having or enjoying objects and ends as my own, the subject-matter of private right, what is lacking is not the right to them, nor even the force needed to secure them, but an external, judicial authority - not an awesome external power - entitled to make an authoritative decision as to where mine ends and yours begins, consonant with the permissive principle of the Universal Law of Right.⁹⁸ This is something that no purely internal imperative sorts out for us and which must, ultimately, have a partly arbitrary character. The criteria used to define what an infringement on the other's freedom is, where the general expectation of a boundary, an end to "mine" and a beginning of "yours", should be, will give rise to natural, ineliminable disagreement among subjects about such matters, within the state of nature. What is at issue is exactly their differing particular projects and thereby their sense of the scope of their own agency. Even within a civic constitution the limits of "mine" and "yours" will be at least partly a matter of positive law and custom within a social context: without any recognized, external judge empowered to do the work of making a binding declaration of the dividing-up the world, the only recourse is violence. The fundamental purpose of the external judge is to provide a mutually-binding, recognizable criterion for separation other than what can be achieved by

⁹⁸ Kant, *The Metaphysics of Morals*. p. 85-87.

violence. Violence, of course, in the state of nature always has a potentially general character, with no resources for self-limitation; violence inescapably portends war. And it is war, the ultimate condition of evil, that overthrows all stability, and thereby decidability, about relations of private right; to choose war is to cease to disagree rationally, but to submit the question to a means of decision that is wholly a-rational, rather than only partly so. The state of submitting to an external judge retains some of that arbitrariness, but does so under conditions of peace. The external judge is therefore not a cognitive tribunal for sorting claims via some absolute political calculus, but is a means of backstopping inevitable conflict about political rights according to principles which must command the broadest agreement - without resort to war. It is, in fact, in the existence of an intersubjectively recognized external judge of public right that Kant locates the transition from the state of nature - the condition of purely private right - to public right.

So for Kant, the State has the function of providing the conditions under which private rights can exist determinatively and be negotiated in peace: that is, that we may have rights against other people and rights to things⁹⁹, such that I may take myself and what I take for my object as lawfully mine, consonant with the lawful freedom of other subjects. Public right, the structure of the laws, with their corresponding

⁹⁹ Ibid. p. 164.

institutions of coercion and legal judgment, is the sphere that contains and enables private right's political existence. A system of public right, properly administered, which supports lawful private right, is what Kant terms "a rightful condition," in which all are enabled to enjoy their rights consistent with the freedom of others. Public Right and Private Right thereby combine in this rightful condition to instantiate the Kantian Natural Right¹⁰⁰, only the mere form of which is known *a priori*. His account of natural right is distinctive, in that the existence of these natural rights do not precede the subject's movement into political association, either in a temporal or logical sense: rather, natural right **is a creation of** civic association, and the creation of natural right is thereby our interest in civic association. Where a more typical theorist of the social contract might define the state of nature as that state of war of all against all which persists because there is no civil body of sufficient strength to end the contention by enforcing the natural rights which are known a priori to exist, for Kant, the priority is the opposite: it is only by being absorbed into the polity subject to legal authority that one's natural rights become fully determinate and determining.¹⁰¹

¹⁰⁰ Kant divides Natural Right into Natural and Civil, rather than Natural and Social: the point is not a right that exists in the state of nature and a right proper to organized society, but rather the emphasize that Natural Right is fully defined by both its moments as private - natural right - and public - civil right. Natural private right exists outside of the rightful condition, but Natural Right as such does not - only one aspect, and that without the possibility of justice. See Kant, *Metaphysics of Morals*, p. 241.

¹⁰¹ Gregor. p. 69.

Public right lives, gets its body within, a particular state. In this sense, Ingeborg Maus was quite right to say that Kant's theory of politics was a theory of institutionalization rather than of institutions: what is discovered *a priori* to be natural right is rather the formal conditions for political "institutionalizing" rather than the finished form of those institutions: it is ultimately no contradiction to say that natural right is discovered *a priori* by practical reason in its political employment and that these rights come into existence and become determinate only in the "rightful condition." Kant's theory of the state is the theory of the coming-to-determinacy of natural right.

There is a further key point here: the coming-to-determinacy of natural right is also the instantiation of the individual's complete power of choice. For Kant, the power of choice is never defined as a power that decides for or against obedience to law. Rather, it is the determinacy of law that defines the capacity of choice, while the absence of law is incapacity¹⁰²; this is a familiar argument with respect to the inner, moral law; the moral law is the form that reason takes in its practical employment. Acting "contrary to law", could such be conceived, would be a sort of volition that took as its grounding principle the lack of any consistent maxim - but this is to behave unintelligibly, simply to lack anything that can be termed a purpose. This cannot be action as such. Rather, the subject's capacity for self-legislation is its capacity for free

¹⁰² Kant, *The Metaphysics of Morals*. p. 52.

choice. But Kant fascinatingly extends this line of reasoning to political right. Insofar as private right exists even in the state of nature, projects can be undertaken by the individual self, and the self can act - but the scope and nature of that power of choice are utterly transformed by the passage into political right, into the civic constitution. What is gained is not so much the Hobbsean 'security' in one's own projects, there being a greater power which overawes all and thereby preserves private property and the space of private action - what comes to exist is not just an enforceable but a determinate scope for individual activity. What one has in the state of nature is private right without privacy - not merely that the sphere of private right is permeable by other individuals forceful interventions, but that those interventions cannot be claimed as unjustified or even known to be interventions into what is one's own; the transition out of purely private right is thus the resolution, the coming-to-determinateness, of one's own capacity to define and pursue one's own projects.

Practical reason's interest in the transition to a civic constitution is an interest in having its rights as determinate; the transition is thus something the subject enjoins on itself and to which it cannot, *qua* rational, but consent. Practical reason, therefore, has an essential interest in the transition from the state of nature to the civic constitution: it is as much as in avoiding violence as making private right determinate beneath the formal dictate of the Universal Law of Right.

Kant even notes that there is no right of safety against coercion against those who do not acknowledge the sway of public right; one may, indeed, coerce by force those who otherwise will not enter into or cooperate with the civic constitution. But, again, that to which the individual has consented, or that within which the individual must recognize as living in a condition of always-already-having-consented, is less a perfected state than a project for the achievement of a state. Kant's original contract, then, is not a theory of the legitimate state, a norm against which any existing state can be compared and, in falling short, declared illegitimate, with the concomitant rightful withdrawal of consent by the governed. Insofar as a state exists, its legitimacy is not even a proper question; *a fortiori* the actual histories of particular states are not relevant. Kant, in fact, discourages us from the inquiry on anything but antiquarian grounds. Subjects find themselves in states whose positive laws bear greater or lesser degrees of resemblance to what the natural law would require. But it is only by already inhabiting such states - even absolute monarchies - that they are able to affirm the transition from private to public right in any specificity.

To take a more concrete example, when I wish to claim some object as my own, or to stake out some particular objective as my own, within the state of nature I have no recourse with which to enforce such a claim - nothing to make such a claim even so much as clear and determinate - except my own power to grasp and to hold; but, what is

important to note, I am advancing a maxim of action that cannot be purely private; what I want in order to name an object or project "mine" is to be able to nominate my control it even when I am not in direct possession. Thus "mineness" can only be conceived within a structure that gives it specificity apart from my mere grasp. Private right always demands to become public right. That is to say, my demand for "mineness" is not a claim advanced upon my own strength but a need for a law of possession, with an external judge of such cases to give my claim scope and definition. In this way matters of purely private right such as promises and gifts become such public matters as contracts and deeds; in this way the positive law becomes more consonant with the natural law, which in turn becomes concretized, from the merely formal postulate that I ought to be able to enjoy my own freedom consonant with the corresponding freedom of others (the Universal Law of Right) to such claims as that I, and others, have a legal right to property; I, and others, can enter into legally-enforceable contracts; and so on. This is the general form of right as such, and it forbids on purely analytic grounds the contingent, individual withdrawal of consent from the existing state.

Perhaps surprisingly, given this account, Kant's theory of the state contains a notion of countervailance, of countervailing right. In more traditional liberal political philosophy, the ideal of countervailance functions from the point of view of the individual: it is a way of securing a

space of negative rights of noninterference by co-ordinatively limiting the authority and scope of the branches of political power. From the point of view of political power, countervailence is an impediment to its smooth functioning. Just as Kant feels that the rights are not secured so much against the state but are extended and guaranteed by the state as a constitutive and necessary element of its own functioning, which is to say, as instantiator of law over violence, the sovereign power of the state is essentially divided into regions of correlative functional responsibility. These, in a sense, act as checks on the others, but in a more proper sense give the necessary, indeed only possible, form to those other regions of authority. Countervailence, for Kant, is another *a priori* feature of the Idea of the state, and is not justified consequentially or in terms of rights granted extrinsically to individuals in some pre-political way. Rather, countervailence is justified as an analytically necessary feature of the state's own ability to exercise its rightful authority in the first place.

Within the Idea of the State, Kant defines three authorities, which are necessarily "co-ordinated" with each other and which, in their coordination, are mutually necessary; each in its moment of proper function is hierarchically superior to the other two. The first is the sovereign authority, in the person of the legislator; the second is the executive authority, in the person of the ruler; and the third the judicial

authority, in the person of the judge¹⁰³. These three authorities require each other much, as Kant notes, as the categorical syllogism has three parts. There is a source for the general law, a means of deciding in cases what the law is in its particularity, and a means of instantiating those decisions by directive and enforcing those decisions through coercion.

Within the Idea of the state, the supreme legislative authority, the source of legal sovereignty does not derive from the person of the monarch, but from the will of the people; this is formally true, and describes a dictatorship as much as a republic. By definition, the original contract specifies that "[t]he legislative authority can belong only to the united will of the people"¹⁰⁴. Consent to the sovereign authority, therefore, is never a matter of a people binding itself to an external demand; the traditional liberal picture of the "original contract" is therefore both logically and temporally exactly backward. Now, rulership, the power of lawful coercion, is invested in the institutions of government which serve to instantiate the law; this may be either in accord with the general will of the people or not - rulership's being in accord with the wishes of the people is not what, for Kant, constitutes consent to be ruled. A despotism rather arises when the legislative and ruling functions are united in one: most properly speaking, though, a despotism arises only in a "direct" democracy, in which supreme

¹⁰³ Ibid. p. 125.

¹⁰⁴ Ibid.

legislative authority and the persons of the legislators are both analytically and spatiotemporally one. A monarch who both legislates and rules is a kind of illusion; even the tyrant is, theoretically considered, the agent of the people. His function is, according to Kant, actually to issue decrees, and so to bring into being a legal order through application of coercion to particular cases, in conformity with the law. When it is said that the monarchs' word is law, what ought to be said is that the monarchs' rule is irresistible decree, that does not attain to the formal status of law. Indeed, for Kant, what makes an absolute monarch absolute is not lawgiving power, but the ability to declare and prosecute wars against other sovereign powers, the activity of the state which is most essentially requires the issuing of orders apart from any legislative process or will.

To put the point another way, before the subject can become concerned about the form the laws take, it is necessary that there be an institutional context in which law, as externally binding force, can exist. But to will such a context is to will away what Kant terms "the lawless freedom" of the subject to act on the basis of its own notion of justice, which is of course just another way of describing the state of nature. Thus the subject is called upon to renounce the state of nature even as an ideal, and enter a state of civil constitution. Indeed, for the subject to arrogate to itself the right to act so as to make its own, private notion of public justice the actual, public one is to will itself back to the state of

nature, in which externally binding legal authority did not exist, and to do this in the name of its own private ideals and for the expansion of its power of choice; this is purely contradictory. At the moment of recognizing the law's failure to live up to one's own ethical intuitions is the moment at which one should recognize one is most bound to the law. Indeed, practical reason is forced to recognize the binding authority of each of the three elements of the state, the executive ruler, the legislative authority, and the judge; to assert as a matter of public right that one is permitted to renounce or oppose any of these three immediately involves a contradiction, or, perhaps more precisely put, involves the dissolution of recognized external authority and withdrawal into the state of nature. There cannot be public right on condition that there be more than one contending judge, more than one contending ruler, more than one contending legislator; but the existence of contention within the poles of authority, rather than coordination of the poles of authority, is another way of willing the state of nature, which it is our imperative, in the name of the determinacy of our own power of choice, to eschew.

Something odd will be noted when the maxims of private right have, so to speak, called public right into existence and begun the process of instantiating natural right into the form of what Kant calls "public justice." The process described here is, in a sense, toward a mere Idea - a normative ideal, which Kant refers to as *respublica noumenon* - but in no way is it necessary that the corresponding empirical fact, the

respublica phenomenon, be wholly in agreement with the Idea. That is to say, what one must work toward is a rational system of countervailence, what Kant calls "co-ordination" of the three authorities - the judicial authority, the sovereign legislative authority, and the coercive ruler. In actuality this coordination will be imperfect, will not obtain to one degree or another; where a clear, reciprocal hierarchy should exist (that is, the ruler should be irresistible, the judiciary irreversible, and the legislator irreproachable, all with respect to the others), in fact, one or more of these will be hierarchically subordinate as such, or in the wrong respect to one or more of the others; this condition is, for Kant, the definition of despotism. To emphasize, though, this is not a condition of the unrightful or illegitimate state against which the individual may rightfully withdraw consent; rather, it is an impediment to the state's own natural functioning and development as mandated by the principles of natural right.

A state can, of course, simply be excessively libertarian, in that its positive laws fail to 'line up' with the natural law on matters of relatively little moral import, so that the coercive power of the state is not bent to the dictates of natural law. An example would be a state in which contracts existed but were not enforced. Of course, from the internal ground of obligation, it would still be obligatory to keep promises; there would simply be no external ground of legal determination for this decision. From the point of view of the positive

law, obedience to the moral law would have a supererogatory character; there would, however, be no essential conflicts between such a slack state and the dictates of the moral law. But what of a state that was more essentially mutilated? What of totalitarianism? Consideration of such a limit case will help make clearer what Kant's commitment to coordinated state authority amounts to.

Totalitarianism as such not having arrived on the political horizon, Kant nowhere deals with the possibility; it may be that he simply felt that such a state would promptly collapse. We know now that, while unstable, such states can and do persist for far longer than is needed to do evil of a type and degree not seen before. The case I have in mind is that in which the basic transition from private to public right is overridden by the executive ruler, which arrogates to itself the power not of both legislation and decree - this is the condition of the monarch - but of both of legislation and of judgment. This is the situation in which law itself is "deformalized,"¹⁰⁵ to use Ingeborg Maus' phrase; the case I have in mind is that of Nazi Germany after the accession to power of the Nazi party. It is, as Maus cogently points out, not quite true to say that it was the basic insufficiency of the law which allowed Hitlerism to take the form that it did - that is, it is not quite true to say that Nazi rule functioned "within the letter of the law." The supreme moment of Nazi disregard for the state and the political order would not be, for Kant,

¹⁰⁵ As noted in Dick Howard, "Just Democracy," *Constellations* 2, no. 3 (1996). p. 335.

Hitler's arrogation of power to make law by emergency decree but rather his arrogation of power to apply it in cases; the analytically absurd basis of Nazi rule was therefore less the Enabling Act, which was justified by Article 48 of the Weimar constitution, but the constitutionally unjustifiable Reichstag Fire Decree, which dissolved civil rights, including the right of the citizenry to appeal to courts. The kangaroo People's Courts that he created were thus a hideous mockery of the very idea of law, as had been the Stalinist show trials of the "Trotskyite-Zinovievite" axis a decade earlier.

One criterion of a state in its more proper functioning is intelligibility to the citizenry: positive law ought to be seen to arise from, instantiate, and respond to the imperatives of natural law. But in the case of the wholly degenerate dictatorship, the limit condition is reached, and the opposite obtains: a set of private maxims, unreflected in the moral law, bearing no relation to natural right, and therefore the antithesis of public justice, take themselves to be limitless, protean; they are thus incomprehensible to the people as grounds of the ruler's actions and appear to arise from no principle at all. Insofar as the executive continues to exercise its function of coercion, this coercion comes to appear as purely arbitrary cruelty, rather than as punishment for law-breaking or negative incentive to obey the law, because, in this instance, there really is no law. Denied application to cases, law remains indeterminate; what is substituted is the pure whim of the ruler - and

this way the analyticity of the ruler's function as agent of the people is broken, for the people can have no interest in losing the specificity of the law, the achievement of which was the motivation and the content of the flight from the state of nature.

The closest Kant gets to systematizing such a state of affairs is in the lengthy footnote on the execution of Charles I and Louis XVI appearing in *The Metaphysics of Morals*¹⁰⁶. The executions aroused all Kant's moral disgust and condemnation. The executions of the person of the monarch, for Kant, strike so thoroughly at the very idea of a civil republic that they form a kind of moral singular, a kernel of inexplicable evil. A mere criminal, he points out, can be understood to act unfreely, from an impulse of sensibility, or from a deviation from the rational will, taking themselves as an exception from a law they otherwise recognize; what is nearly impossible to understand is what Kant calls a "formally evil" crime, in which the transgressor takes as their maxim the repudiation of law which their repudiation formally recognizes, as when Louis XVI was decapitated "in accordance with the law." This is so utterly contradictory that Kant seems to find it almost supernatural: "only what happens in accordance with the mechanism of nature is capable of being explained." The execution of a monarch is a "chasm that irretrievably swallows everything...[it] seems to be a crime from

¹⁰⁶ Kant, *The Metaphysics of Morals*. p. 131-132.

which the people cannot be absolved, for it is as if the state commits suicide."¹⁰⁷

This becomes an unexpungeable crime because the ground of authority of the state has swallowed up and consumed its own agent, the ruler, and, by declaring this an act of lawful punishment, makes its maxim its own self-cannibalization. The Nazi corrosion of law is strikingly similar in structure: the ruling executive swallowed up the legislative authority that can be vested only in the people, substituted its own power of coercive decree for lawgiving authority, and dissolved the very idea of judicial determinacy under the rubric of the ruler's merely private will. The result was a state, or pseudo-state, whose rule was that of self-mutilation and self-consumption, such that the sphere of public right contracted to nothing, the void being filled by arbitrary political terror and cruelty. Perhaps such a political formation ought not to be called a "state" or even a "pseudo-state," but only a mere "power," the term Kant reserves for states in their relations to citizens of other realms, to whom they owe no duties.

What of a right of resistance or revolution to such a degenerate political formation? If we may term rule by private decree in the absence of lawgiving authority and independent judicial judgment "totalitarian dictatorship," a situation in which the decrees themselves become free-floating instruments of pure terror, bent to mean anything that the

¹⁰⁷ Ibid.

originating will requires, it is clear that in that case the strict positive law has either ceased to exist or been collapsed into an identification with mere force. In either case, positive law and natural law become utterly disjoint even from the point of view of the Idea of the State, for the maxims of the ruling executive are not so much in a tension of contrariety with natural law - the ordinary condition of political life within any state, even a cruel and dictatorial one - but are, and blazon forth, complete contradiction to them. Such a ruling executive operates on a ground from which the natural law is not merely held at a distance but is actively regarded as absurd. Such a state may be one that practical reason is unable to recognize as such, as being a coherent, intelligible authority - and these are hallmarks of authority as such.

Recall that, in the Kantian state of nature, the lack of authority is not constituted as much by the lack of a ruling power as by the lack of an authoritative judge: a judge who is publicly acknowledged by others and whose rulings become by accretion the body of law that constitutes legal authority. Yet it is precisely the hallmark of the totalitarian style of rule by decree, by deformatization of law, which prevents this process from occurring: neither positive law, nor rulings of lawfully-constituted judges, nor precedent, means anything before the all-dissolving power of the "emergency decree." Indeed, totalitarianism tends to revise such out of existence in a backward-looking form of erasure: insofar as, for the sake of the formal appearance of legitimacy, totalitarisms

acknowledge non-executive state institutions at all, it is to assert that their existence has always already been in tune with the ruling executive power; where extant histories say otherwise, extant histories will be altered to suit. In short, the totalitarian system differs from the Kantian state of nature only in that the central executive is indefeasible, not in the sense that institutional capacities for public, lawful judging can exist; the former gets us only out of Hobbes' state of nature, not Kant's.

But it remains the interest of practical reason to transform purely private right into public right, which is to say, to enter that condition in which public rights can be brought into being, acknowledged, policed, and enjoyed. Recall that Kant notes that there is no right of safety against coercion against those who do not acknowledge the interest in the sway of public right; one may, indeed, coerce by force those who otherwise will not enter into the civic constitution. And when the individual who will not recognize the ethical imperative in moving into a civic constitution is the totalitarian dictator?

It is here that the space within the term "*recht*" yawns its widest, where the natural law and the positive law stand not just in tension but, in their very ideas, in absolute contradiction. The gap can only be sutured by the destruction of the power which takes as its maxim the abolition of law as such. Yet this is also to will the return to, or the continuation of, the state of nature. It is as if a natural calamity has collapsed the very idea of political order, leaving rationality no resource.

Interestingly, the reading I have sketched here of Kant's theory of the state has, upon detailed engagement with the text, the appearance of underdetermination. Kant argues that whatever the nature of the state, whatever the quality of the legal constitution, the only proper comportment of the people towards their ruler and the laws is obedience. But what is generally less recognized is that Kant's theory of right is intensely restrictive - not only does it place an intense burden of obedience on the citizen, it brings with it as a transcendental question that of what counts as a state or a law at all: rather than being a question as to what states are legitimate, the question is what forms of association are states. There is, in other words, in a theory that attempts quite consciously to destroy the difference between legitimate and illegitimate authority as such, an unacknowledged reinscription within itself of the deeper question of what is and is not a state, what is and is not political.

It is important, however, before plunging ahead, to qualify what I mean by this account of Kant. I do not hold, for example, that there is an esoteric dimension to his work, a radical, revolutionary dimension, that belies his outward position. Rather, I think that there is a necessary lacuna in Kant's work, an unstoppable valency between a liberal absolutism and a radical, revolutionary democracy, an incoherence, in other words, that is the price to be paid for his deeper and more fundamental insight about the nature of democracy as such. If this

insight can be prized out and the way in which it has created an instability in Kant's argument shown, I think we can place the theory of democracy on a better footing more generally, and understand some of the present lacunae in contemporary democratic theory.

To return to the question of revolution within Kant: revolution is "always unjust", at least as an idea; whether or not the noumenal rightful condition ever has empirical import, I have argued, cannot be settled, but for Kant, in any event, the condemnation was neither ambiguous nor deliberately underdetermined. We know this because he tells us so, in the case of the French Revolution. But he also said something else of the French Revolution which I have not yet addressed: that he loved it.

Kant counted himself an enthusiastic Jacobin, at some risk to his own career; Kant's biographer Manfred Kuehn shows Kant as continuing his ardent support for the Revolution far past 1793 - even as late as 1798. This was a therefore position he maintained at least until after the composition of *The Conflict of the Faculties* in 1797, long after what many writers call the "excesses" of the Terror were known to all. In *the Conflict of the Faculties*, the nearly-antinomical nature of Kant's understanding of revolution is at its height. Kant heaps contempt on both on monarchist reactionaries as well as "1789 without 1793" liberal Girondists. He regards the revolution with pleasure, even with glee; he

describes his relationship to it as one of "enthusiasm."¹⁰⁸ This is strange, for it was the moral interest of practical reason to enter into the civic constitution and to give up the right to judge issues of public right, and with it to lay down the capacity to use coercion to enforce those judgments, and it is precisely against this structure that revolution takes place; yet Kant says that approval of it from afar is something which "can have no other cause than a moral predisposition in the human race."¹⁰⁹

We might, for example, wonder whether Kant's apparently reactionary attitude toward revolutions in general but his apparent joy at the French Revolution is a kind of gesture against the censorship to which he was no doubt subject. Thomas Seebohm has investigated this issue and regards the hypothesis as untenable¹¹⁰ (Seebohm 66). It is precisely in what we might regard his most esoteric writings that Kant is most apparently reactionary, most condemning of revolutionary activity, and this from the greatest heights of his own critical project; we get hints that he might in fact think otherwise only in more putatively exoteric writings like the *Streit*. In fact, so well does his anti-revolutionary theory fit with the critical project and so poorly does his revolutionary enthusiasm that we would have to say that the "secret" revolutionary politics were fully post-critical! And if Kant was engaged in limning a

¹⁰⁸ Immanuel Kant, *The Conflict of the Faculties*, trans., Mary J. Gregor (Lincoln; London: Univ. of Nebraska Press, 1992). p. 155.

¹⁰⁹ *Ibid.* p. 153.

¹¹⁰ Thomas Seebohm, "Kant's Theory of Revolution," in *The Public Realm: Essays on Discursive Types in Political Philosophy*, ed. Reiner Schurmann(1989). p. 66.

secret, post-critical theory of justified revolution, why did he remain a Jacobin?

Seebohm's reading, which ties together Kant's anti-revolutionary theoretical stance and his pro-Jacobin fervor, holds that one occurs from the point of view of practical reason, while the other emanates from pragmatic anthropology. There is a difficulty with this, though, because the relation between practical anthropology and moral metaphysics is not one of an antimony of reason in which outright contradiction is held in abeyance, each term subordinated as a regulative Idea within the strict context of a need of reason, as, for example, the discussion of the antinomy of unconditioned free will vs. externally compelled *willkur* in the antinomies of the First Critique. Pragmatic anthropology is not simply an empirical discipline; it is a field upon which we project our highest moral interests.

Pragmatic anthropology, the study of the species and its history, ought not to be seen as a field other to, distinct from, the moral law, filled with objects over which the principles of practical reason have no sway. Indeed, it is in the progressive subsumption of humanity under the laws of practical reason that we find our rational hope: we have a practical interest in this idea. It would be backward, then, for Kant to

appreciate, as contributing to the progress of the species, an act which involved the withdrawal of individuals from the civil constitution which gives natural right its sway. Ethics is a transcendental matter, but there is in Kant no transcendent moral subjectivity which justifies from the point of view of progress what is otherwise wrong, or composed entirely of wrong actions. If such a consciousness was available to us, mere volition rather than unconditioned will would be our primary moral faculty: in other words, if progress were more than an Idea operating within a need of reason, but could be seen to be certain, the antinomies of ethical action would themselves disappear. But this is obviously not the case.

Of course, the primary difficulty with such a reading of Kant's understanding of the French Revolution is that it ignores Kant's own words. The French Revolution, according to Kant, was not properly a revolution at all; justifying it is not a matter of separation of principles from which one acts and from which one judges, whether those latter be those of pragmatic anthropology or otherwise. The French Revolution is justified because Louis XVI abdicated by calling the Estates General to deal with public expenditure and debt, which, by the nature of the Estates General's remit, meant that the Estates General took up positive legislative authority and the "monarch's sovereignty wholly disappeared (it was not merely suspended) and passed to the people..."¹¹¹. For the same reasons one cannot resist the sovereign, the Estates General,

¹¹¹ Kant, *The Conflict of the Faculties*. p. 149.

having seen sovereign power devolve into its hands, could not have been in the position of promising to return that power to the monarch once the crisis had abated; such a promise would entail a limitation of the sovereign authority of the Estates General to something outside itself, a promise which the Estates General could not therefore rationally give or be expected to keep. Of course, the Estates General could have re-invested sovereign power in the person of the king, but it could not be rightfully compelled to do so, even by its own declared intentions; once the Estates General had been called, the monarch ceased to reign.

It is interesting that within the extensive literature on Kant's view of revolution, this passage is seldom referred-to. Seebohm, for example, does not. It is as if nobody can quite believe what Kant says here - it is as if Kant is permitting himself a lazy escape into a mere legalism, quite out of keeping with the spirit of the revolutionary situation in France, if not its actual letter - that, while there may be something in what he says, it is a prison-house lawyer's stratagem, unworthy of the great man.

What this ignores, of course, is the protean yet restrictive sense Kant gives to *recht* - practical reason's interest is that there be a coherent structure of positive law, not that the structure of that law be any particular way. While we are surely enjoined from carrying out duties of positive law that are immoral from the point of view of the moral law within, there is no criteria otherwise which would allow us to sort just

and unjust laws; indeed, the inquiry itself is one that Kant regards as culpable. The question, again, is never the legitimacy of the legal order beyond the sheer question of the morality of any positive acts the law requires; "Obey the authority who has power over you" is, for Kant, a categorical imperative¹¹², while the inquiry into the legitimacy of that authority may itself be lawfully punished. In other words, there is no "spirit" of the law lurking behind the letter, or, to put the point more forcefully, the letter of the law is its spirit. In a fascinating footnote to "Perpetual Peace," Kant wonders at the possibility of "permissive laws"¹¹³ - that is, a law which allows a particular action, as opposed to a law which forbids or mandates. Ultimately, Kant recognizes that permissive laws - as adjuncts to prohibitive laws, in particular, giving specific exceptional cases where the forbidden act may be carried out - are part of the positive law, but of course are completely incompatible with the universal character of the moral law. With tongue in cheek, Kant regrets that a competition held to write legal contracts that were fully self-interpreting was ended without the prize having been won.

Seebohm's solution is to deploy Arendt's distinction between the point of view of the observer and the point of view of the participant, and to classify the revolution, from the point of view of the observer, as something akin to a natural disaster - the culpability of the actors is

¹¹² Kant, *The Metaphysics of Morals*. p. 176.

¹¹³ Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in *Kant's Political Writings*, ed. Hans Siegbert Reiss (Cambridge [Eng.: University Press, 1970). p. 97-98.

beside the point; the revolution ought to be seen simply as something that happened in the course of human history. When Seebohm says that the perspective which allows us to view a revolution as permissible, or at least to view the affects and projects of the revolutionaries as laudable, is one that regards the revolution itself as a natural disaster, he has it exactly backward. In a footnote to "On the Common Saying: That May Be True in Theory but it Does Not Apply in Practice" Kant discusses the result of political cataclysms, when the lawful political order is, by whatever agency, overthrown:

At this point, the state of anarchy supervenes, with all the terror it may bring with it. And the wrong which is thereby done is done by each faction of the people to the others as is clear from the case where the rebellious subjects ended up by trying to thrust upon each other a constitution which would have been far more oppressive than the one they abandoned. For they would have been devoured by ecclesiastics and aristocrats, instead of enjoying greater equality in the distribution of political burdens...¹¹⁴

Yet it is precisely this danger that the French revolutionaries avoided: rather than running for cover by advancing existing institutions like the aristocracy or the church to sovereign political power, the Estates General under the Jacobins took up the challenge of creating a democratic, egalitarian commonwealth. And it is precisely for this reason

¹¹⁴ Immanuel Kant, "On the Common Saying: That May Be True in Theory but It Does Not Apply in Practice," in *Kant's Political Writings*, ed. Hans Siegbert Reiss (Cambridge [Eng.: University Press, 1970). p. 83.

that Kant's Jacobin faith did not waver at the events of 1792 - for, again, there was no, could be no, pre-given set of protective natural rights protecting counter-revolutionary elements; the cruelty of the Terror was lawful, and even if both cruel and at times stupid was still animated by Robespierre's intensely principled desire to complete the revolutionary project - while he lived - and to expunge from French society the corrupt kernels which would oppose, either forthrightly or covertly, the instantiation of the new order. This is, in fact, the function of the state in general; it would have been inconsistent, in fact, from Kant's point of view, to favor the revolution and then shrink from the Terror. What he found hideous, contradictory of the very idea of public right, was not revolutionary terror but the trial and execution of the former King.

There is thus a sort of simultaneous warmth and coldness in Kant's view of the Revolution. He was prepared to look with equanimity on what to most observers was the excessive bloodiness of French revolutionary violence, provided it took place within the legal order; in a sense, the terror of the law is always, for Kant, the central character of the law. He was, by contrast, warmly pleased by the project the revolutionary violence advanced. Indeed, his enthusiasm took the form not just of abstract approval from a distance of the abstract nature of the revolutionary project - but even a kind of fantasized participation in the

act itself, a "wishful participation"¹¹⁵ or projection of himself into the revolutionary situation. Kant describes his enthusiasm as arising less from admiration or approval than a quite direct sympathetic connection with the revolutionaries. Sympathy¹¹⁶ is itself a rather puzzling word for Kant to use. His account of revolutionary enthusiasm based on sympathy does not match well with the more robust account of "sympathy" given in the Critique of Judgment: there, sympathy is merely one of the "languid" affects, not belonging to the noble or vigorous to which we can apply the label "aesthetically sublime," while sympathy "can at most be adjudged beautiful"¹¹⁷. The distinction is that the sublime affects aim at ideas which are themselves fit to direct our intellect with superiority over mere sensibility; the merely sympathetic is, instead, the triumph of the latter, a matter of sensible attunement, not aimed at intellectual attunement.

Kant clearly finds both kinds of attunement when considering the Revolution, indeed, it is in his affective attunement, and the affective attunement of other observers who share his reaction, that he finds shining forth the Idea which gives the contemplation of the revolution its positive ethical weight. That disinterested observers - observers outside France who have nothing at stake in the outcome - feel such partisan

¹¹⁵ Kant, *The Conflict of the Faculties*. p. 153.

¹¹⁶ Ibid.

¹¹⁷ Immanuel Kant, *Critique of Judgment*, trans., Werner S. Pluhar (Indianapolis, Ind.: Hackett Pub. Co., 1987). p. 137.

fervor for Jacobin principles is itself an important fact, for as Kant puts it, it directly indicates a feature of human nature: the common moral interest in political progress, and our ability to recognize that common feature of ourselves. The recognition of this common interest and the concomitant capacity is the origin of political hope.

The structure of this discovery of a moral interest and the coming-to-consciousness of this moral interest so closely maps the Analytic of the Sublime that it makes sense to offer a brief detour. For Kant, the beautiful is that which appears to us as purposive without determinate purpose - placing imagination and understanding in free play as they attempt to subsume an object within a teleological framework that the object, by its presence, resists¹¹⁸. In the judgment of the sublime, by contrast, imagination, in a necessarily fruitless attempt to encompass the whole of what is either huge or powerful beyond all determinate magnitude, is referred directly to the ideas of reason where "which idea...is left indeterminate."¹¹⁹ This is to be understood as a kind of violence against the subject, enacted from within. It is a basic law of reason that objects presented to the cognitive powers be understood in their totality; it is in this regard that we may say that we live in a "common world" with other subjects, rather than merely understanding objects as they present themselves to us as particulars. Now, the

¹¹⁸ Ibid. p. 61-62.

¹¹⁹ Ibid. p.113.

sublime, for Kant, is a moment in which nature discloses itself as absolutely huge and absolutely powerful; where imagination and understanding fail in the conceptualization of the sublime, imagination is ruptured directly by the attempt to take on board as a whole the whole of nature. Only reason has within it ideas that are absolutely huge or absolutely strong: that is, infinite, in the sense of unlimited; the only harmonization of cognitive powers possible in this relationship is a kind of analogy between the unrepresentability of the absolute whole of nature, which is anti-purposive for the imagination and even injurious to it, with the majesty of the Ideas of Reason: God, Freedom, Immortality. By invoking these ideas in a sensible context and not via a concept, the sublime in nature thus, by a presentation counter-purposive to the faculty of imagination, is nevertheless purposive for our own sense of our moral vocation. It is within what Kant calls the uncovering of the "supersensible substrate", that underlies both sublime nature and our own moral vocation, that we discover both within ourselves something unlimited, something counter to our own consciousness of finitude, and discover outwardly that there does exist a nature within, in which the notion of our unlimited vocation can have purchase. We find this purchase paradoxically, by rising above nature in our unlimited moral vocation, standing against its unrepresentable power and vastness¹²⁰.

¹²⁰ Ibid. 120-121.

In contemplation of the French Revolution the disinterested observer, too, discovers something about nature within - in their own affective attunement with the revolutionaries and their project, one discovers not just evidence of the moral law within, but discovers that it does, indeed, animate nature within - our passionate engagement with the world. What the revolutionary observer discovers is an unrepresentable connection between nature and reason, a common root as it were, and a ground, therefore, for hope - hope that can now be something more than a merely regulative Idea, but which discloses itself by a kind of empirical **clue**. What we feel in our sympathy for the revolutionaries is the falseness of what Kant called the terroristic conception of history¹²¹ - that historical progress is impossible, that we are doomed, that our own animal natures militate fundamentally and irresistibly against our rational selves, that our consciousness of ourselves as noumenal stands in complete contradiction to our phenomenal sense of ourselves as embodied beings, that we will always frustrate our own better hopes. What we are allowed, or empowered, to infer here is that providence, or nature, has given us a hint that the contradiction arises from the nature of our cognitive apparatus, but does not necessarily exist in nature; a thought that we cannot coherently explain to ourselves, but the validity of which we can sense in our reactions to a certain kind of event.

¹²¹ Kant, *The Conflict of the Faculties*.p. 145.

It is in this vein that Slavoj Žižek reads Kant's reaction to the French Revolution¹²². Žižek reads "the Real" of the Revolution as occurring, for Kant, precisely in the enthusiasm generated in the spectators; the quotidian reality of the Revolution, by contrast, was horrific and murderous. Žižek describes Kant's reaction to the Revolution - approvingly - as one of "fetishistic disavowal,"¹²³ in that the unrepresentable moral vocation for political progress which was shown through the initial opening of the Revolution. This seems to imply that what we might describe as the disinterested enthusiasm of the spectators was fulfilled regardless of the fate of the Revolution; that the Republican cause could have - as it did - collapse into political terror and eventually the reintroduction of the Imperial project in French history - without the joy of the onlooker being shaken. The hopeful aspect was in the initial opening, what Badiou would have called the authentic Event of the Revolution, prior to its absorption into ideology and terror.

Žižek regards Kant as having gotten the Revolution half right: in locating the moral significance of the Revolution in the way in which spectators react with enthusiasm, he properly, on moral grounds, enacts a disavowal of the moral disaster of the Terror - but, in reacting with horror and repulsion at the Terror, Žižek says, Kant does not follow through his own thought. The disavowal of the terror of the Revolution,

¹²² Žižek, p.15.

¹²³ Ibid.

which allows the vocation of the onlooker to shine through in its enthusiastic comportment, nevertheless should force the recognition that Terror is the ineliminable concomitant of the revolutionary moment - that, in other words, the failure of the Revolution was not the Terror but the failure of terror, or, better, that the revolution turned to mere terror, a mad acting-out of the inability to carry through the revolutionary project deeply enough (by overturning and re-organizing property relations, for example).

I regard this as a strategic over-reading which mutilates Kant's essential insight into the French revolution. Kant does not disavow the Terror - fetishistically or otherwise. He is able to assign it a place within the process of creation of a new commonwealth. Indeed, there is a sense in which the Terror itself was the sublime object of contemplation. To carry through revolutionary change, as Žižek is at pains to remind us, is violent. The revolutionary moment, as Kant reminded us, is irreducibly so. To tie together the populace into a new legal order, when the sovereign order previously existing has already been dissolved, or abrogated, is irremediably violent, for the loosening of the bonds of law foreshadows the reappearance of the state of nature and the attempt by individuals and bands of individuals - factions - to force each other to recognize the claims of private right. To reconstitute determinate legal right requires one of the factions to win - and this can involve all manner of bloody deeds. It is also partly for this reason that Kant enjoins inquiry

into the actual historical process whereby an extant legal authority was brought to power, for Kant knows full well that it will not have been a peaceful or moral process in itself, and that the realization of this cannot but erode respect for the law, which would then appear as the product of mere force rather than legitimate authority. Legitimacy, in other words, if it has any role for Kant, is as an historical precipitate, or a kind of overlying veil that time grants to all regimes, whatever their origins. And while Kant says that the consideration of private right within the state of nature requires that no one can be exempted from forceful coercion to enter into a legal order, it is still a practical requirement that the veil be drawn and that the ordinary duties of virtue be suspended within the coldness proper to the violent instantiation of law.

As Kant points out in his discussion of the "sublime misanthrope" in the *Critique of Judgment*¹²⁴, there is a misanthropy of benevolence, a benevolence that nevertheless veers away from liking - that is, from passionate attachment to any particular person. This is a benevolence that is weighed down by the contradiction between what people are and what they could be - it is a frustrated idealism rather than cynicism. Kant describes this misanthropy, or rather, the sadness of it, as sublime - for it "rests on ideas" about what is truly great in humanity, its moral vocation. But this is also, in an important sense, an account of the comportment of the hardened revolutionary, who withdraws from

¹²⁴ Kant, *Critique of Judgment*. p. 136-137.

attachment to the particular individual, is indeed constantly suspicious of the individual's secret inwardness, which may conceal counterrevolutionary deviations - but who, out of an overarching benevolence, is prepared, in the name of the universal principles of right, to act as pure reason demands - ruthlessly.

In summary, then, we can reconstruct Kant's theory of the state and its relation to civic culture as follows: within the pre-political space, the Kantian state of nature, "right" exists only in the form of private right; but private right requires for its coherent and complete manifestation an external lattice of laws and a judging authority, which between them determine where "mine" ends and "yours" begins without resort to violence - that is, in which the mere principle of possession can become control or ownership in publicly recognized way, beyond one's mere power to hold a thing. This step is inherent, not so much insofar as each individual wishes an irremediably strong external power to guarantee private property, as in conventional social-contract theory, but rather in practical reasons' recognition of the originary principle of all right: freedom itself, which when applied to the interest in private right cannot but entail the recognition of a reciprocal mutuality inherent in all such rights, which is itself the Universal Law of Right: act so that every action can coexist with everyone's freedom in accordance with a universal law. But this principle is not even presentable except under the rule of a fully reciprocal and equal coercion under the law, that is,

under a the condition of public justice, and that cannot exist without a state. Practical reason therefore has a direct interest in the passage from the state of lawless freedom to the state, because the state is the embodiment of that rightful, civil condition of public laws and authoritative judging which just is public justice's, indeed natural law's, determinate existence. Practical reason's interest in the civic condition is such that the dismantling of the actually existing state, and with it the mechanisms of law-making, authoritative judgment, and legal enforcement, is the return to the state of nature, which is an outright contradiction for practical reason's demand for, and recognition of, freedom; revolution is ruled out, no matter the nature of the state. Resistance to legal authority must entail a will to erect a counter-authority; even if done in the name of a putative freedom of conscience, this is still a contradiction to practical reason's interest in its own freedom's determinate existence within a condition of wholly reciprocal coercion. The state, for its part, has obligations of its own, though these are not claims against the state by the populace; rather, they are, again, the essential principles of its own determinate existence and continuation: the reciprocal co-ordination between the legislative authority, which is irreproachable; the executive authority, which is irresistible; and the judicial authority, which is irreversible. A breakdown in this coordination, or the absorption of these powers by one element of the triad, amounts to despotism - though despotism is not,

from the point of view of individual practical reason, illegitimate, merely awful and unstable. It is further the state's obligation to permit free speech and publication on any question for all who are not the state's representatives on that question; this is, in a sense, a duty the state owes itself, as it is, first, a principle of governmental stability, and, second, lends resource to the capacity for authoritative judgment that is in accord with the universal principle of public right.

The relation of civic culture to the state is therefore essentially one of separateness and dependence, not of monadic unity. Civic culture requires legal authorization even to exist, and while the authorization is clearly to the advantage of the state, it is no strike against the legitimacy of the state should it not extend such authorization. The duty of virtue that takes the form of reforming public speech is not one that holds firm in the absence of an authorized space of discourse: quite the contrary. From the point of view of the state, it is all to the good if it extends the maximum of public freedom of speech, but, while Kant thinks any state which does not is placing an unendurable burden on its people, and cannot therefore expect long to survive - whatever the moral status of a rebellion - it is not essential to the normative concept of the state that such a right be extended. The artist or public intellectual - anyone engaged in the public criticism of authority in any aspect - must first act from a principle of respect for the law as it exists; this trumps even the imperfect duty to speak out in ways designed to improve the polity. To

so speak is a duty of virtue - one that doesn't simply beg reforms of power, though Kant certainly thought that was its primary function, in his view of top-down political change. It also has the effect of constituting and perfecting the "systematic community" of public beneficence and rational hope. The price, as we have seen, is that the substantive concept of the state is almost without body, and that civic culture is, even if conceptually dependent on the state for its subsistence, separated from it by a chasm so deep that it is always, historically, threatening to peel away: as Kant notes in a footnote in *The Conflict of the Faculties*, even for the ruler to suggest the state of affairs that necessarily, rationally obtains – that civic culture lies both dependent upon and split away from the state, that the sovereign has indefeasible rights over the people -is to inflict an intolerable psychic wound upon civic culture itself, one that risks the provocation of revolution, of the eruption into the order of history of the Idea of the state in which the people are co-legislational. The state is in the paradoxical condition of being unable to enunciate what its very constitution as lawful authority shows to be true; in this sense, the formalization of law upon which Maus insists is paid for by a corresponding, constitutive muteness, and it is in this muteness that the ontological unfitnes of civic culture and rulership resounds. The radical democratic project of suturing them is doomed not just because it risks the creation of a political order with no interior limits to the abuse of power; it is doomed

because the removal of countervailing interior limits is the destruction of the conditions of the possibility of political order as such, including the possibility of a politics of the people's co-legislational authority, which is to say, democracy. Thus, Maus' Kant falls to the same *aporia* within the Schmittian political horizon: the inability of political actors to realize political action correlative to any grid other than that of the instinctual enmity of friend and foe: that is, of political actors to be self-conscious in the first instance: which is to say, for them to throw off their self-imposed tutelage. Thus, the half of "What is Enlightenment" that precisely does not receive its due in Maus' reading is the **first** half, the supposedly radically-democratic half: within the limitations of the radical democratic project as founded upon the Schmittian critique of liberal republicanism, it is exactly that principle of popular sovereignty that, for Maus, required the waiving of the right of revolution, that cannot come into determinate existence: rather, the "age of enlightenment" becomes an age of re-barbarization. And so, the last opening of the radical democratic critique is foreclosed, and becomes apparent that, rather than Schmitt exploding the Kantian liberal project from within, it is the Kantian understanding of the rational determinacy of right that has exploded Schmitt.

CHAPTER III

CIVIC CULTURE AND TASTE

It remains to answer the question as to what resources for civic culture, in all its separateness from (and dependence upon) the ruling authority, exist within Kant's theory of political right. It was Ingeborg Maus' contention that Kant provides less a theory of the perfected form of the state than of the conditions for the perpetual pursuit of the achievement of a rightful condition, and of the political institutions proper to it; in this I think she has Kant right. Where Maus errs is in asserting that the Kantian account of the structure of state power is a radically democratic one, in the sense that what Kant advocates is the progressive destruction of extra-political structures of countervailence and extrapolitical normativity. Rather, the situation in Kant is precisely the opposite: it is in the name of the progressive achievement of the conditions of the instantiation of determinate political right that Kant cannot permit the dissolution of structures of countervailence and normativity. And this is, in fact, preservative of the notion of democracy as such, for it is precisely in the dissolution of these structures that Kant sees not just the return into political life of mere violence and war, but of the loss of politics' very ability to resist them, indeed to distinguish itself from them at all.

To put the point differently, Kant was, in an important way, an anticipator of the dangers of Schmitt's radical decisionism. The challenge for liberalism advanced by Schmitt, recall, was that liberalism conceals an illegitimate distinction between inside and outside, between those deserving of recognition by the law and those not, while requiring universal respect for the law as a background condition. The consequence was that, by concealing its own inherent violence, liberal democracy was constitutively unable to recognize the ways in which its formal conditions necessarily disable the possibility of egalitarian inclusion, that its institutions, as enforcers of political norms themselves exterior to the reach of liberal discourse, foreclose the possibility of a more genuine form of democratic political engagement. But the error that Schmitt made, and the followers of Schmitt inherited, was to believe that the paradoxical nature of liberal democracy is inherent to its countervailing structure, but not to democracy itself, that it is the assertion of enunciated formal conditions for democratic life that are at fault, that democracy and normativity are contraries.

This is the characteristic error that Kant opposed. Kant's republicanism, therefore, is not an eliminable feature of his understanding of democracy, "institutionalization and not institutions" notwithstanding; the a-rational, organic, *Gemeinschaftlich* decisionism of Schmitt always looms when the formal conditions of democratic constitution are laid aside in the interests of democracy itself. The cost

is less political rationality, as in the Habermasian formulation, but peace - or, to put the point more forcefully, what is lost when the formal conditions of the civic constitution are set aside are politics as such.

Kant does, however, give a developed theory of the relation between democratic discourse and democratic institutions; it is not one that a radical democrat of the post-Schmittian type could rest with, but if radical democracy has turned out to be, as I hold, a doomed project, it is essential that this theory be explained in some detail and the peculiar but inescapable consequences seen for what they are. It is to Kant's theory of civic culture that I will turn next.

Kant describes our duty as political subjects to "strive after a constitution which ... conforms most fully to principles of [natural] right" as a "categorical imperative"¹²⁵. But given that political subjects are bound to the law, and given that natural right has no complete and determinate *a priori* architectonic, it turns out that what the subject must strive for is not merely the occurrence or bringing-about of such a constitution; it must strive for a process whereby that imperative can be heard and can become concrete. Full realization of the natural law in a civic constitution apart from the concrete political history that gives content to the forms of natural law is vapor; such a demand would be empty. Rather, what the subject is demanding at that moment is a

¹²⁵ Kant, *The Metaphysics of Morals*. p. 129.

political correlative, a space within which contending ideas of public right can find expression and can become proposals for specific change.

Kant provides such a sphere of political freedom, which he defines as "the freedom of the pen"¹²⁶ - that is, the sphere of free publication of ideas. Within the community of public intellectuals, it is contrary to natural law that a ruler limit the right to publish, except insofar as the intellectual is bound by some contingent, public role: from this role the publishing intellectual must take pains to dissociate their publications (when such might not be possible, as in the priest speaking from the pulpit, they must renounce the role of public intellectual and toe the line). The sphere of contending public intellectuals is as open-ended as it is free, and runs up against the limit only of sedition: that of making a demand against sovereign power to be carried through by the overthrow of the sovereign ruler. The public intellectual may recommend, however, what it pleases, just as it may lodge what complaint it sees fit.

Importantly, as Kant notes, the audience for the public intellectual is lawgiving authority, not the people as such: while in a democratic republic these are analytically conflated, they may be far from such practically. While overthrow of the lawful order is forbidden, a reform process is to be expected - from above - by the free acts of lawful

¹²⁶ Kant, "On the Common Saying: That May Be True in Theory but It Does Not Apply in Practice." p.85.

authorities; the appeal of the public intellectual is therefore to rationally engage the conscience of those in authority, to deliver rational arguments as to the disposition of the state and its future as a viable and just concern. Of course, in a democratic republic, "above" is also "below," in that the citizenry holds power over the legislative process: but it is not, and cannot be, a demand for the overthrow the constituted authorities through nonlegal means.

Respect for the extant legal order is by the intellectual, in fact, the basis upon which their recommendations of legal change are conceivable; the alternative is, again, to inject by fiat into the sphere of public right a purely private notion of political right, and this is to will not an improved legal order but a return to the state of nature, a moment of re-barbarization - the rejection of the external legal judge and the reintroduction to the political sphere of civil war as the only possible alternative. Even if after the existing legal order is to be swept away, a better one is to be put in its place, better even from the point of view of natural right, the willing of the destruction of the existing legal order creates an epistemic gap that cannot be rationally bridged: it is only within an actually existing legal framework that natural right is determinate in the first place, so that the destruction of the legal order removes not only the conditions for the inherence of natural right but the very determinateness of the idea. Insofar as the public intellectual has the task of making concrete practical reason's aspiration for a closer fit

between the Idea of the State and the actual state, between natural right and the positive law, this would be to sweep away not just the legal and political order, the respect for which is the intellectual's condition for being - but would remove the very context for the specificity of the intellectual's proposals in the first place. For the intellectual to assert the right of resistance, therefore, would be for the intellectual to will away the very rationale for public intellectual activity, as opposed to non-cognitive means which exist outside even the formal possibility of rational engagement, not in the sense of willing against its own Habermasian conditions of public discourse but in the sense of replacing any possible conditions of public discourse with pre-political violence. The alternative, in other words, is not a violation merely of the conditions of sense but of the conditions of public speech, of peace. Similarly, for the dictate of the ruler to repudiate free speech would be to erode the conditions of lawful judging within the republic, and thereby to erode the conditions for the coherence and application of the law itself; free speech is thereby not an extrinsic value for political authority but one of its conditions. But, again, on the same grounds that obviate the possibility of revolution, the intellectual has no justification for agitating against such a ban on speech, other than by speech - and would thereby have no basis on which to resist or avoid the application of lawful punishment against such speech, should it be banned. While this would be a violation of the sovereign's duty and an erosion of the state's essential

constitution, it would not, crucially, touch on the sovereign's legitimacy, which is not a category operative in Kant's politics.

It is already within the register of the public law that Kant makes his distinction between the public and the private sphere. In "What is Enlightenment," he, to later commentators, describes those employed in what we would now be inclined to call a "public role" - established priest, government spokesperson, etc - as being within the purely private sphere, and that those who speak purely on their own account - on their own home ground, as it were - as described as speaking "publicly." The distinction arises in this way because only the public speaker - the person who we would likely now say is speaking privately, only for herself - can be accounted-for purely on the basis of public right. The twinned duties of sovereign authority to permit a public space of discourse and the duty of individuals to speak on behalf of an improved constitution better embodying the principles of natural right, are matters for the construction of the rational political order, the relation in right between the state and its subjects taken as a whole. While the relation in which the person fitted within a "public role" is that of private right: the sphere of reciprocal rights and duties between particular agents. The priest of the established church, for example, is in the position of having contracted to fulfill that role, and the duty of doing so is the duty of promise-keeping - a private obligation of justice, one that ought to be covered by civil law, the law of contracts, but

nevertheless not in the form of a duty to sovereign power as such. The public intellectual, on the other hand, has contracted to no-one and in terms of her or his capacity to speak owes only the same general respect for the law that all other subjects do. In the event of a law suppressing such speech, such a law is contrary to the proper ends of the state, but still ought to be respected.

Is there, then, a higher duty to speak, even if the law forbids it? Such a duty would have to be a moral duty, one which would trump the duty of respect for what would therefore be a purely positive civil law. But it could not be a perfect duty, or a "duty of Right"¹²⁷, for perfect duties invariably take the form either of an outright proscription against a certain category of action (lying), or of some formal requirement that any action must obey if undertaken, which takes the form of a hypothetical (if speaking, tell the truth; if promising, keep the promise.) The duty must therefore be what Kant terms a duty of virtue or an imperfect duty, such as the duty to beneficence, or the duty of sympathy discussed in the *Tugendlehre*. The accounts for these duties are subtle, but at least it can be said that they enforce ends that require some positive actions for their realization, "according to the means" of the agent¹²⁸, which are needed to promote these ends as general conditions; they are not simply forms that actions must take, whether or not they

¹²⁷ Kant, *The Metaphysics of Morals*. p.194.

¹²⁸ Ibid. p.247.

are performed. Kant calls these "wide duties"¹²⁹ - not only is there considerable latitude in the choice of actions to undertake so as to promote the necessary ends, there is wide latitude over the domain of action itself, the targets of actions. The width of the domain of action varies with the content of the duty entailed by the end; a filial duty to family is lesser in extent than a duty of general beneficence - and Kant seems to suggest that the intensity of the obligation to act varies inversely with the width: the duty is more exacting in respect to a family than to humanity. Wide duties, though, can conflict, and it is not guaranteed that the intensity of the obligation indicated by the scope of the duty's domain will resolve the conflict in every case, or even that the resolution is perfectly analytic in any case. This seems to depend on the maxim contemplated: a better action on behalf of a wider constituency is more pressing than a less perfect action on behalf of a narrower one. And given that none of these qualities - intensity of obligation, scope of obligation, perfection of the act - produce anything like an architectonic of categories with which their exact hierarchy could be determined, we are left with only a judgment call to help us know what to do.

I use the term "judgment call" precisely - the matter is one for the power of judgment in its reflective capacity, examination of instances in which actions conforming to "wide duty" ought actually to be entered

¹²⁹ Ibid. p.194.

into - and, similarly, examinations of instances in which wide duties apparently conflict. According to Paul Guyer¹³⁰, the situation of reflective judgment is the presence to consciousness of a particular thing, or state of affairs, which resists conceptual subsumption through ordinary, "determinative" judgment. Reason is thereby thrown open, upon the mercy, as it were, of the cognitive powers in general: which, for Kant, means those powers, judgment and reason, which are other than inherently presentational. Because no determinate concept is given, the instance can only be met by judgment if it is guided by nonconstitutive but heuristic principles derived from Reason itself: the Ideas of Reason, which function regulatively rather than determinatively. Kant names a number of instances of reflective judging: the search for the causal laws of nature, aesthetic judgment in the cases of the beautiful and the sublime, and teleological judgment. Each is undertaken against the background of a "form of systematicity"¹³¹ which is assumed as a need of reason and applied to cases. In the case of the search for the order of nature, the assumed systematicity is of nature as a whole; in the teleological judgment of an organism, in the systematicity of the organism as a purposive unity; in the judgement of the beautiful object, of the assumed system of human judges to whom the subjective universality of the judgment of taste can be communicated, and so on.

¹³⁰ Paul Guyer, *Kant and the Claims of Taste* (Cambridge, Mass.: Harvard University Press, 1979).

¹³¹ *Ibid.* p. 19.

I wish to add two elements to Guyer's account: first, that judging when to engage in political speech, or any "wide duty" to others insofar as they constitute a political community, must have a similar structure; and that, unlike determinate judgments, reflective judgments about the application of wide duties must be accompanied by a clue, a material or sensuous guide, to their proper application. Additionally, I hope to get more out of this analysis than simply an account of when the public intellectual ought to speak out, regardless of the civic law (of course, there will be no cases in which it will be just to speak out and not expect the consequences limned in civil law to be justly applied). I hope to get a fuller account of what a political or civic "community" might be for Kant.

Susan Meld Shell¹³² remarks that there is in Kant a sense in which what might be called the systematicity of community is of fundamental, even transcendental, interest for him, an interest that underlies the First Critique as much as the Third. Shell argues that, from the discovery of the 'scandal of reason' in the First Critique onward, the transcendental effort has only partly been about dividing the presentational and cognitive powers into relative domains of influence and so to enact limits against the mind's falling into speculative *aporias*.

¹³² Susan Meld Shell, *The Embodiment of Reason : Kant on Spirit, Generation, and Community* (Chicago: University of Chicago Press, 1996). Chapter 6, *passim*

Rather, she argues, the deeper purpose of Kant's systematically divided account of mind is, paradoxically, to account for the seamlessness of experience, to collapse, once and for all, the philosophical basis for the great *aporetic* dualities: mind and world, self and others, to achieve a philosophical account of a wholly communal and worldly experience.

So long as one regards the objects of our knowledge as things in themselves, there is no way (other than moral) to understand how one thing can stand in necessary but nonlogical relation to another: no way, in other words, to explain the "fact" (as he puts it in the essay on negative quantities), 'that, because something is, something else is', or 'because something is, something else is canceled.' It is only when one understand objects as constituting a whole whose reciprocally binding principle is grounded in the mind that this problem of necessary connection...can be overcome.¹³³ (Shell, 134)

I would argue that this is, too, a description of the systematicity of a solidaristic political community, in which a fundamental advance for one is an advance for all, or in which an injury to one, is an injury to all? This is the transcendental principle, the Universal law of Right, appearing not as an atomistic, competitive individualism, merely as a system of noninterference, but as a positive principle of coexistence, of common life - a community of individuals reciprocally bound, or coordinated, as we might say, by mutual duties of common moral advancement. It should be clear that the political community, in

¹³³ Ibid. p. 134.

instantiating natural right, is not thereby merely giving body to determinate "spheres" of mutual avoidance; still less of mere partial interest. This is not the whole of what it means for the "rightful condition" to exist; it is also for each individual to be caught in a coherent space of mutual responsibility to one another, in which mutual demands can be intelligibly heard and met.

Regarding the *Tugendlehre*, Shell holds that Kant imagines a "community of sympathy," sympathy being the intersubjective form of the broad duty of love - that this community of sympathy is the basis for what might better be called a society of friends. For Kant, the origin of the mutual respectful sympathy that is friendship is not propinquity or tradition or anything like these, as it is on the standard communitarian account; it arises from the ideal of the systematicity of community united according to the virtuous dispositions of all its members, that is, those who act in the light of the broad duty to love. Friendship is therefore, if not a universal, at least a universalizing category which is animated by reason's overall requirement that judgment and action take place against a background of appropriate systematicity, according to which the action will appear to be coherent and meaningful.

To put the point another way, Kant's discovery is that what we might call a merely procedural criterion or heuristic by which the laws and institutions of the democratic polity may be constituted or judged is

really only the beginning of what is required of us in consideration of the *a priori* form of natural right. There is a necessary dimension of mutuality, of mutual friendship, as a positive dimension of mutual action, rather than the purely negative, non-interfering dimension of mutual respect.

Rawls¹³⁴, in this sense, does not go far enough in his reconstruction of Kantian political ethics: consideration of a putative political order from the veil of ignorance can instantiate only the purely procedural dimension of mutual respect and noninterference, and can judge the justice of political proposals only on that narrow base. This is not to say that the results of the consideration of political proposals from the perspective of the veil of ignorance produce what Kant would regard as erroneous results - it is hard to see how even the inclusion of the dimension of the politics of active friendship would thereby invalidate the results of consideration of politics from behind the veil; rather, the construction of politics from behind the veil is always radically incomplete. Critics of Rawls who object that the veil excludes the facticity of real identity-positions perhaps miss the point: there is no requirement, at least in Kant, that their exclusion from part of political rationality. Indeed, the contrary. Restriction of political judgment to the zone behind the veil means their exclusion from political rationality generally, even from a transcendental point of view. For example, in

¹³⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999).

one's particular encounters with other "thickly" constituted subjects, it would be a violation of the Kantian account of political rationality to ascribe one's duties toward them on purely formal, deracinated grounds: the question of one's positive duties of virtue towards them must certainly be based on, and could reasonably be based on nothing other than, the features of identities that can be made mutually intelligible - however this is achieved. One could reconstruct such a moment according to modes of interpretive charity, but that, of course, is an additional premise not laid down by the argument to this point. We need only aver that this is a moment that is mediated by, indeed enabled by, culture. Kant notes:

If we regard nature as a teleological system, then it is man's vocation to be the ultimate purpose of nature, but always subject to a condition: he must have the understanding and the will to give both nature and himself reference to a purpose that can be independent of nature, self-sufficient, and a final purpose. The final purpose, however, we must not seek within nature at all...Hence among all of his purposes in nature there remains only this, as that which nature can accommodate with a view to the final purpose outside of nature, and this may therefore be regarded as nature's ultimate purpose: It is a formal and subjective condition, namely, man's aptitude in general for setting himself purposes, and for using nature (independently of nature within man's determination of purposes) as a means in conformity with the maxims of his free purposes generally...Producing in a rational being an aptitude for purposes generally (hence leaving that being free) is culture. Hence only culture can be the ultimate purpose that we have cause to attribute to nature with respect to the human species...

But not just any culture is adequate for this ultimate purpose of nature. The culture of skill is indeed the foremost subjective condition for an aptitude to promote purposes generally; but it is not adequate (by itself)...This other condition could be called the culture of discipline. It is negative and consists in the liberation of the will from the despotism of desires, a despotism that rivets us to certain natural things and renders us unable to do our own selecting.¹³⁵

Culture, then, is a means to an end, the end of increasing the scope of human self-legislative, rational freedom, a project dictated by the moral law: the project of creating the formal but subjective conditions of being a moral subject. This thought allows us to put more flesh on the bones of the notion of a Kantian society of friends bound together by mutual duties of virtue. Henry Allison, in a forceful article¹³⁶ on the moral subject's capacity to set for itself unconditioned ends, provides a partial account of how this cultural project might work in Kantian terms. Moral action itself has no particular end other than duty itself. To search for moral ends and organize action around them is impermissible, a formal violation of the conditions of good will¹³⁷. If there are to be any moral ends at all, they must share the same ground as the ethical maxim: the very concept of duty, apart from any particular duty. Kant finds two such ends: the moral improvement of the self (self-perfection),

¹³⁵ Kant, *Critique of Judgment*. p. 431-432.

¹³⁶ Henry E. Allison, "On Kant's Doctrine of Obligatory Ends," in *Idealism and Freedom: Essays on Kant's Theoretical and Practical Philosophy*(Cambridge; New York: Cambridge University Press, 1996).

¹³⁷ Kant, *The Metaphysics of Morals*. p. 383.

and the removal of obstacles for the moral self-improvement of others. These exist as duties precisely because they are analytically connected to the subject's practical interest in the sway of the moral law: they aim at bringing about the condition whereby the moral law enjoys its greatest scope, and *eo ipso* the condition of the greatest scope of our rational freedom. Indeed, each of these duties is the same aim considered inwardly or outwardly: inwardly it is the suppression or removal of elements of the empirical self which militate against the carrying-out of moral duty; outwardly, it is the removal of hindrances that lie in the path of others doing this for themselves.

Several duties of virtue derive hierarchically from these two: to cultivate moral feeling, that is, to increase our susceptibility to be moved by duty; to cultivate conscience, that is, to become more attentive to our rational capacity morally to judge ourselves; to love, that is, to be benevolent to others just because they are fellow humans; to respect, both self and others, simply because, as human, they are free moral agents. Interestingly, these duties of virtue are not identical with being predisposed toward certain feelings; while Kant says that all humans have these feelings, needing only to cultivate them, the source and ground of duties of virtue is merely the concept of duty, and it would be simply absurd to demand of someone lacking in fellow-feeling to get it, for the 'conscience' here under consideration is not a disposition or

feeling so much as a mode of attention to the moral law within, to pure practical reason itself, which all human beings have *qua* rational¹³⁸

The duties of virtue pertaining to outer freedom - beneficence and respect, those deriving from the duty of virtue one has toward others' powers of moral self-improvement - have the peculiar structure of requiring one's self to treat the self as a means (though, of course, not a mere means). One attaches one's self to the moral interest of another person. This is not a case of the reach of private right, for it is not a case of contractual binding, but it is analogous - one takes the other's project of moral self-improvement as at least partly one's own.

The only route available whereby one acts out of a sense of binding one's self to the whole, to the community, as a case of moral virtue rather than private moral or public law, is within the sphere of public expression: **as the public intellectual or artist**. As direct action within the strictures of government is always constrained by the standards of private right (one's relation to the sovereign is as if one were in a private contract, an agreement to fulfill a role, or promise, the terms of which are not negotiable) and public justice (one may not act against the positive law, and, further, direct action against the government is enjoined by the nature of the subject's interest in legal order), the only domain open for the communal expression of moral virtue is through speaking and publishing, and through expressive activity generally. This

¹³⁸ Ibid. pp. 201-204.

is the content and function of Kant's civic culture, and it is the only path through which his claim that there is a duty for all to strive for the realization of a more perfect civic constitution can be realized. In this sense, one's cultural activity is public just insofar as it is bound not to none but to all: to undertake to carry out duties of virtue in the name of the entire polity; what is public about this is less that one acts free from any external constraint but that in speaking on one's own part one speaks in the part of all: that one's expressive activity arises from the consciousness of the identity of the possibility of one's own power to set projects for one's self and the similar power of all, the mutual coordination of which under a civic constitution just is the determinacy and scope of our power to act.

I think it is from this point of view that one can best approach a strange and puzzling remark of Kant's in the 59th section of the *Critique of Judgment* - that the beautiful is the "symbol" of the morally good¹³⁹. The section is famously difficult to interpret. Kant intends what he calls "the indirect exhibition of a concept." A concept, if not simply "characterized" in language, can be exhibited via a sensuous form, which Kant calls "symbolic hypotyposis". Symbolic presentations are, if not absolutely ruled out in other cases, at least only fundamentally interesting where the concept to be symbolized is one that does not admit of direct sensuous representation. That is, there is no object in the world,

¹³⁹ Kant, *Critique of Judgment*. pp. 225-230.

via the mediation of a schema, that can be subsumed under the concept. The example Kant gives is the principle of the absolute monarchy, which is a set of social facts and a rule for the organization of objects of experience, not an object of experience itself. In the case of such a concept, the presentational powers on their own account are stumped, and judgment must perform a double function - it must find an alternative presentation and attach it, as it were, to the unschematizable concept by an "analogical" relation. But given that the concept is not merely one that happens not to occur as an object of experience but is formally of a nature to rule out such a relation entirely, the analogical relation does not occur between the new object of experience and the concept, or between the concept and the new object's schema; this an error commonly made in the secondary literature. The resemblance is cognitive only, and occurs in the synthesis or connection of the two concepts by a "mere rule" of association - that is, by their points of discursive identity, they are compared directly.

But this seems at once to raise an insuperable objection to the claim that Kant makes, which is that the beautiful is the symbol of the morally good. Why? The beautiful lacks any determinate concept. How can this be? A complete account of Kant's theory of taste is beyond the scope of this chapter. But briefly, a judgment of taste is a very special kind of judgment.

Kant's most sustained account of judgments of taste comes in the first division of the Third Critique. Confronted by a object as a candidate for aesthetic judgment, we may feel in ourselves a liking for it, a pleasure, but it is a mysterious sort of pleasure. In general, for Kant, a pleasure is "...the agreement of an object or of an action with the subjective conditions of life"¹⁴⁰; it is something that satisfies a need or fulfills a determinate human capacity. The pleasure in a judgment of taste is not so determinate: it is a liking that has a peculiar subjective form, a liking that involves us in the communication of our reasons, if such they are, with others, and that makes us desirous of their assent to our judgment: it is held in a universal voice. Yet when we wish to say what it is about the object that has dictated such a judgment and given such pleasure, we are at least partly at a loss. The very desire for communication of the judgment, not merely appreciation of the pleasure, implies that we find it more than merely agreeable but, in some sense, good - neither morally good nor good for any particular purpose, but still, somehow, good - and that others ought to think the same, despite the object's unfitness for our particular purposes and needs. Indeed, the object is one we have no special interest in; we have no use for it, see in it no moral or improving function. On what could such a liking be based?

¹⁴⁰ Immanuel Kant, *Critique of Practical Reason*, trans., Mary J. Gregor, Cambridge Texts in the History of Philosophy (New York: Cambridge University Press, 1997). p. 140; Mary Gregor's note.

For Kant, the clue is in the very propensity to communicate judgments of taste. If the pleasure indicates in some manner the fitness of the object for us, but not for any of our particular aims or interests, the nature of a pleasure that demands communication hints in what that fitness consists: a fitness for our cognitive faculties in general. The moment of aesthetic pleasure is thus a kind of productive cognitive failure: the object fits our "conditions of life" but not in any particular way. The understanding, the "power of rules", part of our presentational ability, simply has no resources to deal with the object; it cannot subsume it under concepts or in any other way discover a determinate rule for it; yet it is the demand of reason, the "power of principles," that cognitive unity must be served and that the object must be made the occasion of systematic thought. It is therefore judgment's function, as mediator between the understanding and reason, to discover a "mere rule of association", a rule not of attaching the presentation to particular concepts but of attaching it to conceptuality. To do this is to discover, under the unifying, systematizing dictates of Reason, which contain the laws of the power of desire, a unity without unification, a formal fitness for cognizability without a determinate cognition, an artefactuality that gives away nothing about, not even the possibility, of the artificer, a purposiveness, in short, without a purpose. If pleasure comes from the discovery - the successful search for - objects that satisfy the conditions

of our life, the discovery made in the case of the beautiful object is the unconditioned within.

Given that the beautiful is that which lacks a determinate concept, how can the beautiful be the symbol of anything? There is no concept of beauty according to which any discursive analogy can be constructed, so no analogy can be made. This, however, would be to go too far: Kant does not say that there is no connection between beauty and the cognitive powers at all, merely that the judgment is reflective rather than determinative. To nominate something as "beautiful" at all is, of course, to judge, but it is a judgment of a peculiar kind, a reflective judgment of taste. Kant seems clear that reflective judgment of taste is a kind of procedure of failure: an object appears which, at least in the respect relevant to taste, finds no concept; but something must still be done with it. The intuition is thereby referred to the cognitive powers in general, which are set into "free play," that is, they are not bound by determined conceptual rules of association. But it is vital to note that this process is still essentially a cognitive one; the process of free play is precisely that of finding a lot to say about an object of experience's fitness for a judgment of taste in the absence of conceptual determinacy.

The judgment of taste involves a liking, but the liking is not the basis of the judgment - just the reverse. It is in the moment of open-ended communicative excess which is a kind of obverse of the failed moment of judgmental determinacy that both funds the content of the

judgment of taste and produces the pleasure of the experience. But what exactly is felt here? The very universality of the cognitive faculties in their communicative universality: or, since Kant calls this pleasure the link between judgment and Reason, Reason finds in a sensuous appearance the manifestation of the "systematic community", to use Schell's phrase, which is not merely an audience for communication **but is a condition of communication.** The "universality" in the judgment of taste is not just a moment of normativity, insistence upon the other's agreement which is founded upon the judgment's communicability; it is the discovery of a certain kind of communicability, or a communication with a particular structure. Applied to the world, these principles aim at the discovery of the purposive unity of nature, a feature which will be discovered to function as a need of reason and not as a theoretical dogma; of course, in their practical employment, these principles just are the principles of the moral law itself.

The beautiful is the symbol of the morally good, then, only in a kind of indirect sense, or rather, a redirection of an indirectness: the beautiful object of experience serves as the occasion for the judgment of taste by showing a kind of unity: not a formal unity in its empirical presentation, but a "mere" form, a purposiveness without purpose, something like "bare artefactuality." The purpose is not merely lacking but is constitutively absent - it is as if the purpose is such that it can be known only to an intellect fundamentally different from our own, a mind

that apprehends the *noumenal* directly, that is, apprehends *noumena*, rather than merely thinking them, via a power of non-sensible intuition - it experiences directly that which for us is merely the theoretical "something in general", the "x", which, considered as an "in itself" must be the "supersensible nature".¹⁴¹ But in the case of practical reason, this can be none other than what Kant describes as "the highest good" in the dialectic of practical reason: the fit combination of virtue and happiness, the supersensible moral order. One of the thrusts of the *Critique of Judgment* is to unify these two supersensible grounds: there must after all be a basis uniting the supersensible that underlies nature and the supersensible that the concept of freedom contains practically.

Kant says this with good reason: the combination of supersensibles directly in the theoretical and practical registers produces antinomy. Kant is clear that the combination, at least in the form of cause and effect, is impossible, and in either direction: happiness, partial interest, cannot be the cause of the maxims of virtue, whose determining ground is none other than the unconditioned free will; and moral virtue cannot be the ground of happiness, for happiness is a matter either of luck or of the prudential manipulation of cause and effect - which has no connection with the good will at all. The antinomy is solved only in the posited supersensible order, which functions as a need of reason. The

¹⁴¹ Immanuel Kant, *Critique of Pure Reason*, trans., Norman Kemp Smith (New York: St. Martin's Press, 1965). p. 268.

supersensible order comprises a collection of concepts necessary to the functioning of morality as such: transcendental freedom, god, immortality - but it also provides a sort of transcendently utopian thought: that in the supersensible order, we can have the happiness we deserve, that there will be a consonance between moral virtue and the order of cause and effect. What we find in the judgment of taste, I hold, is not merely, within the communicability of the judgment of taste, a felt unity of cognitive powers with other judges - it is also **a felt possibility of a moral kingdom**, discovered in the symbolic relation between beauty and the supersensible - a relation which, Kant notes, we are to discover and communicate "as a duty."

Of course, the movement toward the Kingdom of Ends - not just as an Ideal but as an ideal for human life - is one in which Kant says we must hold rational hope. Just as the supersensible moral order is a need of reason for morality, something like historical progress is a need of reason for politics: the alternative is the terroristic conception, in that it would intend to establish that human political achievement - justice - is as fleeting as all other phenomena apparently are, and that there can be no expectation that political achievement is durable. At least in general and in the longest possible run, progress must be real. To believe otherwise is to crush the motivation for, even the coherence of, action: the power of desire, the source of empirical motivation and satisfaction, requires that the arena of its activity be such that the representation it

wishes to actualize be actualizable there, and not an impossibility. To imagine justice is necessarily to imagine the achievement of a kind of political order that is both good and enduring - its appearing and passing away in a moment is of no help.

Hannah Arendt, who imagines that all political achievement is tenuous and what endures is only symbolization, is therefore politically terrorist on Kant's account. We must, in the very structure of our actions, assert the possibility of durable progress. But that is not to say that we can have direct knowledge that history is "whiggish" in the required sense; in a way, this is beyond even the lessons of history, in precisely the same way that the laws of causality are not established in mere empirical regularity. But, amazingly, this is not all we get - in the symbolization of the supersensible order by beauty we find a kind of hint that both the order of nature and the order of human making are such that the prospect of improving both our species' happiness and its worthiness to happiness is possible. There is a way in which this discovery is supererogatory; to act is already to apply this principle practically; but now in an additional moment reflective judgment finds a means of tasting that possibility. As Kant notes:

The concept of freedom is to actualize in the world of sense the purpose enjoined by its laws. Hence it must be possible to think of nature as being such that the lawfulness in its form will harmonize with at least the possibility of [achieving]

the purposes that we are to achieve in nature according to laws of freedom.¹⁴²

I have taken this lengthy detour into the symbolization of the morally good to show the deep role of Kant's notion of civic culture within his overall political project, which is in turn embedded in a theory of moral history. The robust autonomy of culture is not just necessary to drive the progressive reconciliation of the *respublica noumenon* with the actually existing state; it is the cradle of all our rational hopes *qua* moral beings, and as the site of humanity's expressive powers, it is the means by which we show to ourselves the material possibility of these hopes. Further, insofar as civic culture remains the sphere of acting-for-one's-self, it is the sphere of what we might term not our moral vocation but **our vocation of virtue**: the taking on of the other's moral perfection as a project of my own. This notion of community, in which each is bound to each not just out of material need but out of our own sense of our moral perfectability, thrives only when civic culture has the dimension of separateness from rulership that Kant asserts that it must.

It is perhaps at this point that a substantial mistake or misreading obtrudes, one which, I think, leads to the account of the Kantian political philosophy that is advanced by Hannah Arendt in her

¹⁴² Kant, *Critique of Judgment*. p. 15.

famed *Lectures on Kant's Political Philosophy*¹⁴³ and, more restrictedly, as an appendix to volume two of *The Life of the Mind*¹⁴⁴. Arendt devises her account of Kant in large measure by a reconstruction of Kant's theory of civic culture, rather than according to his theories of civil right. One must begin by wondering why Arendt began with Kant - why she attempted to devise a Kantian political philosophy on the basis of *The Critique of Judgment*, rather than on the explicitly political works, why, indeed, she says that Kant's political philosophy is "literally nonexistent"¹⁴⁵. Why, for example, does the *Rechtslehre* not rate as a political philosophy? True, she did not think much of it -

As far as The Doctrine of Right is concerned...if you read it, you will probably find [it] rather boring and pedantic - it is difficult not to agree with Schopenhauer, who said about it : "It is as if it were not the work of this great man, but the product of an ordinary common man."¹⁴⁶

But more than this, Arendt is operating with a peculiar, even idiosyncratic, notion of the political, one that is explicitly non-Kantian. Her attempt, in the latterly-published \emph[Lectures on Kant's Political Philosophy], is a kind of transplant operation - to take from Kant notions of deliberation and judgment more congenial to her project, while leaving

¹⁴³ Hannah Arendt, *Lectures on Kant's Political Philosophy* (Chicago: University of Chicago Press, 1982).

¹⁴⁴ Hannah Arendt, *The Life of the Mind* (New York: Harcourt Brace Jovanovich, 1977).

¹⁴⁵ Arendt, *Lectures on Kant's Political Philosophy*. p. 19.

¹⁴⁶ Ibid. pp.7-8

behind Kant's political moralism and his emphasis on obedience to heteronomous authority.

Arendt is one of the leading theorists of the return to the democratic *agon*, a project she shares with the radical democrats. For her, the political sphere is to be a sphere of radically free action, unconditioned by the demands of other spheres of life, self-sufficient, valuable in itself, the sphere of human freedom *par excellence*. The purity of this concept imposes some heavy demands on what politics can be. The primary distinction is against the social, which is her collective term for the activities of human life which are purposive but unfree, performed under the rule of necessity, needed for continued individual and collective life.

The model institution of society is the household, concerned with the getting the necessities of life and making the artifacts and contrivances essential in making life both sustainable and comfortable. The active categories of the social are labor and work: labor she regards as the continually repetitive metabolism of nature into the raw material for human life; work is the transformation of that raw material by skill into tools and other artifacts, the second nature in which we live. While an artifact produced by work may be novel, the art of its creation is the disciplined skill of a vast number of repeated techniques; work shares with labor the sense of the grinding, endless, endlessly repetitive struggle to alter the given according to rules that can only partly be our own:

much of work and labor are determined by the obdurateness of nature and matter themselves.

Arendt's diagnosis of modernity is of the hypertrophy of the social over and against the political, which has withered. Thus, the state and the public sphere appear to us now as attenuated, as agents of social administration in the face of which we are relatively powerless; vast institutions which take as their rule the dissolution of the individual and the individual's identity in a utilitarian calculus of human prosperity. The whole of the *polis* is administered as a vast household. This is a position she shared with Ingeborg Maus, who noted that it was precisely because of this hypertrophy of the social that we are now almost unable to cognize Kant's political theory, which thereby appears to us as an absolutism, a quasi-Hobbesian account of complete abasement before power, rather than, as she thought Kant actually envisioned it: as an ideal of the unity of authority and deliberation within a functional institutional framework dedicated the endless reconstruction of political relations so as continually to expand inclusion.

Arendt is not so sanguine about the possibility of an account of deliberative democracy arising from Kant; it is precisely, she says, in his political moralism, his notion that one ought to treat others always as ends and not means only that is the perfect expression of an

"anthropocentric utilitarianism"¹⁴⁷ - one that separates the world, political and otherwise, into means and ends, right from the beginning, and which can only protect humanity from becoming a mere cog in an integral, administrative state apparatus by advancing the "paradoxical" formulation "end-in-itself."¹⁴⁸ Kant's moralism, and his injection of that moralism into politics, is the degradation of political life into political craft, into a sphere of means-ends rationality with no independence on its own account or any independent worth. The human community becomes an immense "metabolic" engine for the transformation of nature into the implements of prosperity, with no remainder.

Action is distinct in that it intends the bringing-about of novel events by novel means; the background here is not the senseless repetition of the natural world but the continual flux of human history. But to perform an action which appears as new, as a spontaneous intrusion into the historical timeline, and which, by showing a new possibility of action, thereby alters the past that is to come (if we may speak this way), this is to define an action's meaning and import as foremost a function of its appearance, its reception in the minds of its spectators. Insofar as this reception is an historical process, the operative category is historical memory. Action, therefore, is the bringing-about of a novel event, one which will have deep meaning within

¹⁴⁷ Arendt, *The Life of the Mind*. p. 155.

¹⁴⁸ *Ibid.* p. 156.

historical memory. Action is what alters by retrospection our own *arche*, by opening up transformative possibilities within our own sphere of political action, whose effects will redound on our heirs in turn. Politics is thus a sort of historical theater; the meaning of actions is the disclosure of new meanings; the audience, history.

It is significant to note that where Arendt extols "actions" she is generally thinking of war and revolution, but war and revolution considered as guiding symbols. Indeed, within the sphere of action, speech is "coeval and coequal," great deeds do not come without great words, but the priority here is not to view speech as a kind of action, an intervention in political life to be gauged according to its effects, but rather the reverse: both words and actions are agents of disclosure in the same manner. The actual transformations brought about by wars, revolutions, and other great deeds, after all, are merely transitory, indeed quite brittle; what lasts are meanings, examples, stories about what can be done. Actions, therefore, insofar as they are taken up by history, are activities of persuasion, appeals to the mind: one is not "persuaded" by the sword but rather what the sword can be seen to have meant, by the honor or dishonor accruing over time to the example. The model persuader, interestingly, is neither the philosopher nor the politician, but the mythic warrior: the great words and great deeds of Achilles. The form of the state and the legal order are, in an important sense, "prepolitical" (Arendt 27) - they are part of the mere background which

gives form to the scene containing deeds and words, which are themselves the vital content of politics. Even the effects of words and deeds are relevant for what is truly political only insofar as they add meaning to the normative. Politics may be a struggle, full of violence and violent words, but it gains its properly political sense only at a distance, in the spectators who absorb them as a narrative and interpret its lessons. Political action, therefore, is not a relation of agent and patient, but of agent and spectator.

Spectation, though, is a kind of activity of its own, a sort of gap of open space between past and future action. Arendt shares with the radical democrats the notion of an open space of political deliberation, one that must take its own norms of application as internal to the process of deliberation itself; in her case, the subject of the deliberation, of course, is the field of great deeds offered by history. What one is to make of them, how they are to guide one's own capacity of doing deeds, of making symbols for the delectation of future history, is a matter of one's consideration of the historical examples in view.

Of course, even if Arendt's argument that Kant's moralism paradoxically renders the political into an appendage of instrumental culture is thin, surely she is right to say that for Kant politics and civic life are nothing like spheres of absolute unconditioned free activity - insofar as politics is not the world of the morally unconditioned, it could never be. To return for a moment to the apparent contradiction in Kant's

politics: the paradox between the twin moral interests in increasing freedom and in complete obedience to the state. This paradox exists within what Kant described as the private sphere. There has been much puzzlement in the literature about why Kant chose to describe as "private" those communal political roles that we would describe now as quintessentially public - for example, we speak of politicians and leaders of important institutions such as the church as being "public figures." But for Kant people in such positions are rightfully constrained by their positions, which are as contracted to sovereign authority: the rightfulness of this constraint arises from the same grounds as the right to property, and while one could not say that public functionaries are "owned" by the state or institution for which they speak, their activity is representative of the state or institution in such a way that the state or institution has an indefeasible contractual claim on the individual, precisely on the grounds of universal respect for law. To imagine that a person acts in such a capacity has civil rights against their contractual constraint is therefore a category error; they are held in a situation of private control. Rather, the civil right of free speech and publication, even if granted generally, holds only for those who speak entirely on their own account, outside of any particular role, from, as it were, their home ground. Should one be able clearly to separate the performance of one's public (private) duties from one's private (public) self, well and good, one may speak; but if not, one is absolutely compelled to remain silent on

one's own account and say only what is mandated, even if one does not believe it. On a principle of basic fallibilism, Kant holds that most of the time we will be able to say what is asked of us by our roles, as we are often unsure of the truth in those situations, but where our conscience is ineluctably violated we must resign the role, or remain silent and be punished, rather than violate our pure duty to truth-telling.

Kant's notion of politics is therefore not just attenuated, for Arendt, it is absolutely antithetical to her account of politics - which makes her recourse to his *Critique of Judgment* as a political text more surprising still. But in a sense this is the only place in Kant she could have gone, for it is the only one that offers a sphere of pure cognitive freedom, and if no theory of political action in Arendt's sense is to be forthcoming in Kant, at least a notion of free deliberation may be, and for Arendt it occurs precisely in Kant's theory of judgments of taste.

For Arendt, again, the objects that satisfy in this case are the deeds of history taken as symbols, symbols which, as objects of spectation of political actors, become guides to what has been done and what can be done; in this sense they are the matter of political deliberation upon which decisions to act are taken and against which new actions are judged, as to their power, honor, and, importantly, their novelty: the scene of history, of historical exemplars, both defines the scope of human action by communicating what has been previously shown to be the force and extent of the human capacity to act: it also

brings forward the possibility, indeed the necessity, of that limit's transgression by the imperative, or the burden, to act with honor when one's actions are judged according to the exemplars of history. Against that background, within the gap between actions that have been and actions yet to be, there is a space of deliberation about politics, an open, nonterminating dialogue about the political good: this is the task of philosophy as it stands, in the memorable image Arendt appropriated from Kafka, between past and future.

What we might call the sphere of disclosure - what Arendt calls the public realm - therefore engulfs politics, becomes what politics most essentially is. This is the discovery we make in our "investigation of political things," as Strauss described the pursuit of political philosophy: it seems that what is most properly human, what makes us the *zoon politikon*, is that we enact symbolic disclosure for audiences, the most important of which is history itself, our memory for actions worthy of being imperishable. It is this dimension that, for Arendt, Kant specifically neglected and which relegated his account, at best, to the pre-political. But it is important to notice what price has been paid: the philosophical re-enfranchisement of war as the central political category of action, and violence as the model form of civic discourse. Schmitt and Arendt on this point have a great deal in common.

This was a notion of which Kant was more than simply wary. Rather than seeing war as the highest achievement of culture, war was,

for Kant, precisely the absence of culture, and more, the absence of reason. The figure of the powerful individual rising up to create, by force, new senses of reality, was simply for him the "lawless freedom" of the individual acting by "private right" but not yet subject to heteronomous political order; but it is inherent in private right considered rationally to seek to move into a rightful condition, in which questions of right can be submitted to external, coherent judgment. The contrary case, one unable or unwilling to recognize the rational requirement for respect for law and lawful institutions, is a kind of surd spot on rationality, the inability or unwillingness to think consistently about ethics, or about action as such. But this is precisely for Kant a demonic figure: Arendt's political philosophy, which finds in Kant the lack of anything human, has instead elevated the essentially evil to the status of the properly human.

This should help to clarify what is at stake in the issue with which I left the second chapter: the nature of civic culture and its relation to politics. In the Arendtian vein, what matters in politics is symbolic disclosure, the production of meanings. This process gets the name "action" and is the *sine qua non* of the public realm. Even violence, particularly war, is thereby assimilated to political speech. War becomes a kind of epitome of culture. And this was a tendency we saw strikingly in Schmitt and the radical democrats that explicitly descend from him: the valorization of symbolic disclosure as the essence of

political experience, the elevation of war as the proper form of cultural life. A less Kantian thought is difficult to conceive.

CHAPTER IV

LOVE, WAR, AND THE *PANTHEISMUSSTREIT*:

A LESSON FOR THE THEORY OF (RADICAL) DEMOCRACY

In previous sections of this project, I have attempted to lay out a problematic that must be taken up by contemporary attempts to forge a new philosophy of democracy. I first examined radical democracy as descended from Mouffe and Laclau, showing how it could not sustain its attempt to enact a Schmittian critique of liberalism without itself falling prey to a barbarous decisionism. Later, I showed that this fate was common to attempts to reshape political philosophy and politics itself so as to collapse the distinction between culture and authority, into a sort of political "monism" between authority and civic culture. This was, I hold, a danger foreseen by Kant and avoided in his version of republicanism. There were other prices to pay in his point of view, in particular an underdetermining theory of the state, but without a careful attention to Kantian liberalism and the reasons for its seemingly paradoxical moments, political philosophy that attempts a post-liberal democratic synthesis will simply re-invent the barbarous petard on which to hoist itself.

To make still clearer what is at stake, I wish to follow out a pair of historical situations within the history of political philosophy, which

appear as repetitions of one another: the *Pantheismusstreit* of 19th century German letters, centered around Jacobi's accusation of Spinozism against Lessing, and Mendelssohn's reply, and today's resurgence of interest in Spinozism as a means of resolving the contradictions inherent in contemporary democratic theory.

The *Pantheismusstreit* raged across German letters after the death of Lessing in 1781. The debate is sometimes described as being of only antiquarian interest, or, at best, as being the occasion for Kant's 1786 essay "What Is Orientation in Thinking?", itself generally read as a capsule of his rational approach to religious faith¹⁴⁹. That the *Pantheismusstreit* between Jacobi and Mendelssohn, including Kant's interventions in it, is of importance for contemporary political philosophy has gone generally unrealized. In particular, I see a parallel between Mendelssohn's discovery of a "refined Pantheism" in Lessing - one that went quite against the grain of Spinoza's philosophy - and the latter-day interest in the *Tractatus Politicus*, as it appears in the world of Michael Hardt and Antonio Negri in *Empire* and *Multitude*, two enormously influential recent books.

The public *Pantheismusstreit*¹⁵⁰ began when Jacobi, anticipating the publication of Mendelssohn's *Morgenstunden*, released his own *Über*

¹⁴⁹ Manfred Kuehn, *Kant : A Biography* (New York: Cambridge University Press, 2001). p. 305.

¹⁵⁰ The historical account of the *Pantheismusstreit* given below is heavily indebted to Kuehn, Beiser, and Gérard Vallée (*The Spinoza Conversations Between Lessing and Jacobi*, 1988). I take it to be largely uncontroversial.

die Lehre des Spinoza, which contained both Jacobi's account of a 1780 conversation he had with Lessing in which Lessing - said Jacobi - had admitted being a Spinozist, and the record of a correspondence between Jacobi and Mendelssohn on Lessing's putative pantheism. Given the secondhand evidence, whether Lessing really admitted this is contested; Mendelssohn spoke of his friend's love of disputation for its own sake, but Frederick Beiser is willing to take Jacobi's word as accurate, as reflecting sentiments located throughout Lessing's works¹⁵¹. The *Pantheismusstreit* was itself the most intense moment of the broader cultural conflict over rational religion, in which Lessing had been a famous participant: his *Christianity of Reason*, for example. Manfred Kuehn¹⁵² situates this as a stage in Jacobi's great project, a massive *reductio* argument designed to show up the pretensions of rationalism and create a system that results in anything but fatalism, atheism, and ultimately nihilism. It was Jacobi's contention that Spinozism in fact necessarily terminates in this fashion, and Lessing's apparent acceptance of Spinozism late in life showed, on Jacobi's account, this movement had, in at least one great philosophical mind, become conscious and manifest at last. The great Lessing had died godless,

¹⁵¹ Frederick C. Beiser, *The Fate of Reason : German Philosophy from Kant to Fichte* (Cambridge, Mass.: Harvard University Press, 1987). p. 56.

¹⁵² Kuehn. pp. 306-307.

argued Jacobi; he was led to such a zero-point by his rationalist commitment, his commitment to the religion of reason.

Interestingly, the *Pantheismusstreit* itself was a repetition of the prior conflict between Lessing and Goeze¹⁵³. Lessing had published the infamous *Wolfenbuttlter Fragmente* in 1778; it was his commentary upon the Reimarus' *Apologie*, a stringent critique of theological orthodoxy and defense of natural religion. Lessing used his commentary on the text as occasion to promulgate his own view that both orthodoxy and religious neologism were false extremes; rather, the proper path was a rational religion oriented by the indemonstrable principles of Christian faith. In their rerunning of the Lessing/Goeze controversy, Jacobi threw in with the orthodox, holding that the indemonstrable principles of revealed religion constituted a kind of limit to reason, that they were so different in kind as to fund a different realm of truth; reason and faith were to part ways. Mendelssohn, rather, was sympathetic to Lessing's notion of an oriented reason.

Whether or not Lessing was a Spinozist or a pantheist is outside the scope of this project - indeed, it was not quite central to Mendelssohn either, who found "most offensive"¹⁵⁴ not the suggestion that his friend was a pantheist or a Spinozist, but the suggestion that Lessing's pantheism or Spinozism amounted to a covert nihilism. Thus the central

¹⁵³ Beiser. pp. 60-61.

¹⁵⁴ Kuehn. p. 130.

debate between them was only partly whether Lessing's remarks and published works were compatible with Spinoza's; it was the interpretation of Spinoza himself, or, rather, the assertion of an internal wholeness to Spinoza's philosophy, a wholeness terminating in materialism and nihilism, that was at issue. Mendelssohn, at least implicitly, believed that Spinoza's writings broke into two halves: those defensibly in accord with a rational theism congenial to both Judaism and Mendelssohn himself, and those not: the former seemed to include the first three sections of the *Ethics* and the *Tractatus Theological-Politicus*, while the latter included the final two sections of the *Ethics* and the unfinished *Tractatus Politicus*. Jacobi, by contrast, seems to have appreciated them as a seamless whole, but one which led inevitably to a steady closing-down of any possible position but the most radical skepticism. Again, given the kaleidoscopic violences being perpetrated against Spinoza's texts here, the issue is not who had Spinoza right; likely in this debate nobody did, at least insofar as it might be the case that Spinoza's philosophy does form some kind of whole that does not terminate in nihilism. This is an interpretive course not taken by the participants of the *Pantheismusstreit*.

It is important to note that Jacobi was not in fact the theist reactionary he is sometimes portrayed as being. In Jacobi's 1782 essay "*Etwas das Lessing gesagt hat: Ein Commentar zu den Reisen der Papste*", he argues for an internationalist civil society characterized by free speech

and respect for property; his primary opponent is the attempt to instill virtue by autocratic means. His differences with Mendelssohn and even Kant were rather less in the bare realm of political principle; instead, his orthodox dialetheism clashes with their analyses of the scope and power of reason to unravel philosophical problems. His own belief was that reason could be no more than a sort of theorem-proving mechanism, and, unprovided with experience or innate data, could produce nothing synthetic. Thus, for Jacobi, what he saw as Spinoza's attempt to rationally encompass metaphysics from first principles was doomed to be nothing but the manipulation of empty symbols, free of significance, leading to no real knowledge: if the thought is made conscious, to nihilism. The assumption that philosophical knowledge has no other basis implies that philosophical knowledge cannot exist. Jacobi, of course, sought, in his polemical way, to re-found philosophical inquiry in *Glaube*, faith: it was only through *Glaube* that speculative thought can have any basis. Without *Glaube*, thought is nihilist, working over empty signifiers, affirming nothing, atheist in consequence. With *Glaube*, the hand of Providence guides thought and allows it to step over the otherwise absolute division beyond which is only silence.

This is utterly un-Kantian, but one might see a certain consonance between the two - despite the fact that Kant intervened in the *Pantheismusstreit* in defense of his friend Mendelssohn. Jacobi saw his project as:

[not to] explain the inexplicable, but simply to know the line of demarcation where the inexplicable begins, simply to recognize its presence: such a person, I think, has created within himself the maximum space for the harbouring of human truth.¹⁵⁵

And this would be the space open for the fullness of *Glaube*.

Nothing but dogmatism to Kant, but the attempt to clip the wings of mere speculation cannot have failed to strike a chord. It was simply that Jacobi was unable to provide a bridge between reason and experience, such that reason unaided could be anything other than empty; Kant's answer is, of course, the discovery of the synthetic *a priori*, the essay "What is Orientation in Thinking." Kant may perhaps have seen in Jacobi a rationalist of the Cartesian tradition, a strain of argument he dealt with in the Refutation of Idealism.¹⁵⁶

Rather, Kant's "What is Orientation in Thinking?" is explicitly hostile, even insulting, to (the then late) Mendelssohn. Mendelssohn's *Morgenstunden* and his *An die Freunde Lessings*, his reply to Jacobi's

¹⁵⁵ Lessing, "Über die Lehre des Spinoza", in Friedrich Heinrich Jacobi, Moses Mendelssohn, and Gérard Vallée, *The Spinoza Conversations between Lessing and Jacobi : Text with Excerpts from the Ensuing Controversy*, trans., Gérard Vallée, J.B. Lawson, and C.G. Chapple (Lanham: University Press of America, 1988). p. 95.

¹⁵⁶ Kant, *Critique of Pure Reason*. p. 244.

Über die Lehre des Spinoza, reveal a kind of transcendental realist, whose metaphysics was populated by demonstrably-existent intelligibles such as God. For Mendelssohn, Judaism, the rational religion, does not rest centrally on faith: rather, it rests on an historical accretion of revealed law, which exists as fact, and a rationally-demonstrable theological and ethical core, non-theophantic, which no more needs faith than mathematics. Rather, Judaism emerges out of historical fidelity and ratiocination, obedience and reason; faith is not part of it¹⁵⁷. As to his theological system, Mendelssohn in the *Morgenstunden* quotes a series of unpublished remarks taken from Lessing's posthumous *Christianity of Reason*, with which he intends to show the consonance of his own belief with that of Spinoza - at least those parts of Spinoza he considers reasonable and not apostasy - and that of Lessing, all three sharing a "refined pantheism." Refined pantheism is a strange combination of Leibnizian entities and emanationism: an "infinite series of beings"¹⁵⁸ standing in hierarchy, each containing the sum of the attributes of those beneath it in perfection, with God at the top of the range and a pre-established harmony of simples at the lowest: a series which is itself the eternal thought of God reflecting upon God's own divine perfection.

In an oddly unreflective moment, however, Mendelssohn says something singular about the relationship between rational religion and

¹⁵⁷ Mendelssohn, "An die Freunde Lessings", in Jacobi, Mendelssohn, and Vallée. p. 137.

¹⁵⁸ Mendelssohn, *Morgenstunden*, in *ibid.* p. 75.

law, that is, between speculative reason and right practice. It turns out that the origin of right practice is not simply a matter of obedience to the revealed law. The relation is a journey from rational theology to revelation, laid out for us like a road, and from which we deviate chiefly by too-dainty metaphysical ratiocination:

On the long road which takes one from these overly subtle speculations to the praxis of religion and morality, there are many points where one can effortlessly re-enter the open highway from a by-way. Just as an error in calculation can be canceled out and corrected through another error, one inaccuracy in such abstract meditations can quickly be corrected by another, or one small digression which might, in the event, have led us far from our goal can be rectified by an equally small turn, and we are back on the road. Hence the corruptibility of excessive consistency which from time immemorial has spawned, or at least nourished, all the persecutions and religious hatred of the human race.¹⁵⁹

What is important, ultimately, is right practice, and this has no internal connection with right, rationally defensible doctrine. It is as if, for a proof that leads to the right result, the chain of reasoning need not be correct or even explicable - erroneous steps can average out. Indeed, while Judaism's ethical and theological core are rational, Mendelssohn's attitude toward anyone who would reach this core by rational means alone is one of deep suspicion, for it is to deemphasize the power of the cultural precipitate of revealed law, to privilege metaphysics over history. Indeed, consistent reason unaided is itself to be rejected as too error-

¹⁵⁹ Mendelssohn, *Morgenstunden*, in *ibid.* p. 77.

prone, for it has the effect of preserving, even amplifying, tiny errors, or the vices of a thought process not founded in a correct orientation.

For Kant this could be nothing but objectionable. During the composition of "What is Orientation in Thinking?" and "Remarks on Jakob" he was engaged in composing the B edition of the First Critique, including the famous remarks in the new Preface on his hopes for setting philosophy on the "high road" of science¹⁶⁰. The notion that philosophical speculations were but an origin-point for a journey to correct religious practice, and that error subtending error could just as well lead to a proper result as a correct deduction, must have struck him as extraordinary. And how much more extraordinary the claim that it is the job of reason to, as it were, keep out, after its initial - and dispensable! - moment of impetus. Kant notes:

If we deny reason its due right to make the *initial* pronouncement in matters relating to supra-sensory objects such as the existence of God and the world hereafter, the way is wide open for every kind of zealotry, superstition, and even atheism. And yet in the controversy between Jacobi and Mendelssohn, everything seems calculated to overthrow the authority of reason in this way. I am not sure whether this affects only *rational insight* and knowledge (in view of the supposed strength of speculation), or whether even *rational belief* is also rejected in favor of an alternative belief which anyone can fashion as he pleases. One is almost inclined to draw the latter inference on discovering that *Spinoza's* concept of God is said to be alone consistent with all the principles of reason but nevertheless worthy of rejection.¹⁶¹

¹⁶⁰ Kant, *Critique of Pure Reason*. p. 17.

¹⁶¹ Kant, "What Is Orientation in Thinking?." pp. 246-247. Emphasis in original.

The defense of the protean Lessing has led Mendelssohn far indeed. And Kant's reply is so firm as to risk an all-too-clear declaration of his own skepticism of the possibility of a personal God: recall that as this debate is being conducted, a shadow is falling across Germany's right to free expression: the era of Frederick the Great, dedicatee of the First Critique, is about to come to an end, and that of Frederick William about to begin.

For Kant, the initial pronouncement is of course the transcendental one: the tribunal of reason is to slam shut the gates before theological speculation can bolt forth. Better from that perspective to attempt to reason demonstratively to a doctrine he regards as absurd and indefensible - that of Spinoza - than to simultaneously give license to the most unconstrained speculations, while devaluing the entire enterprise of a rational theology. But Mendelssohn seeks to divide various cognitive and practical purposes from one another on what appear to be purely pragmatic lines. There are hints of the same difficulty in Kant's other famed interaction with Mendelssohn, the two "What is Enlightenment" essays, published the same year. The "dissemination of knowledge", for Mendelssohn, is to be related to "[men's] vocations...", and where "the enlightenment of man can come into conflict with the enlightenment of the citizen" it is the dissemination of knowledge, indeed the desirability of thinking itself, that must be

curtailed. The reason? Civil peace: it is thinking, too much thinking, that incites against it.¹⁶²

It is perhaps important to note that the way in which thinking threatens civil peace is not, for Mendelssohn, the same as is embodied in that governing metaphor of Plato's *Republic*: the philosopher who stands outside the walls of the *polis*, un beholden to it, whose unbridled thoughts, driven only by their own necessity, are such a threat to the founding myths of the *polis* that the philosopher is a mortal threat to civil order. For Mendelssohn, the danger is rather the reverse - that the philosopher, as speculator, will create myths of the state for his or her own part, that can only mystify what is already rational or falsely rationalize what is essentially mystical. Philosophy's job is more or less over. There is, to speak crudely, apparently no longer anything of importance outside the cave: the danger is that someone will stand between the captive and the fire and so confuse the shadows on the wall. Kant describes the whole effort as the result of a lack of "agility in thinking" due to age¹⁶³. Harsh words for a friend.

What, then, is orientation for Kant? In thinking, orientation is provided by the needs of reason, in their theoretical use and practical import. Kant's thinking is anything but disoriented. Nor is his politics;

¹⁶² Mendelssohn, "On the Question: What is Enlightenment", in James Schmidt, *What Is Enlightenment? : Eighteenth-Century Answers and Twentieth-Century Questions*, Philosophical Traditions ; (Berkeley: University of California Press, 1996). p. 55.

¹⁶³ Kant, "What Is Orientation in Thinking?." p. 239.

the transcendental argument produces a theory of the political, of the necessity for an autonomous culture, for a co-ordinated, countervailing state, for a private order based on the contractual and a public realm based on free expression. Indeed, it is not his argument that Mendelssohn's "healthy reason" illicitly provides an orientation; it is that it is not orienting enough. "Healthy reason," which leads us on the road from dainty metaphysics to obedience to revealed law, is, for Kant, like a chair in a dark room: we may orient ourselves with it only if we already know the whole of the room and the chair has not been moved.

Orientation seeks something more robust still, as in the distinction between left and right that we carry within us: a subjective condition of orientation that nevertheless functions objectively. For Kant, this function is taken up by the needs of reason.

But one must ask what kind of political orientation one gets from reason's needs. It is not the kind of orientation that answers most political questions, particularly those about means and not ends. For example, as I noted before, Kant's theory of the state is not one that can make a distinction within *recht* between legitimate and illegitimate uses of power; it cannot advance a programmatic theory of the right state, beyond certain internal contradictions to be avoided in the adumbration of rulership. There is a deep reason for this: for Kant, as precisely not for Hobbes, the function of political order as such is to create the

possibility of the determinacy of right; natural right¹⁶⁴ for Kant, does not even exist determinately outside the civil constitution, and only comes to have real being within a determining political order.

Kant's needs of reason "orient" thinking like a compass - but through the dark space of the supersensible. Kant's philosophy of history functions analogously in politics. As I have said in the previous chapters, both arise, for Kant, as functions of rationality itself, as reason's own needs. They are therefore not substantive "positives" in the sense he ascribed to Mendelssohn's healthy reason. But more than that, they have an entirely different function within politics and within practice: the thought that our actions can endure, that before our species, in some deferred future, is goodness, is simply part of the concept of action as such: it does not guide our actions in any way other than the way in which practical reason itself does, through universalizable maxims. These notions are, in short, answers to speculative questions given by reason to itself, and not the answers to political questions. Still less do they serve as potential justifications for any particular action that might otherwise seem evil. We may indeed commit terrible acts and bring about disaster. What Kant asserts is that this must be risked, not that it will, through operation of some powerfully optimistic posit, be avoided or denatured in some kind of greater

¹⁶⁴ Recall here Kant's distinction between the state of nature, the state of "externally lawless freedom" (Kant, *The Metaphysics of Morals*. p.308) outside the *status civilis*, and natural right, which is indeterminate outside the *status civilis*.

synthesis: the risk is real. Even if our acts bring about catastrophic results, we have warrant to think that even this will not be the end of the matter, that we, or others, can yet act differently. This is not to excuse the disaster in virtue of its eventual absorption as a moment of something better; the disaster happens as a disaster precisely as it appears as having been our evil, our failure, to do what could have been done, or to avert what could have been stopped.

With a kind of eerie precision, the conflict of *Glaube* and Orientation has recurred in our time, in the explosion of interest in neo-Spinozistic politics that has arisen from the work of Negri and Hardt. Negri and Hardt have produced what they regard as a new synthesis of Spinozism for today, a theory of "absolute democracy" based in Spinoza's theoretical approach to the question of sovereignty and its metaphysic as it appears in the final book of the *Tractatus Politicus*. The huge popularity of both *Multitude* and *Empire* might obscure their philosophical profundity. I will argue that these books are deeply flawed, but I wish to emphasize that their flaws are deep, revealing an important tendency within contemporary political philosophy that is worthy of examination and critique. There is a curious way in which the reappearance of Spinoza in these recent political debates has the quality of inevitability - not the happy rediscovery of a forgotten answer to a question that has at last recurred, but a specific conflict that has remained with us, encysted, in the very terms of the contemporary

philosophy of democracy. I think the way in which the debate has recurred highlights what Kant himself called the issue of "orientation in thinking" - in this case, orientation within political thought, as well as orientation within the practice of politics. The quest for orientation, even within the most putatively radical political theories, has tied political philosophy to a doomed quest, one that, within Spinozist radical democracy in particular, once again causes the whole edifice to redound into its opposite.

For Negri and Hardt, Spinoza - particularly in the *Tractatus Politicus* - is the political philosopher of immanence *par excellence*, and in politics the philosophy of immanence goes under the name "absolute democracy" or "the multitude." Hardt and Negri refrain from giving absolute democracy and the multitude any analytic definition. Rather, the terms are described negatively, by a careful exploration of "present conditions," what Negri and Hardt give the grand name "Empire." Empire is no longer imperialism, but what we might call "our politics under present conditions" - the techniques of military, financial, social, and informational control - including the state, but much beyond it - that stand over and against the self-determination of the populace. Yet Empire also contains this populace as a moment within itself, indeed, as its most essential moment; Empire is a name for the means by which the populace currently divides and controls itself, while experiencing itself as ruled by external power. Control is maintained by what Hardt and Negri

name "sovereignty",¹⁶⁵ which is less a form of power or even an idea of a form of power but "an ordering function"¹⁶⁶, under which power presents itself as unimpeachable to the ruled populace. This function is not merely an ideological identification but something like the possibility of ideological identification as such: the "transcendental representation"¹⁶⁷ of the chance for order, peace, prosperity, happiness, in whatever guise these may take, liberal or authoritarian. This transcendental representation is an ontological illusion, a fiction Empire tells itself of both the need for an the unsuturable absoluteness of the separation of rulers and ruled, or, put differently, of the impossibility of a distinction between Empire and Multitude, which is used to channel and domesticate a properly ontological demand: that the people heal the fictive cut and rule themselves. It is only through the maintenance of this ontological illusion of essential division that Empire maintains itself as the form of authority *sine qua non*; it is thus that Hardt and Negri argue that the reinvigoration of politics is an ontological project first, a project for philosophy, before being properly a political one. Philosophy, and in particular metaphysics, properly carried-through, will serve to smash the organizing appeal of the fictive ordering function of sovereign power.

¹⁶⁵ Michael Hardt and Antonio Negri, *Empire* (Cambridge, Mass.: Harvard University Press, 2000). p.88.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid. p. 84.

The multitude must find itself in its originary wholeness; doing so is to bring about the realization of "absolute democracy" and banish once and for all the need for a transcendent ordering function. But as this movement away from Empire to Multitude is a transformation performed by the multitude upon itself, the seeds for it must already be inside Empire. For Hardt and Negri, the transformations we have already seen within sovereign power in the last generation reveal that this is so. It is in the transition from the mere "power of command"¹⁶⁸ of the absolute sovereign ruler to the form of sovereignty offered by the neoliberal global order that the transcendental ruling function has come to appear as a function at all: but this movement has opened a breach within Empire at the very moment of its coming to its own maturity. Inevitably, this breach will open out into the self-realization of Multitude. The transcendental ruling function is what Hardt and Negri call a "network"¹⁶⁹ operation: it operates precisely as the power of command could not, apparently from everywhere at once. Empire's central distinction, between rulership and ruled, is not a conflict of strong individuals against masses, or of classes against classes: rulership is ubiquitous, appearing less as orders than in the guise of non-negotiable abstractions that surround everyone, in the form of social facts whose existence is not tied to the will or the purposes of any individual or

¹⁶⁸ Ibid. p. 88.

¹⁶⁹ Michael Hardt and Antonio Negri, *Multitude : War and Democracy in the Age of Empire* (New York: Penguin Press, 2004). p. 142.

group. These social facts appear as "natural" to each individual - not rules to be obeyed but simply a reality to be recognized. But these social facts confront even the state, which comes to appear as a vestige of the mere "power of command": the state both relieves itself and is relieved of the functions of decision-making and becomes an element of the ruling function's spectacular livelihood. The loci of actual power continually diffuse outward. The process is akin to Marxian "valorization", in which the commodity form becomes universalized; here, however, the network form of power becomes universalized. And the network goes everywhere.

I am glossing over Hardt and Negri's perspicuous new political history of the West, but the crux is that the universalization of network power, even if it brings with it enhanced "juridical regimes" of private property¹⁷⁰ and new technologies of social control and economic exploitation, opens up the place and the means for the multitude's own project of self-realization. This space can be spoken of loosely as "information technology" or "new means of communication", but the heart of the matter is not any technology or technique but - simply the intensification of contemporary capitalism itself. Capitalism is the name we give to the ordering function that has dissolved the state. But capitalism's triumphal expansion, its success at blowing away boundaries, has created a recognizable, even obvious, separation of interest between itself and the state: a crisis that is temporized only by a

¹⁷⁰ Ibid. p. 302.

great change in capitalism. Whereas the state had been capitalism's handmaiden under the prior form of sovereignty, capitalism's ever-increasing speed and reach have led it to a transformation of degree that is now of kind: an uncontrollable "hybridization"¹⁷¹ of constitutional function between state and capital through a set of institutions and institutional relationships which are not those of the state, nor purely corporate. It is not so much that, as if often noted, that the nation state is being corroded by capitalism; capitalism's own purity of nature has been likewise altered, as the functions of capital and the state have been sintered together in a new form of political power that is essentially neither.

But the hybrid constitution of power poses a crisis for the ruling function: Hardt and Negri offer a crisis theory not of the state or of capital but of sovereignty itself, or, rather, of the sort of social myth that sovereignty actually is: the ruling function now appears in a third form, neither somewhere (state power) nor everywhere (capitalism), but nowhere, as if it has begun to withdraw from political life altogether. Suddenly it appears as if nobody or nothing were in control, that there is no control. Both capital and politics, such as they still appear to us as differentiated, appear to be destroying themselves. Neither is a reliable source of order; still less does either appear as a social fact, but only as a kind of hypothesis that is now being disproved.

¹⁷¹ Ibid. p. 326.

The point for Hardt and Negri is twofold. First, that countervailence, the usual means by which the state and economic agents contrive to limit one another and in so doing absorb the potential shocks of each others' crises, is no longer available as a political strategy, even for the liberal reformist: the body of government is thoroughly penetrated, even animated, by the ramifying network of capitalism. There is simply no available point of interface between state and capital through which the mutual collision of countervailence can be accomplished. This may be disheartening, for it portends a radical increase in the combined power of the state/capital hybrid nexus to intensify exploitation without limit. Yet it is this very development which brings hope.

Of course, to the Marxian, the removal of the capacity for mutual limitation is foreseeable, and leads to crisis - and crisis is the potential revolutionary moment. Hardt and Negri's theory is not a Marxian crisis theory. The possibility of the achievement of absolute democracy is not to be attained through class-based revolutionary activity - this is a reversion to a form of sovereignty, or attempted sovereignty, which has already been done away with; it is at best a utopian illusion and at worst a rallying cry for the most terrible political violence. Rather, the attainment of absolute democracy, the multitude's moment of self-realization, will occur through the intensification of capitalism's own inner drive for immanence. The network form of power is everywhere,

diffused, all around us - ordering from within and without, everywhere at once, not remote and commanding from on high. And as it becomes ever more diffuse, ever more pervasive in its embrace, it will, in the end, become **us**. Empire is an empire of capital, but it is capitalism that will heal the ontological division, or the illusory division, that maintains the ordering function of sovereignty. Indeed it has already done so - by eroding and hybridizing with the state, erasing its capacity as the bearer of the transcendental representation of power.

How will it happen? This Hardt and Negri do not tell us; they are engaged, rather, in the philosophical work of organizing the possibility of the ontological demand, creating what they call "a new science of democracy."¹⁷² The precise path history will take in unfolding the multitude to itself is not foreseeable as such. Indeed, the proscriptive elements of *Empire - Multitude* has none - are so under-formed as to be anticlimactic: the book ends with a stirring call for the expansion of the internet and the institution of a social wage.

But the heart of the argument is the new science of democracy. That is to be distinguished from the old by its reconsideration of sovereignty. The metaphor that most impresses Hardt and Negri is Hobbes' of the body politic, the animate creature whose organic unity symbolizes the unity of authority possessed by the state, and whose division into functional parts - head, hands, nerves, muscles - mimics

¹⁷² Ibid. p. 348.

the divisions of political power and of labor in society¹⁷³. The body politic is, for Hardt and Negri, a figure of unified repose: the brain wills, the fingers move. The purpose of the image of the body in repose is to ward off the image of common struggle: the war of all against all, individual units battling for whatever temporary supremacy their own strength can bring them. The image of calm, assured life over struggle and death. For Hobbes, for Hardt and Negri, the contrast is between the democracy of the multitude and war¹⁷⁴ (Multitude 238-9).

This, though, is just the model of sovereignty that Hardt and Negri seek to break down, to dissolve in a kind of solution of metaphors. Absolute democracy, whatever it might be in its fullest realization, it at least "the rule of everyone by everyone"¹⁷⁵: reduced to fleshly metaphor, this is a body without a brain, without differentiation into functional tissues. It is not even composed of elementary cells, each much alike - it is a combination of singulars¹⁷⁶. It is a "living flesh," self-organizing, self-governing, yet not governed, no part able to impose function on any other. What such a living flesh might look like is frankly unimaginable; to theorize it is the task of the "new science" of democracy. It would at the least be monstrous, terrifyingly unlike any organism we know, as

¹⁷³ Ibid. p. 330.

¹⁷⁴ Ibid. pp. 238-239.

¹⁷⁵ Ibid. p. 307.

¹⁷⁶ Ibid. p. 99.

Hardt and Negri forthrightly admit (their preferred metaphor is the vampire; a better one might be the zombie)¹⁷⁷.

To push off consideration of the means of such self-organization into horror-movie metaphor may seem like a dodge, but it is at least a forthright one, motivated by a deep philosophical point: the kind of social organization proper to absolute democracy as such, if that is the proper term, is unknown, and if it is to question the very notion of the sovereign power, as it seems that it must, it is one that goes beyond the limits of political philosophy as it has been handed down to us. Therefore a gesture toward a future theorization - one for which the capacity may not even yet exist, for it will depend on "a new human nature"¹⁷⁸ - is not absurd. Yet there are reasons to think that theorization-to-come is going to be monstrous in a way other than the palatably postmodern.

There is, however, a vital distinction to be made between Hardt and Negri's radicality and that of the radical democrats I addressed in the first chapter: for Hardt and Negri, the creation of the new flesh is not a disclosive or discursive operation, but a productive one. It is a matter of the organization of the productive forces of the economy and society into a "common" in which the self-ruling impulse of the multitude is expressed in creative activity. This is much less a matter of the mediation of contending subject positions than the problematic of

¹⁷⁷ Ibid. pp. 192-193.

¹⁷⁸ Ibid. p. 348.

discovering a means for the "common" to become the communal site of what Arendt called the "metabolism" of nature into human world; the issue here, therefore, is not one of translation or decisions about friends and enemies, rather one of management and mobilization. As Lukacs might have noted, the problematic is better chosen: not the potential for praxis to appear spontaneously as the organic expression of the will of the proletariat, but the question of the mobilization of proletarian forces for political ends.

Yet the change of registers here, from discursion to production, still hides within itself a reinscription of the same problematic, this time in the form of a kind of master signifier of political orientation, one that ultimately cannot but fall to the very objection of Laclau and Mouffe: that "there is no theoretical reason why the mythical reconstitution should not move in the direction of fascism."¹⁷⁹ Yet this seems precisely what Hardt and Negri, in a most unmaterialist moment, hope. To see how this occurs requires unspooling their critique of sovereign power's "coordinating function."

There is a problematic inherited by automatically identifying liberal democracy with the Hobbsean body politic. The Hobbsean theory is based essentially on force: on the over-awing force that holds all particular impulses in check. The transition is from an *omnium bellum contra omnes* to a state of security guaranteed by legitimate, but no less

¹⁷⁹ Laclau and Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. p. 41.

terrible for that, war. Hardt and Negri indeed identify the coordinating function of sovereignty with at least the promise of legitimate war, the war of power against contrary power, for it is this distinction within war - between legitimate wars of the state and the illegitimate war of each against each - that funds liberal order. When liberalism seeks to disenfranchise war as a viable ideal within politics, it can sound only hollow, for the distinction which enables it is not between war and politics but between modes of war. Hobbes' political disenfranchisement of war, they note, did not mean the expulsion of violence from the body politic, for the war of each against each is only banished at the cost of a vast and terrible power of violent coercion, a war from above. The ouster of the *bellum omnium* is the legitimation of a state of terror. "War and death," they note, "[are] the primary weapon[s] used to coerce the multitude to obey the rule of the sovereign."¹⁸⁰

To replace the Hobbsean form of sovereignty, Negri and Hardt seek a form of political organization - absolute democracy - which is not animated by a *post-hoc* distinction between modes of war, but which distinguishes itself from war at its origin. This requires the dissolution of the ordinary notion of sovereign power and its attendant distinction, legitimate war, and requires reconsideration of the purpose of politics as such.

¹⁸⁰ Hardt and Negri, *Multitude : War and Democracy in the Age of Empire*. p. 239.

But there is a problem. If the dissolution of the traditional notion of sovereignty - both in practice, through the intermediate stage of network sovereignty and in theory, as the new flesh that is not sovereign - aims at dissolving the ontological gap between ruler and ruled, it must perforce take with it a concomitant distinction, not between one form of politics, democracy, and war, but that between **politics as such** and war. Hardt and Negri are attempting the **complete philosophical disenfranchisement** of war. The irresistible authority ruling Hobbes' body politic has as its purpose the end of the war of all against all. Hardt and Negri understand this; it is in carrying over violence as the check against the *bellum omnium* that they see the central tendency of liberal democracy to lead to violence repression and exclusion. Absolute democracy will in some sense - never be at war.

What does this mean? It turns out that the answer is precisely not "the absence of political violence." Hardt and Negri offer another bodily-political image: "tragic" but unavoidable, the burst flesh of the "asymmetric" warrior whose own body is the cannon which fires the blast that ushers in the new age. It is a strange involution. It is the contemporary world, they argue, in which war has become the "constructive" condition: war is for us a totalizing framework and even a form of socially necessary labor. To even speak of the state's legitimate monopoly on violence is to cover over the hideous reality of "security": a social world so consumed by war, so thoroughly penetrated by a regime

of punitive violence that even to call it "secure" is absurd. Certainly. Yet Hardt and Negri's alternative is violence as a constitutive condition - as the founding event, but this time not covered over, and this time: a pervasive, absolute violence which is not war.

Or perhaps one last war. In a deliberate and conscious re-invocation of Schmitt, Hardt and Negri note that the struggle for absolute democracy, there will be war, but not just any war, a "war against war." This was precisely the formulation Schmitt used to designate the unimaginable war, the war too terrible to describe, the war that because final and because oriented to the expulsion of war from the liberal constellation would be the most inhuman and total war: but while on Schmitt's analysis this was the unacknowledged self-betrayal of liberal cosmopolitanism, for the Multitude it is a constructive political motive. Whatever form absolute democracy should take, it will be ushered in by an indefinite spasm of barbarism.

This is remarkable, for it makes explicit a vital premise in Hardt and Negri's work: that the *bellum omnium* is not the "outside" of politics that liberals see it as. The terror of violence in which the sovereign authority holds the populace is a moment within the multitude itself, as is the very distinction: multitude "has no outside." Multitude is a monism: in a sense, there is nothing to exclude and to war against. Multitude **just is** war: Multitude and absolute democracy carry within

them the *bellum omnium* constitutively. To have distinguished the *bellum omnium* from politics was already a blunder.

Yet, this violence takes the form of - an "act of love." "Love" is "joy ... incarnated in the common material political project of the multitude"¹⁸¹. Whereas love had been delegitimated as a political concept or force by relegation to the private sphere, now love will be the passion proper to the installation of the common as the ultimate scene of popular "constituent power". Love is both a product of and ground for this political project: the bringing-to-fruit of the Multitude is the "project of love."¹⁸² "This world of rage and love is the real foundation on which the constituent power of the multitude rests... It is 'the democratic will to power.'"¹⁸³ Love leads us to the new flesh, love grounds us in its production. Love binds the common, makes it common. Love, for Hardt and Negri, **orients** us.

Love is evidently vitally important, for it is the only available distinction to move violence in a positive direction; the notion of civil peace was itself torn down as part of the fictive "coordinating function", and made ludicrous by the construction of the constitutively violent new flesh of democracy. Yet by the conclusion of *Multitude*, love remains substantially untheorized. There is something deeply strange about a

¹⁸¹ Ibid. p. 352.

¹⁸² Ibid.

¹⁸³ Ibid. p. 353.

"philosophical book"¹⁸⁴ which ends in a call for violence against Empire but cannot limn what it is that it seeks, except in terms of a literally unimaginable new flesh and a common project of "love" whose outlines we cannot yet grasp. There is something honest in the incapacity, yet there is something cynical about it, too. Philosophically cynical: enlightened false consciousness, in the terminology of Peter Sloterdijk. "Logically it is a paradox, for how could enlightened consciousness still be false?"¹⁸⁵ Here we see the answer: Hardt and Negri have produced a powerful and profound critique of Enlightenment politics. They have diagnosed every pathology, listed every failure. And the response is a flight into what can only be called a philosopher's utopia, one which we have seen before in the radical democrats: the thought that the world will be transformed if only we have the right theory, or, in this case, the right orientation for the theory we do not yet have.

Ultimately, for Negri and Hardt, as for Mendelssohn, "love," is a kind of guarantee in an Enlightened world which has otherwise given up on guarantees. The traditional function of the state, after all, was to be that sovereign power which guarantees civil peace; for Hardt and Negri, it is that form of civil peace which is the problem, and it is why a new moment of constitutive violence against sovereignty itself is the only answer. Why, then, "love"? Why not simply rest as Schmitt did, in the

¹⁸⁴ Ibid. p. xvi.

¹⁸⁵ Peter Sloterdijk, *Critique of Cynical Reason*, Theory and History of Literature (Minneapolis: University of Minnesota Press, 1987). p. 5.

distinction between friend and enemy, with the moment of violent overthrow valorized as such, without the need for guarantees, or even hope? Because that possibility is still too terrible for Hardt and Negri: they seek, after the re-founding of society, a new, un-civil peace, but a kind of peace nonetheless. Indeed, democracy for them functions as a name for peace: it is the current form of sovereign power and its sham of liberal democracy that is the institution of continual war. Yet nothing stands to guarantee the possibility of that hope other than the orientation of political love.

For Kant, by contrast, love is almost lovingly theorized: as a broad duty of virtue, constitutive of a solidaristic *polis*. (See chapter 3.) Love, political love, is the kind of caring one gives to one another's moral well-being: not their happiness but their fitness for being happy. It appears in the form of all kinds of signification, but never as an attempt to inculcate virtue or moral fitness by juridical means, and still less by force, which are inappropriate to it. Rather, it is the state proper to our communal project of growing up, of, in Kant's rather grander phrasing, "throwing off our self-imposed immaturity". Love is a kind of private debt we all owe each other for being the systematic community in which we ourselves have our lives, our political being.

Thus, love stands for Kant as a virtue thoroughly imbued with historicity: we grow in and through love, our culture grows in and through love. Growth is ultimately a matter of moral fitness to act, to act

on one's own reason's maxims: freedom to act from the pure law within. It is a progressive discovery of what, for Kant, it is that makes us all most human and most like each other. Yet what it is not is a kind of ideology; still less a sort of signficatory guarantee of better things to come, the progressive conception of history from Kant's "Universal History" given a substantive life of its own, beyond its function as a need of reason. Kant's love is not an angel of history or an Absolute or a new flesh. It is a rational virtue that can move us to recognize and act on the needs of our fellows, that we make amongst ourselves an interdependent community. But what shall that community become?

Not peaceable, at least not for an almost infinitely deferred time. It is of course our unsocial sociability, which we might read here as our hateful love, or our childish cry of "mine!" which becomes, in the rightful condition which makes natural law determinate and determinative, the political act which funds culture. Of course, unsocial sociability in the rightful condition is a condition of civil peace: but the movement into the rightful condition, a movement which has substantially greater purchase on history, given Kant's underdetermining theory of the state, and the defense of the rightful condition from its exterior, that require war.

For Kant, war is the "greatest difficulty" of the theory of *recht*¹⁸⁶, and he surrounds it with limitations, stipulations, and instructions: yet he cannot and will not banish it. We have a rational interest in the

¹⁸⁶ Kant, *The Metaphysics of Morals*. p. 347.

instantiation of the rightful condition, which is the interest in our own freedom and moral development; Kant's answer to the question "Why war?" is not even the weary one of Freud, but is advanced in the full consciousness of war's terror and war's power; even, as he hints, with a kind of bloody *naïveté*, its power to ennoble. Yet what Kant has avoided the radical democrats, who rail against the state of Terror that liberal democracy requires, have fallen prey to: what we might call "network war," war gone everywhere, war as the constitutive principle of politics, and not just an element of it. And Kant saw that in the issue of "orientation" there could be the cover story for the constitutivity of war, for politics' **complete** barbarization.

There is a bit more to it than this. When I spoke previously of a "clue" given by beauty to reason, that clue's import was partly affective. Yet that affect is simply to license action as such, and nothing more than that. It is the reasoned and felt possibility that action is not vain, that the terrorist conception of history is false. What is to be done? still stands before practical reason as an unanswered question, unanswerable programmatically, except by the categorical imperative itself.

It is a project for a politics in which nothing is given except our own rational - that is, human - commonality. It is a project which does not have at its center the valorization of war. It is one that vouches for the possibility of significant and durable change. It is one that does not

demolish the autonomy of culture in favor of its militarization. It is one that brings to consciousness its own synthetic status as a human community. It is one that grows. It grows in love.

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