

The One and the Many: A Discourse Analysis of Sovereignty in Liberal Civic Republicanism
with Prospects for an African American Political Theology

By

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Introduction

This dissertation is a critical discourse analysis of sovereignty in Western canonical political theory. The *Oxford English Dictionary* defines sovereignty as “supremacy in respect of excellence or efficacy; preeminence, as political supremacy...[or] supremacy in respect of power or rank; supreme authority.” As early modern French legal scholar Jean Bodin (1530-1596) notes in his *Method for the Easy Comprehension of History* (1566), sovereignty is involved in five functions:

I see the sovereignty of the state involved in five functions. One, and it is the principal one, is creating the most important magistrates and defining the office of each one; the second, proclaiming and annulling laws; the third, declaring war and peace; the fourth, receiving final appeal from all magistrates; the last, the power of life and death when the law itself leaves no room for extenuation or grace.¹

Although sovereignty is not necessarily a theological signifier, Christian moral philosopher H. Richard Niebuhr (1894-1962) draws out its religious significance by signaling sovereignty as a deity. A deity is, for Niebuhr, an entity, whether person or idea, that has the power to evoke absolute loyalty and devotion as their ultimate cause and center of value.² In his *Radical Monotheism and Western Culture* (1943,1970), Niebuhr depicts Western culture as constituted by three deities: “the many,” which are the objects of desire (polytheism), “the one among the many” (henotheism), and “the One beyond all the many” (radical monotheism).³ These deities are in perpetual competition for human faith, that is, human “dependence on a value center or loyalty to a cause.”⁴ The concept of sovereignty plays itself out in our human contestations over faith on earth and the battle of the gods.

¹ Bodin, *Method for the Easy Comprehension of History* trans. by Beatrice Reynolds (New York: Columbia University Press, 1945), 172-3

² Niebuhr, *Radical Monotheism and Western Culture* (Louisville: John Knox Press), 24

³ Niebuhr, *Radical Monotheism*, 24

⁴ Niebuhr, *Radical Monotheism*, 24

Nowithstanding the polyvalence of Sovereignty, this dissertation tracks the concept as a political symbol throughout modern Western political theory. The dissertation begins with the early modern writings of Jean Bodin and English philosopher Thomas Hobbes (1588-1679), both of whom had monarchial views of sovereignty. It then tracks the four-fold transmigration of the discourse on political sovereignty, which rests first with the monarch and then “the people” in the thought of John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778). With Immanuel Kant (1724-1804) and GWF Hegel (1770-1831), sovereignty comes to nest in the authority of “reason”. Finally, sovereignty comes to rest on “the dictator” for German jurist Carl Schmitt (1888-1985) and “ideology” for German political theorist Hannah Arendt (1906-1975). This dissertation finds that sovereignty is justified by three doctrines in Western canonical discourse: the state of nature, the body and the political body. The state of nature is a figure of speech, a primordial myth that has been taken literally, and the political body is nature’s mimetically derived political symbol. Thinking on the state of nature thus conditions thinking on the political body. Thus the state of nature becomes the central theme among the three for how one thinks about sovereignty. This dissertation finds that Hobbes’ doctrine of the state of nature has become hegemonic in the discourse on sovereignty, and that his doctrines of the state of nature and the body politic have problematic enduring cultural-historical effects, especially for African Americans and the world’s poor.

How I Came to the Topic of Study

I proceed in a rather autobiographical manner to situate the significance of this dissertation to my overall concerns with African American political theology. I did not originally plan to write a dissertation on sovereignty. I only came to a decision on this topic after a long course of development from the time I arrived at Vanderbilt through coursework, qualifying

examinations, and a dissertation proposal. In coming to Vanderbilt University in 2006, when asked by professors and graduate students what I wanted to work on, I was very uncertain about my research trajectory. As a student at Austin Presbyterian Theological Seminary, in Austin, Texas, Reformed theology was paint on the hallow halls, and the spirits of John Calvin and Karl Barth enjoyed great privilege. Many of their theological commitments resonated with my own background as a non-denominational black Evangelical. I was sure that I would be a Reformed theologian, thinking and writing under the lights of Calvin, Schleiermacher, and Barth. Though I continue to appreciate their influence on my thinking, the reader will note, perhaps with a measure of concern, that these figures appear nowhere as topics of interest governing this dissertation. I hope to ease this concern momentarily.

Moreover, during my final year at Austin, in passing conversations, I was introduced to something called “public theology” and found the idea critical for my application to study at Vanderbilt. However, my knowledge of public theology was much too shallow to ground my graduate research trajectory. Although reformed theology and public theology captured my academic interest, my heart belonged to the “least, lost, and left out” of the world, those whom psychiatrist and philosopher Frantz Fanon dubbed the “wretched of the earth.” This ambivalence was in part a result of my experiences growing up in poverty and in part an outgrowth of my Christian faith. Thus at Austin Seminary, throughout my theological education in a mainline, predominantly white, progressive Presbyterian seminary I immersed myself in a variety of “publics” connected to America’s underclass. I served as a youth minister at St. James Missionary Baptist Church (2001-2006), as staff intern for the Honorable Representative Dawnna Dukes during Texas’ 79th Session, and as a special project director at the Austin Area Urban League (2005-2006).

In my intellectual development, I found a measure of coherence between my academic interests and my social action by reading works by Christian philosopher and cultural critic Cornel West. Three works were particularly motivating: *Prophesy Deliverance: An Afro-American Revolutionary Christianity* (1982, 2002), *Race Matters* (1993, 2001), and *Democracy Matters: Winning the Fight against Imperialism* (2004). *Race Matters* evoked in me the acute sensibility of existential nihilism that was threatening over young black men and women throughout the U.S. Senses of meaninglessness, hopelessness, and lovelessness marked my self-understanding at the time. Yet, West foregrounded the immanent force of love that sustained me against the absurd. *Prophesy Deliverance* was both shocking and exciting. West presented the very real possibility of socio-political transformation driven by African American faith and Marxist social theory. Such a transformation through the power of black revolutionary Christianity would bring the perennial domination of blacks in America to an end. Even if West's vision remained unfulfilled, I became fixated on the problems he raised in that book. However, it was West's *Democracy Matters* that brought together the wider scope of my concerns for the world's poor and socio-political transformation. West highlights three 'antidemocratic dogmas' that dominate the American cultural landscape. They are "free market fundamentalism" (an unfettered, deregulated market, even at the expense of public interest), "aggressive militarism" (might makes right), and "escalating authoritarianism" (the staggering growth in the areas of US government surveillance and policing and the centralization of key aspects of law such as criminal justice).⁵ These dogmas frame the cultural conditions of African American oppression in the early twenty-first century.

⁵ The definitions of these dogmas are modifications of West's original definitions that have been modified in light of my own research, especially 'escalating authoritarianism'. For West's own definitions see *Democracy Matters* (New York: Penguin Books, 2004), 4-7

Although West shaped much of my thinking before Vanderbilt, it was the writings of French social theorist Michel Foucault (1926-1984) and Italian Political theorist Giorgio Agamben (1942-) that convinced me to write on sovereignty. I came to critical political consciousness by reading West, But also found West's sole focus on culture left unattended larger social forces, especially political and economic ones. Arriving to Vanderbilt, then, I was theoretically confused: Where to turn? Theology? Culture Studies? Social Policy Studies? I read as widely as I could during the first two years of my graduate study. I was introduced to Foucault in my Theories of Practice Seminar, specifically his *Discipline and Punish: The Birth of the Prison* (1986).⁶ Here, Foucault argues that sovereign power now works primarily through various subtle forms of social discipline (exams, normalizing judgments, hierarchical observations, classifications, confinement) rather than through its older, more spectacular methods of punishment (town scaffold). The operations of sovereign power are mobilized to protect the sovereign social body.

While Foucault's text put sovereignty on my radar, Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life* (1998), compelled me to take sovereignty seriously. I was introduced to Agamben in my Biopolitics and Biopower course. Agamben discusses how the logic of sovereignty still circulates throughout modern societies (in the form of the ban), an event where one is abandoned by both human and divine law.⁷ Caught in this double exclusion, the abandoned is rendered "bare life", "life that is able to be killed but not sacrificed"⁸ and life that is always already under the shadow of sovereign power. Between Foucault's and Agamben's

⁶ West rejected Foucault's analysis in *The Evasion of American Philosophy: A Genealogy of Pragmatism* (1989), 223-226. West's humanist conception of human agency would not allow him to acknowledge Foucault's description of modern power, i.e. biopolitics. See "The Political Philosophy and Humanism of Cornel West" by Howard McGary, Jr. in *Cornel West: A Critical Reader*

⁷ Agamben, *Homo Sacer: Sovereign Power and Bare Life* trans. by Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 28

⁸ Agamben, *Homo Sacer*, 99

writings, I began to see how the concept of sovereignty was linked to my concern for the “least of these.”

Before beginning my dissertation research, I took qualifying examinations. These gave me my first opportunity to study the topic of sovereignty beyond Foucault and Agamben. I read not only in philosophy, which is the primary focus of the dissertation, but especially in theology. The twentieth century Western political theological discourse on sovereignty has been defined primarily by two figures, Anglican “radical orthodox” theologian John Milbank and the late political theorist Jean Bethke Elstain. Milbank’s views on sovereignty are expressed most definitively in *Theology and Social Theory: Beyond Secular Reason* (1990), where he argues that the fundamental problem of Western culture is the sovereignty of secular reason, which nihilistically posits that power, violence and self-interest lie at the root of all human relations.⁹ For Milbank, secular culture is one where self-assertion, domination and aggression are virtues, and ultimately a culture that deconstructs into “violent, agonistic difference.”¹⁰ Milbank argues that sovereign secular reason also blinds culture to the fact that its claims about human nature are *theological* claims. Secular reason itself stands on the heretical notion of “the *dominium* of an arbitrary, voluntarist God.”¹¹ Thus for Milbank, to engage sovereignty is to engage issues of ontology, to answer questions about the nature of existence and being.¹² Engaging sovereignty is also to engage issues of metaphysics, discussing a) what is ultimately real and b) the nature of

⁹ See Milbank’s *Theology and Social Theory* (Malden, MA: Blackwell Publishing Ltd, 1990, 2006). Also see his *The Future of Love and Theology* (Eugene, OR: Cascade Books, 2009) and *Theology and The Political: The New Debate* (Durham, NC: Duke University Press, 2005)

¹⁰ Milbank, *Theology and Social Theory*, 380

¹¹ Milbank, *Theology and Social Theory* 326

¹² Edward Craig, “Ontology”, *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/ontology> Accessed 8/6/2015

reality.¹³ Milbank argues that any account of human existence that fails to acknowledge the reality of the sovereign Christian triune God of reason and love denies reality itself. Such accounts also necessarily subscribe to a heterodox understanding of God as an all-powerful, irresistible will-centered being. The reality of the triune God implies an ontology of peace as well as unity and harmony for the world's difference. Milbank says, "as the reality which includes and encompasses in [God's] *comprehensio* every difference, God is also the God who differentiates."¹⁴ Recognition of the reality of God also reorients our desires, displacing self-interest and lust (*cupiditas*) with true love of God and other (*caritas*).¹⁵

Like Milbank, Elshtain takes up sovereignty in terms of metaphysics, although she casts the discussion around a realist/nominalist polemic as opposed to Milbank's orthodoxy/heresy one.¹⁶ In *Sovereignty: God, State, and Self* (2008) Elshtain argues that there are essentially two views on sovereignty.¹⁷ On one hand, realists such as St. Augustine (354-430), St. Thomas Aquinas (1225-1274), and Elshtain herself agree that all volition and action, including sovereignty, should be checked by limits.¹⁸ For example, political will should be checked by the right to life. Such checks on political action reflect the (metaphysical) structure of the cosmos, where (God's) power is limited by the laws of nature (or divine covenant). On the other hand, nominalists such as Richard Hooker (1554-1600) and Carl Schmitt (1888-1985) prioritize will and power over limits and thus advocate unlimited sovereignty. Politically, they might emphasize dictatorial or national will over established laws. Like realists, nominalists have a view of the world.

¹³ Edward Craig, "Metaphysics" *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/metaphysics>, Accessed 8/6/2015

¹⁴ Milbank, *Theology and Social Theory*, 429-30, brackets mine

¹⁵ Milbank, *Theology and Social Theory*, ch. 12

¹⁶ See Elshtain's *Sovereignty, God, State, and Self: The Gifford Lectures* (New York: Basic Books, 2008) and *Augustine and the Limits of Politics* (Notre Dame, IN: University of Notre Dame Press, 1995).

¹⁷ See also Elshtain's *Augustine and the Limits of Politics* (1995) and *Democracy on Trial* (New York: Basic Books, 1995).

¹⁸ Elshtain, *Sovereignty, God State, and Self*, ch. 1

Nominalists believe that (God's) power is so absolute that even the world's existence is contingent. Elshtain notes nominalism's troubling view of culture as well. Nominalism posits a "sovereign self", a "*monistic* self" whose willing and action takes place "in a vacuum"¹⁹ without acknowledging contexts, relationships and other limits to which the self is responsible.²⁰ For Elshtain, the sovereign self is the self of unlimited desire, and as such, unfit for democratic life and oriented toward socially destructive action. Such a self feeds a culture of "multiple, individualized entities, each willing and each calling upon the state- a state defined as entirely self-determining under the classical definition of sovereignty – to satisfy that willing *and* to serve as a model of strong self-determination."²¹ Elshtain advocates a realist metaphysics and a limited sovereignty, and also cautions against the sovereignty of self or identity politics in our postmodern political climate.

I also studied the discourses of black and womanist theologies of liberation on sovereignty, discourses which, although insightful, contributed little on the topic. Like West, black and womanist theological discourses of liberation conduct analyses primarily at the level of culture. Key texts in my theological ethics exam were Dwight N. Hopkins' *Religions/Globalizations: Theories and Cases* (2001), *Being Human: Race, Culture, Religion* (2005) and *Black Faith and Public Talk: Critical Essays on James H. Cone's Black Theology and Black Power* (1999). I also studied much of James H. Cone's work, including *Black Theology and Black Power* (1969), *A Black Theology of Liberation* (1970), and *God of the Oppressed* (1975) as well as key womanist thinkers such as Katie Cannon's *Black Womanist Ethics* (1988) and Emilie Townes' *Breaking the Fine Rain of Death* (1998) and *Womanist Ethics and the Cultural Production of Evil* (2006).

¹⁹ Elshtain, *Sovereignty, God State, and Self*, 166

²⁰ Elshtain, *Sovereignty, God State, and Self*, 160, 229 "[W]ith the emergence of sovereign selves," says Elshtain, "the sovereign God stands as a provocation: man must himself become a God against the Creator God in order to strip himself of any indebtedness, whether to Creator or other persons." 160

²¹ Elshtain, *Sovereignty, God State, and Self*, 160-1

If there yet remains an unarticulated consensus on the topic of sovereignty in black theological discourse, it is a critical orientation toward the sovereignty of white supremacist ideology. In black liberationist discourse, white supremacy aspires to be that ultimate principle of authority beyond all laws and magistrates. The relevance of black liberationist discourses for this dissertation lies in the fact that they reflect and give voice to a culture located on the underside of sovereignty, one more exposed to the sovereign powers of death than those of life. Black liberationist discourses emerge from such a state of affairs. As my qualifying exams came to a close, then, I was forced to acknowledge the limits of theological discourse with respect to gaining clarity on the concept of sovereignty or in understanding how their perspectives on sovereignty connected to the concrete, everyday struggles of the least of these.

Having completed qualifying examinations, I then moved into the dissertation stage of my research. My qualifying examinations had not only increased my knowledge on sovereignty, but also suggested strong links between this concept and both “race” and “American empire”. It seemed necessary, then, to study these three concepts as a cluster or constellation. Linking my research back to Cornel West’s work, I entitled my dissertation proposal, “The Niggerization of the Other: Sovereignty, Race and the American Empire.” If the latter two terms emerged as correlates to sovereignty during the course of my qualifying examinations, the term “niggerization” was taken from Cornel West’s *Democracy Matters*, where he used the term to capture a growing sense of fear and insecurity among Americans. West says:

Americans of *all* classes, colors, regions, religions, genders, and sexual orientations [feel] unsafe, unprotected, subject to random violence, and hated. Yet to have been designated and treated as a nigger in America for over 350 years has been to feel unsafe, unprotected, subject to random violence, and hated.”²²

²² West, *Democracy Matters*, 20

My original research goal was thus to critique this process of “niggerization” by analyzing the three categories of sovereignty, race, and American empire. I wanted to take seriously the structurally expansive forms of sovereignty and racism that are determinate in the “niggerization” not only of African American ‘Others’, but also other ethnies, so called third-world populations, and global economies influenced by U.S. foreign policy.

I found West’s three doctrines, namely free-market fundamentalism, escalating authoritarianism and aggressive militarism, to be an adequate account of what sovereignty looks like in our contemporary global situation, and why sovereignty continues to be a bad idea. Moreover, I wanted to investigate the operations and effects of sovereignty in particular cases such as the war on drugs culminating in the phenomenon of mass incarceration, the rule of necro-politics over the global south, or the globalization of multinational corporations’ productive capital, which has rendered the world’s poor poorer, destroyed continuities of many traditional societies and indigenous peoples, and contributes to the making of world subalterns. I also planned to search for a substantive theological interpretation of West’s conception of radical democracy that was faithful to the resources of black Christianity. This interpretation would be instrumental in the renewal of democratic practices beyond the logics of sovereignty, race, and American imperialism. To be sure, my goals were ambitious, and I have come to provisionally set aside these goals to gain clarity on “sovereignty” itself. Sovereignty has too long of a history (emerging in the 1500s) and is entangled in too many discourses to do it justice except on its own terms, at least initially. This dissertation is thus a ground clearing project on the concept. Only after getting clearer on it could I move forward with my original plan for a project in African American political theology.

Method: Critical Discourse Analysis

There were lots of interpretive issues to overcome in my research. In pursuing this project, I first began reading in social theory and political theology, but have since read in a wide range of disciplines, including law, economics, history, psychology, political science, science, and even a bit of math, which I had actively avoided for my entire educational career. I began looking at texts in modern political theory to understand the categories that fill in theoretical points in political and social thinking on sovereignty. As I read more recent political philosophers such as Michael Oakeshott (1901-1990), Sheldon Wolin (1922-), Judith Shklar (1928-1992) Leo Strauss (1899-1973), Wendy Brown (1955-) and J.B. Schneewind (1930-), I discovered that there was an established rubric of figures that continued to circulate around certain periods. So through secondary literature I was led to isolate canonical figures on sovereignty in liberal civic republicanism. These figures are Jean Bodin and Thomas Hobbes (ch. 1), John Locke and Jean-Jacques Rousseau (ch. 2), Immanuel Kant (ch. 3) GWF Hegel (ch. 4), Carl Schmitt (ch. 5) and Hannah Arendt (ch.6). Much of the secondary literature on liberal political theory refers back to the canonical figures covered in this dissertation, and Western politics is largely interpreted and evaluated in light of these figures. Thus, I selected figures that are inescapable as representative theorists of civic republicanism.

This dissertation is a discourse analysis of primary texts of these representative figures on sovereignty. Discourse analyst Titus Hjelm defines discourse analysis as the “study of how to do things with words”, especially how words construct social reality.²³ Discourse is a “way of speaking that does not simply reflect or represent things ‘out there’, but ‘constructs’ or

²³ Titus Hjelm, “Discourse Analysis” in *The Routledge Handbook of Research Methods in the Study of Religion* ed. by Michael Strausberg and Steven Engler, (New York: Routledge, 2014), 134

‘constitutes’ them.”²⁴ According to Hjelm, discourse analysis begins with the premise that all descriptions of the world - written or spoken texts - are by definition partial, and that the variability of discourse itself is an indicator of the constructed nature of social life. Discourse analysis highlights this constitutive feature of texts. Discourse is not only constitutive, but also functional.

Discourse analyst Norman Fairclough thus defines discourse as “the use of language seen as a form of sociocultural practice.”²⁵ Here, discourse analysis is analysis of how texts work within and as sociocultural practice. Analysis in this more critical model requires attention to textual form, structure and organization at all levels, the phonological, grammatical and lexical, for the ways that discourse contributes both to the reproduction of society and to social change.²⁶ This may include vocabulary and metaphors, grammar, politeness conventions, speech-exchange, style, or other aspects of discourse.²⁷ One must thus live with the texts to get a sense of them. Critical discourse analysts ask how the discursive constructions of common knowledge perpetuate particular ways of thinking and practice by suppressing alternative discourse. They focus not only on the way that discourse constructs reality, but more specifically on how discourse constructs reality such that relationships of domination/oppression are maintained. Critical discourse analysis thus asks about relations of power and ideology in discourse as well as a reality outside of discourse that is reproduced and exchanged discursively.

According to Hjelm, critical discourse analysts must be aware that the range of a text’s properties is potentially ideological. Following Hjelm, I understand ideology not simply as a

²⁴ Hjelm, “Discourse Analysis” 135

²⁵ Fairclough, *Critical Discourse Analysis: The Critical Study of Language*, (New York: Longman Group Limited, 1995), 7

²⁶ Fairclough, *Critical Discourse Analysis*, 4

²⁷ Fairclough, *Critical Discourse Analysis*, 4-10

(philosophical) grand narrative of cultural transformation (e.g. Marx's class struggle and a subsequent communist society), but also as "meaning in service of power...which contributes to the production, reproduction or transformation of relations of domination."²⁸ Discourse analysts ask about the ideological nature of discourse, which not only includes ideological conceptions of self and world, but also the kinds of relations these ideologies support and the actions they legitimate. Following Fairclough's conception of power, a discourse may thus be defined as ideological to the extent that it maintains either asymmetries between participants in discourse events or the unequal capacity to control how texts are produced, distributed, consumed.²⁹ The peak of ideology is hegemonic discourse. An ideological discourse becomes hegemonic when all alternative constructions are suppressed in favor of one dominating view.

The framework of critical discourse analysis should enable one to analyze language in ways that address its involvement in contemporary capitalist society, thus serving as a resource for people who are struggling against domination and oppression in its linguistic forms.³⁰ This includes a multifunctional view of text. Texts always simultaneously function a) ideationally in the representation of experience and the world, b) interpersonally in constituting social interaction between participants in discourse and c) textually in tying texts to situational contexts.³¹ My framework also notes that in critical discourse analysis, one seeks to move beyond studying the actual "content of a text" to studying the "content of its texture." It asks about a text's form of organization, its links to other texts and text types, and its implicit meaning. In the final analysis, this method is more interpretive than an exact science. As Fairclough notes, it is the process of wandering to and fro in and between texts until one finally

²⁸ Hjelm, "Discourse Analysis", 141

²⁹ Fairclough, *Critical Discourse Analysis*, 8-9

³⁰ Fairclough, *Critical Discourse Analysis*, 17-19

³¹ Fairclough, *Critical Discourse Analysis*, 6

comes upon “the halfway house between presence and absence.”³² Yet Hjelm reminds us that analysis still makes use of three different models, and is thus not arbitrary. A discourse analyst may ask 1) about the cognitive reception and processing of texts (cognitive model), 2) about the thematic structures in discourse itself (interactive model), or 3) about the dynamics of power, knowledge and ideology that surround discursive processes (critical model). This dissertation adapts and combines these models as needed. Hjelm reminds the analyst, however, that the primary focus of discourse analysis is the thematic macrostructure of a text and its application in practical analysis. In analysis, “the theme of discourse is processed and condensed from the words and sentences of a particular text.”³³

Reading primary texts allowed me to analyze actual discourse on sovereignty rather than secondary discourses about the discourse on sovereignty. I was also able to map out from the texts themselves the nuances between these figures to gain a better sense of their own structures beyond generalizable themes and to get a sense of their own difficulties and complexities beyond generalizable judgments. Again, not only did I read primary texts, but also theological readings and secondary literature as well as literature dealing with the development of modern liberal thought, some of which were very hard to get. The historical contextual work was background for reading primary texts. Then after reading primary sources, I mined them for their hermeneutical value to the questions that this dissertation asks, namely in what ways does discourse on sovereignty contribute to the oppression of the world’s poor and socially marginal? My analysis suggests that theorists of sovereignty in the Western tradition such as Thomas Hobbes, John Locke, Immanuel Kant, etc. are comparable rather than redundant, and certainly not reducible to their agreement on the notion of a “social contract”. Their differences are

³² Fairclough, *Critical Discourse Analysis*, 5

³³ Hjelm, “Discourse Analysis,” 137

especially exhibited by way of three thematic centers that frame discourses on sovereignty in liberal civic republicanism. This same thematic structure also operates as the organizing rubric for my chapters. As with the figures studied, then, the chapter thematizations allow for comparisons between theorists disparate in time. The thematic centers are a) “the state of nature,” a social theory of what life was like before the political organization of social life, b) “the body,” their philosophical anthropology, their view of the nature of human beings, and c) “the political body,” the visions by which social communities are rendered politically coherent.

Discourse analysis on sovereignty reveals a story. It is the story of sovereignty and the loss of “the political”, or civil society, in modern political thought, culminating in the perpetual state of exception. This dissertation describes the dynamics inherent in modernist theories of sovereignty, which over time and through a series of rational moves, have progressively eroded the centrality of the political. In early modern theories of sovereignty (Bodin, Hobbes, Locke, Rousseau), the political was embedded logically in the body politic. With Hume’s radical empiricism leading to Kant’s rational empiricism and the abandonment of traditional metaphysics for transcendental thinking, theories of sovereignty traveled from their metaphysical basis in early modern thinkers to the reason of state. Thus, in comparison with early modern thinkers, Kant and Hegel give little attention to a philosophy of nature and do not envision a political body based on an imaginary social contract. With Hegel in particular, the reason of state becomes totalized. With this epistemological shift, the political force of early modern theory, along with its notion of the political body, recedes into background as bureaucracy, management and statecraft become the primary locus of the political. In an early 20th century crisis, the reason of state abandoned itself to the state of exception, marked by the voluntary creation of a permanent state of emergency and the suspension of *habeas corpus* for certain populations. The

outline of the chapters reflects and gives rise to this narrative. The dissertation frames this discussion in six chapters, which are divided for heuristic purposes into two parts, Part I: Sovereignty and the Metaphysics of Nature, which includes chapters 1-2, Bodin, Hobbes, Locke, and Rousseau on sovereignty, and part II: Sovereignty and the Rationality of State, consisting of chapters 3-6, Kant, Hegel, Schmitt, Arendt and culminating in Agamben's state of exception.

The gravest difficulty in discourse analysis is translatability. To meet this challenge, the dissertation gives attention to historical context and the significance of their contexts for the theory. It also analyzes theorists' answers to the problems posed by the political order of their day. It shows their considerable agreement with philosophical and scientific thinking, which grounds their views of nature and anthropology. It then pays close attention to the analyticity of distinctions embedded within the complexity of political theories of sovereignty. Finally, I try to show how the analytic particulars contribute to a coherent picture of a unified political order in their theory. I thus try to give an image of their understanding of the political body and consider its promise as a contribution to the development of civic republicanism and its concept of sovereignty. It is from this final step that my thesis emerges, namely the four-fold transmigration of sovereignty from the monarch to the people to reason to ideology.

To be exact, this dissertation reflects interest in one area of political theology. It critically analyzes the discourse on sovereignty to get at its structural logic insofar as this understanding enters into our structure of civil society. The dissertation asks what sovereignty bestows upon actors in civil society, whether the monarch, the people or representatives. Sovereignty itself is a free-floating signifier; what was ascribed to the monarch in Bodin floats to the people and its representatives in Locke, and in the thinking of Kant, to the military. It consists ultimately of the power and authority over life and death.

To conclude, political theologians bear a great responsibility for the history of effects and consequences of sovereignty as the ideology of totality and power in the twenty-first century. Sovereignty endures even today in the state of exception, which frames our current global political context. The challenge this dissertation presents for future constructive work is how to construe the political when the state of exception seems perpetual in the 21st century. In this sense, the dissertation is a prolegomena to an African American political theology in the state of exception, where the henotheism of market forces reigns supreme: free-market fundamentalism, escalating authoritarianism, and aggressive militarism. In concluding the dissertation, I ask the following questions: 1) How might one think about African American Political Theology where we seem caught between the rock of Carl Schmitt's henotheistic faith in the national community as sovereign and the hard place of Hannah Arendt's polytheistic faith in plurality and difference? This dissertation finds through the critical theory of philosopher Giorgio Agamben that the beginning of an answer to this question lies in understanding the state of nature doctrine not as an ontological game of the reconciliation of "identity and difference", but as a paradigm for the art of governance. Viewing the state of nature doctrine as a paradigm enables us to see that certain state of nature doctrines are constituted with the paradigm of sovereignty, and that this paradigm must be forcefully countered with alternative paradigms. I explore these paradigms in detail in chapter 7 and the conclusion. CB

PART I
SOVEREIGNTY AND THE METAPHYSICS OF NATURE

Chapter 1

Jean Bodin and Thomas Hobbes: Monarchial Sovereignty

This chapter takes up the writings of French legal theorist Jean Bodin (1530-1596) and English political theorist Thomas Hobbes (1588-1679), who overlapped with Baruch de Spinoza and John Locke, as canonical representatives of early modern (15th -16th century) discourses on sovereignty. Both Bodin and Hobbes articulated their political theory during the decline of late medieval feudalism, the Catholic religio-political establishment, and the rise of mercantilist and capitalist regimes. They take up and reconfigure sovereignty in an attempt to establish an appropriate arrangement of authority and power in early modern European states. Analysis of the discourse on sovereignty discloses its progressive democratization since the sixteenth century, and although neither thinker in this chapter is a democrat, there is a slight movement in the locus of sovereignty from the monarch in Bodin to the monarch as state in Hobbes. Both thinkers are absolute monarchialists, where the king's will transcends public law, and the king has ultimate authority over the power of life and death. However, they differ in that Bodin locates the origins of sovereignty with heads of households while Hobbes, on the other hand, attributes sovereignty to everyone in the state of nature, before the state is constituted. Bodin and Hobbes also differ in their understandings of the nature of the political body. For Bodin, the political body is a natural outgrowth of (and is modeled on) the family. For Hobbes, the political body is a voluntary construct authorized by social contract. The political body creates unity out of self-interest in an otherwise precarious and atomistic world.

Hobbes is slightly less absolutist than Bodin in terms of the offices of government. However, this dissertation finds that Hobbes's state of nature doctrine has had far more deleterious effects with respect to African American freedom than Bodin's doctrine of nature. Hobbes's state of nature doctrine, theorized largely based on traveler's reports of experiences

during the colonization of the New World, Africa and India, has had a long and lingering negative history of effects on African Americans. This doctrine, which reflects the darkest dimensions of frightened white Western fantasy, has been read onto black and colored bodies in an effort to order them “appropriately” in relation to ‘the civilized’ and civilization, i.e. the political body. In the end, it is this doctrine of nature rather than any absolutist theory of government, that continues to vitiate African American struggles for freedom by providing the state with a paradigm, which justifies the exercise of sovereignty. This chapter introduces the doctrine to the reader within Hobbes’s own context. Before Hobbes, however, we begin with Bodin.

A. Jean Bodin

Context

French legal scholar Jean Bodin (1530-1596) was among many of his time to offer a theory of absolute monarchical sovereignty. This was done within the context of an early modern Europe, whose structures of feudal society were upset as the Renaissance and Reformation movements permeated Northwestern Europe (France, Germany, Italy) and England. Empowered by a burgeoning mercantilist economy, sixteenth century France began to assert its international independence against the jurisdictional authority of both the papacy and Holy Roman *Imperium*.³⁴ Christendom was falling away, and a new *imperium* was coming into formation. According to legal historian Harold J. Berman, the French Catholic establishment also took action to quell the growing number of Calvinist-formed Huguenots, who became more bold about the open practice of their Protestant faith in a Catholic Country. Berman explains that the Huguenots posed a unique threat because they “advocated the bible-based right and duty not of

³⁴ See Julian Franklin’s *Jean Bodin and the Rise of Absolutist Theory* (New York: Cambridge University Press, 1973)

every person...to kill a tyrant, but of the responsible leaders of the Christian community, the elders or magistrates, to overthrow a monarch who persecutes adherents of the truth faith.”³⁵ The Huguenots’ social movement for the freedom to practice their faith destabilized the French-Catholic establishment, which in turn heightened efforts to persecute the nascent Protestant faction. The Catholic backlash became especially vicious on August 24, 1572, when Queen Mother Catherine of Medici oversaw the murder of Huguenot political and military leaders in the St. Bartholomew’s Day Massacre of 1572.

Although the exercise of sovereignty began as a royal prerogative, the Queen Mother could not control its unintended social consequences. The political violence enacted on August 24 spilled over into French society as several thousand Huguenots were killed in the following weeks, continuing well after Charles I had issued a royal order for the killings to cease on August 25th. Over the course of his intellectual career, Bodin remains steadfast on the conviction that the political body is rooted in the monarch. This suggests that Bodin would have legitimated both the murderous acts of August 24th and the order to cease and desist on the following day. As a royalist, Bodin would have argued that any evil committed by the crown’s sovereign acts was ultimately offset by the fundamental good of the preservation of the state. But he failed to consider the unintended social consequences of his theory, wherein an act of political sovereignty incited a wave of cultural violence that dethroned the very authority he wanted to establish in France.

³⁵ Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, Mass: The Belknap Press of Harvard University Press, 2003), 236.

The “Theater” of Nature and the Body

According to American historian Ann M. Blair, Bodin’s doctrine of nature was derived from a Renaissance humanist method called the “commonplace book.” Blair explains that with this method one uses a notebook to organize “interesting turns of phrase, opinions, or facts of all kinds encountered in reading, travel, and daily life, for later retrieval and use.”³⁶ Blair notes that the commonplace book was “taught in Renaissance schools and advocated by Bodin himself in his first major work, the *Methodus ad facilem historiarum cognitionem* (*Method for the Easy Comprehension of History* – 1566)”³⁷. It provided a way for students to manage the “explosion of knowledge in late Renaissance without cognitive dissonance”.³⁸ The method also appears in his *Universae naturae theatrum* (theater of all of nature, 1596), where he uses it to argue that one must study nature in a particular order. According to Blair, Bodin’s view of a correct understanding of nature begins with the things most “clear to us”, i.e. ash, the elements, the earth and sky, plants, fossils and animals. Only after considering these may we proceed to those “most difficult” things, i.e. humans, the heavenly bodies.³⁹ “Finally, [we consider] God, incorporeal, eternal and infinite, ... [at] a tenth hypostases ‘outside the order of nature’”.⁴⁰ Blair argues that this approach to the study of nature is frequently characterized as a “chain of being”, where as Bodin’s view may also be understood as a “complex web of interconnections.”⁴¹ Bodin himself speaks of a ‘chain of being’ at times, but also of “the indissoluble coherence of nature, its interrelations and agreements.”⁴² Bodin says,

³⁶ Ann Blair, *The Theater of Nature: Jean Bodin and Renaissance Science* (Princeton: Princeton University Press, 1997) 5

³⁷ Blair, *Theater*, 5

³⁸ Blair, *Theater*, 5

³⁹ Blair, *Theater*, 32

⁴⁰ Blair, *Theater*, 32

⁴¹ Blair, *Theater*, 32

⁴² Bodin, *Universae*, 6 quoted by Blair

For there is nothing we have searched for more diligently than the succession of all things and the indissoluble coherence of nature, its interrelations and agreements [*contagionem et consensum*], and [to see] how the first things correspond to the last, the middle ones to both extremities, and everything to everything else [*omnia omnibus*].⁴³

Blair notes that Bodin's "task is not to follow a strict progression from less to more perfect, but to search for the interconnections between each and every being."⁴⁴ It is to theorize the general relations between various classes and types of natural beings. In his *Universae* "a hierarchized structure gives way to an abundance of particulars treated with little apparent structure: the chain of being becomes a web in which intermediate creatures link many different levels of beings."⁴⁵ Bodin's depiction of these relations as a web allows him to balance his concern for order with variety. On the one hand, the web brings order to nature's large field of particulars, while, on the other, it maintains the "exuberant diversity of nature...[that might] overwhelm any pedagogical framework."⁴⁶ By theorizing nature as such, Bodin brings coherence to those particulars observed in the commonplace book by highlighting their interconnections with the elements, humankind and heavenly bodies.

Although Bodin's philosophy of nature prioritizes the material world, he acknowledges God as nature's first cause. Blair explains, "science and religion were inextricably intertwined in the early modern period...religious themes permeated traditional and encyclopedic natural philosophy in the northern, sixteenth century Renaissance."⁴⁷ Thus the "table [*tabula*] of the whole world" – elements, plants, animals, souls and angels – find their source and summit in God.⁴⁸ Blair argues that Bodin's "natural theology" is unique, first, in that it "invokes divine providence and omnipotence but as the best explanations of natural phenomena rather than the

⁴³ Bodin, *Universae*, 6 quoted by Blair

⁴⁴ Blair, *Theater*, 32-3

⁴⁵ Blair, *Theater* 33

⁴⁶ Blair, *Theater* 30

⁴⁷ Blair, *Theater*, 18

⁴⁸ Bodin, *Universae*, 129-30 quoted by Blair

primary subject of his work”.⁴⁹ In other words, while Bodin discusses God, he does not offer an exhaustive account of God’s nature and attributes. Blair notes a second unique feature of Bodin’s natural theology, namely that his “own religious position remains unusually broadly defined: his *atheomachia* [apology] is not a defense of Christianity like other contemporary works. Bodin’s exaltation of a single Creator-God could be acceptable not only to Catholics and Protestants, but also to Jews and Muslims, who were regularly included among infidels attacked in defenses of Christianity.”⁵⁰ Although Bodin’s natural theology is broad enough to include other faith confessions (i.e. Judaism, Islam), Blair notes that his thinking shows traces of the nominalist Catholic theologian Duns Scotus (1266-1308).⁵¹ For Scotus, nature exists as the result of almighty God’s voluntary, completely free act. Divine government (i.e. the natural law) orchestrates nature’s operations, but God may suspend these to directly intervene in nature, and all rests fundamentally on divine decree emerging from God’s sovereign will.

Bodin conceived of nature as a “theater” wherein the human as spectator contemplates nature’s wonders. According to Blair, the metaphor of the theater signifies that “nature is a theater or a spectacle laid out by God for human contemplation, which is both beautifully varied and perfectly ordered by its Creator.”⁵² Bodin exclaimed that after God’s act of creation, “nothing that he did was greater or better than to distinguish the parts of matter that were mingled and confused in the beginning and to place them, once garbed with form and figure, each in the appropriate location”.⁵³ God, in freedom and power, acts to establish and order the world and all the wonders therein. For Bodin, humans occupy a primarily passive position in the grand scheme of the cosmos, as they are more spectators than actors in the theater of nature.

⁴⁹ Blair, *Theater*, 25

⁵⁰ Blair, *Theater*, 25

⁵¹ Blair, *Theater*, 18

⁵² Blair, *Theater*, 7

⁵³ Bodin, *The Theater of Universal Nature (Theatrum, 1596, 2008)*, 1 (quoted by Blair p 30)

Blair notes that the theater metaphor suggests a “nonverbal form of contemplation” within the vast public structure that is nature, rather than human activity.⁵⁴ Humanity looks “out at the world as to a stage where God displays [God’s] skills and providence as author and producer.”⁵⁵ In beholding the wonders of nature, the atheist is compelled to acknowledge the one true God, and all are compelled to worship God. Blair notes Bodin’s “double-use of the metaphor of the ‘theater’, which not only signified nature, but Bodin’s book itself (*Universae naturae theatrum*). The term *Theatrum*, she says, signifies “the ambition of treating a large subject systematically, as if in a tabular fashion.”⁵⁶ The metaphor of the theater of nature especially conveyed the encyclopedic ideal of bringing a vast topic under a single, all-encompassing gaze. Bodin’s text thus not only sought to place nature’s “table” of beings against the backdrop of a divinely governed world, but to represent this world with the metaphor of the theater in the body of the text itself.

According to Blair, one of the most original aspects of Bodin’s natural theology is his application of the argument of the interconnectedness of the world through “intermediate beings.” While nature’s field of particulars (i.e. nature table) finds its first cause and principle of coherence in almighty God, Bodin believed that “intermediaries” established relations between different substances and species in nature.⁵⁷ Blair notes that Bodin’s concept of intermediaries is unclear, but she characterizes them as “innumerable links,” which create nature’s web of relations. For example, Bodin uses the concept of intermediaries when describing how spirits

⁵⁴ Blair, *Theater*, 153

⁵⁵ Blair, *Theater*, 153, brackets mine

⁵⁶ Blair, *Theater*, 8

⁵⁷ Blair, *Theater*, 135

(angels and demons) are able to associate with humankind, “directing them and communicating with them.”⁵⁸ Bodin says:

There can be no association that holds between angels and demons [for God has placed an irreconcilable antipathy between them]; but there are men who are neither good nor bad and can adapt to either type, so that one can say that the intellective soul of man is intermediate between angels and demons. For we can see that this great God of nature has bound all things through intermediates, which are in accord with the extremes and compose the harmony of the intelligible, celestial, and elementary worlds through intermediate and indissoluble links.⁵⁹

In this example, humans are intermediaries between good and evil spirits, i.e. they stand as figures of “harmony which subsume[s] discord.”⁶⁰ Blair notes that although he does not refer to the concept of ‘intermediaries’ in his *Six Books of the Commonwealth*, he acknowledges that “middling people” in the areas of “social status, wealth, or moral qualities [as] crucial to the harmony and stability of government.”⁶¹ These (social) intermediaries are important because they mitigate extremes of wealth and poverty; they are “middling people [*mediocres*] who link people to one another”, making the state less prone to revolutions.⁶²

In *Theatrum*, Bodin compares intermediaries in the state to the angels in heaven; both the state and the heavens require intermediaries – middling persons in the state, angels in the heavens - to keep them “in harmony, by diffusing and executing fairly and effectively the orders from above. If in the state there are three essential ranks of magistrates (superior, middling and inferior magistrates), there is also in nature a web of command descending from almighty God to superior angels, then to inferior ones, humans, and finally animals.”⁶³ Blair says, “In both nature and the state, intermediate beings uphold hierarchy and create harmony: magistrates and angels,

⁵⁸ Blair, *Theater*, 135

⁵⁹ Bodin, *De la Demonomanie des sorciers*, (Paris: Dupuys, 1587; facsimile ed., Paris: Gutenberg reprints, 1979). I chap. 2, fol. 8r. quoted by Blair, *Theater*, 135

⁶⁰ Blair, *Theater*, 136

⁶¹ Blair, *Theater*, 136

⁶² Bodin, *Six Books of the Commonwealth*, IV chap I, p 49 quoted by Blair, 136

⁶³ Bodin, *Theatrum*, 527-8

as the essential links of a hierarchy of command; and intermediates of all ranks and types (between rich and poor, wise and foolish, between rocks and metals, or snakes and insects) as the bonds between opposites that create stability and harmony. This is one of Bodin's most often and proudly repeated insights."⁶⁴

Bodin's conception of "intermediaries" is also critical for his view of human nature. It enables him to conceive of human beings as constituted by bodies and immortal corporeal souls. Blair notes that Bodin's view of the body consciously embraces the natural body (the body of physics) as opposed to the mathematical body (abstracted by reason alone), the artificial body (subject of mechanics) or the incorporeal body (the subject of metaphysics).⁶⁵ Thus Bodin's section on the human body, "De corporis humani fabrica", is suggestive of a 1543 anatomical study by Andreas Vesalius (1514-1564), the physician to Holy Roman Emperor Charles V (1500-1558). Vesalius' book, *De humani corporis fabrica libri septem*, revolutionized anatomical and physiological studies by using the latest technologies of visual representation to display the inner workings of the human body.⁶⁶ As Blair notes, Bodin's illustrative account pales in comparison to Vesalius'. His list of the parts of the human body, "'bones...marrow, ligaments,...muscles, veins, arteries, kidneys,' and so on", is more of a "jumble" than a classification.⁶⁷ However, Bodin's allusion to Vesalius' book and his attempt to account for the most recent anatomical studies is consistent with his "commonplace" scientific method, which begins with nature's field of particulars before taking account of their coherence in the grand theater of God. Bodin's theory of the soul takes up this second task. That is, if Bodin's anatomical approach takes up the body as particular, Bodin's theory of the soul accounts for

⁶⁴ Blair, *Theater*, 137

⁶⁵ Blair, *Theater*, 40 quoting Bodin

⁶⁶ See *Vesalius on the human brain* trans. by Charles Singer (London ; New York: Published for the Wellcome Historical Medical Museum by Oxford University Press, 1952)

⁶⁷ Blair, *Theater*, 210

humanity's place among the variety of natural beings. As with the body, Bodin placed his treatment of the soul under physics. Bodin explains:

The subject of physics is the mobile body. Since therefore we have demonstrated that angels, souls surviving the dead bodies [to which they were attached], and demons are mobile bodies, it is the task of the physicus to treat their nature.⁶⁸

Blair explains that Bodin's "noteworthy" conception of an immortal corporal soul begins from "analogy with angels and demons."⁶⁹ Bodin reasons that "[i]f angels and demons are corporeal, then disembodied souls must be too, for given their past association with material bodies, they are inferior to angels in dignity."⁷⁰ Bodin's idea that angels and demons are corporeal, rather than immaterial beings, was derived not from the commonplace method, but from a rich scholarly tradition which includes "Aristotle, Iamblichus, Plotinus, . . . Tertullian, Augustine."⁷¹ All of these thinkers, according to Bodin, affirm that the human soul is corporeal. Bodin also establishes this claim on rational grounds. He says:

Every substance that is contained in the embrace of the greatest orb is finite: human souls [mentes], angels, and demons are contained in the embrace of the greatest orb, therefore they are finite, because nothing infinite can be contained in a finite space. . . . But nothing incorporeal is enclosed in any limits or place; therefore human souls, angels and demons are not incorporeal. . . . therefore they must have a corporeal nature."⁷²

For Bodin, the notion that human beings consist of both bodies and corporeal souls is established not only by tradition, but by rational deduction given the nature of all finite beings. If human souls, angels and demons exist within a larger orb then they must be finite, but since nothing incorporeal can be limited by time or place, they must be corporeal. Bodin also pointed to cases of out of body experiences or "ecstatic religious" experiences where they 'heard' or 'saw' things

⁶⁸ Bodin, *Theatrum* 520 quoted by Blair, 42

⁶⁹ Blair, *Theater* 137, 140

⁷⁰ Blair, *Theater* 140 brackets mine

⁷¹ Bodin, *Theatrum*, 520 quoted by Blair, 42

⁷² Bodin, *Theatrum*, 513, quoted by Blair, 141

without the faculties of a body.⁷³ These were evidence for him that human souls consisted of the same corporeal nature of angels and demons, but also of the soul's immortality. Bodin is not saying that the human soul is an intermediate between corporeal and noncorporeal things, nor that the human body is connected to an incorporeal soul. Rather, Blair explains that for Bodin human nature mediates between these two extremes, between "form separated from matter (disembodied souls and angels) and form fully embedded in matter (as in all natural bodies)."⁷⁴ Bodin attempts to describe the nature of the corporeal soul: "[H]uman souls [*mentes*], angels, and demons consist of some corporeal nature, but not of bone, or flesh; rather from an invisible essence, like air or fire or both, or of a celestial essence...thus even if we grant that it is a spiritual body, it is a body nonetheless."⁷⁵ Thus, Bodin theorized something of a polyvalent body, one that exists as an entity subject to the forces of the material world also stands as intermediary between angels and demons.

The Political Body

As early as 1896 political theorist W.A. Dunning clarified the structure of Bodin's politics, noting its roots in Greek thought.⁷⁶ Dunning finds traces of Aristotle (384-322 BC) in Bodin, specifically Aristotle's *Politics* (350 BC). Like Aristotle, Bodin discusses "the social basis and philosophical end of state; the analysis of the family and the distinction between the family and the state; the characteristics of paternal authority and the institution of slavery."⁷⁷ For Bodin, a state is born when families and other collectivities (e.g. guilds, fraternities) come together under a common authority.⁷⁸ A state cannot be founded by one person or one family. It

⁷³ Blair, *Theater* 138-9

⁷⁴ Blair, *Theater*, 140

⁷⁵ Bodin, *Theatrum*, 515-6, quoted by Blair, 140

⁷⁶ Wm. A. Dunning, "Jean Bodin on Sovereignty", *Political Science Quarterly*, Vol. 11, No. 1 (Mar., 1896), pp. 82-104 URL: <http://www.jstor.org/stable/2139603> Accessed 7/29/15.

⁷⁷ Dunning, "Jean Bodin on Sovereignty", 89

⁷⁸ Bodin, *Method for the Easy Comprehension of History*, 157

requires that “more than one should come together under the same roof” and that they have an obligation to a single (ultimate) authority. Bodin elaborates his understanding of the state in

Method:

So I hold that the family or fraternity is the true image of the state, and since the family cannot come into existence in the solitude of one man, so the state cannot develop in one family or one guild... Then three or more families, or five or more fraternities forms a state, if they are joined together at a given moment by the legitimate power of authority. If, on the other hand, families or colleges are separated from each other and cannot be controlled by any common rule, the group should be called anarchy, not a state... From this it comes about that the state is nothing else than a group of families or fraternities subjected to one and the same rule.⁷⁹

Bodin explains that his conception of the state may apply to villages, towns, cities, however scattered, again provided that they are controlled by the same authority. Those under this single authority become citizens, and all not under this authority become foreigners. Citizenship is thus defined by subjection to an authority rather than inalienable rights.

The fact of legal personality distinguishes (male) citizens from women, children and aliens. Legal personality grants citizens certain rights, liberties or power to dispose of property.⁸⁰ For Bodin, it is this legal personality, rather than rights, that makes one politically free. A citizen is thus “a free subject who is dependent on the sovereignty of another.”⁸¹ Bodin upholds a public/private divide in the commonwealth. The public comes into being when heads of households gather as equal citizens away from their private homes. However, as Bodin transitions from public life to private concerns, the notion of ‘equality’ recedes into the background and the notion of ‘sovereign power’ emerges as a controlling theme. Although equal in public, citizens remain lord and master of their households. Bodin is clear that this means that sovereign power, i.e. the power of life and death, is ascribed to the head. Bodin says, “The

⁷⁹ Bodin, *Method*, 157-8

⁸⁰ Bodin, *Six Books of the Commonwealth*, trans. by M.J. Tooley (Oxford, Basil Blackwell, 1955), ch VI and VII

⁸¹ Bodin, *Six Books*, ch VI

power, authority and command that a husband has over his wife is allowed by both divine and positive law to be honourable and right". The natural right of sovereign power is also extended to parents over their children: "In any rightly ordered commonwealth, that power of life and death over their children which belongs to them under the law of God and of nature, should be restored to parents."⁸²

According to M.J. Tooley, Bodin's view of the family served as a model for state government. "The artificial society of the commonwealth," Tooley asserts, "should be modeled on the natural society of the family, and no father is appointed by his children to rule over them."⁸³ For Bodin, nature serves as a model for statecraft. Bodin's ideal state, then, is one where a single authority rules with absolute power, just as a father rules his household. In the political realm, this authority is called 'the sovereign' and his power, 'sovereignty.'

"Sovereignty", says Bodin in *Six Books the Commonwealth* (1576), is the "absolute and perpetual power of a commonwealth."⁸⁴ The term 'perpetual' signifies that "the true sovereign remains always seized of his power", even for life.⁸⁵ Bodin says:

However much he gives there always remains a reserve of right in his own person, whereby he may command, or intervene by way of prevention, confirmation, evocation, or any other way he thinks fit, in all matters delegated to a subject, whether in virtue of an office or a commission. Any authority exercised in virtue of an office or a commission can be revoked, or made tenable for as long or short a period as the sovereign wills.⁸⁶

For Bodin, the sovereign can never be deprived of absolute and perpetual power, i.e. of sovereignty. It inheres in the physical body of the sovereign. Thus, for Bodin, to embrace

⁸² Bodin, *Six Books*, ch II-V

⁸³ MJ Tooley, trans. "Translator's Note" in *Six Books of the Commonwealth* by Jean Bodin http://www.yorku.ca/comninel/courses/3020pdf/six_books.pdf 18 Accessed 7/29/15

⁸⁴ Bodin, *Six Books*, 25. For Bodin's discussion on sovereignty see p25-36. See also *On Sovereignty: Four Chapters from the Six Books of the Commonwealth* by Jean Bodin, Julian H. Franklin, ed. and trans. (New York: Cambridge University Press, 1992)

⁸⁵ Bodin, *Six Books*, 25

⁸⁶ Bodin, *Six Books*, 25

absolutism is also to embrace hereditary monarchialism. The birth of an heir to the throne is also the promise of a rightly ordered state, and the art of government becomes an explication of the features and contours of sovereignty.

On Sovereignty

Bodin's discourses on sovereignty is worked out in both his *Method* (1566) and his *Six Books* (1576). Over the course of this unstable decade, Bodin emphasizes absolute rather than limited monarchial sovereignty. In *Method*, Bodin argues that sovereignty is the foundational principle of the state. Sovereignty rests at the top of a political hierarchy. It is distinct from the actual governance of the state, that is, decision-making and the issuing and execution of orders. Sovereignty is neither the bare statutory process of lawmaking nor the execution of the law, or what Foucault calls "juridical power". For these servile functions of government, magistrates are given only a portion of political authority.⁸⁷ Sovereignty (*summum imperium/summa rerum*) is that final, ultimate authority beyond magistrates, which has an independent principle of legitimacy to endow or recant magistrates or sanction their decisions regarding governance. "[T]he right of sovereignty," Bodin maintains, "is chiefly displayed in these specific attributes. Therefore, in every state one ought to investigate who can give authority to magistrates, who can take it away, who can make or repeal laws – whether one citizen or a small part of the citizens or a greater part. When this has been ascertained, the type of government is easily understood."⁸⁸ Sovereignty is, for Bodin, the highest, most decisive, and necessary aspect of political authority and of the state.

⁸⁷ Bodin, *Method*, 172-9

⁸⁸ Bodin, *Method*, 178-9

A sovereign, says Bodin, possesses his own right of authority, has jurisdiction over everything or anything, and is a permanent and unitary force.⁸⁹ Bodin lists five functions in which sovereignty is involved: creating magistrates, proclaiming/annulling laws, declaring war/peace, receiving final appeal, and the power of life and death when the law itself leaves no room for extenuation or grace.⁹⁰ Notwithstanding these powers of monarchical sovereignty, Bodin advocates a *limited* monarchical sovereignty as opposed to absolutism. Still, even in *Method*, his theory abounds with tensions, ambiguities, and even confusion. This is owing to his locating both sovereignty and powers thereof in the same person, while leaving intact the substantive checks to monarchical sovereignty by divine law, natural law and the property rights of subjects. Absolute monarchical sovereignty is not autonomous. Rather, Bodin insists that it is above positive law, i.e. the laws of certain states. If necessary, however, the sovereign “may repeal [positive law], take from it, invalidate it, or add to it, or even if circumstances demand, allow it to become obsolete. These things cannot be done if the man who makes legislation is held by it.”⁹¹

In *Method*, Bodin, thus, highlights two views of monarchical sovereignty. The first is unlimited, and the second stresses limits on the monarch’s power. On the first view, monarchical sovereignty is unlimited, i.e. “restrained by no law at all” according to Bodin.

Of the first kind are the kings who once upon a time without any laws governed empires most justly by prerogative. Such the kings of the ancient Greeks are said to have been before Lycurgus and Draco, that is, before any laws had been made binding. Such, also, the ancients remember the rule of the kings in Italy. At that time no laws were promulgated by kings or private citizens, but the whole state and the rights of citizens depended upon the will of the prince.⁹²

⁸⁹ Erik Empson, “Jean Bodin on Sovereignty” *Generation Online*. GenerationOnline.org URL: <http://generation-online.org/p/fpbodin1.htm> Accessed 12/12/12

⁹⁰ Bodin, *Method*, 172-3

⁹¹ Bodin, *Method*, 202, brackets mine

⁹² Bodin, *Method*, 201

Bodin explains that while it may be appropriate to bind magistrates with law, “it is...an entirely different matter to hold the king, since the latter has authority from himself, the [magistrate] from the prince of the people.”⁹³ For Bodin, the sovereign’s authority is self-caused. “For those who decree the law ought to be above it, that they may repeal it, take from it, invalidate it, or add to it, or even if circumstances demand, allow it to become obsolete. These things cannot be done if the man who makes legislation is held by it”.⁹⁴ This unlimited sovereignty renders the sovereign “master of all things and of laws in the state.” The metaphor of the family drives home Bodin’s point. These kings, “like fathers of families, protect the state as if it were their own property.”⁹⁵ Yet even in this unlimited model, Bodin notes at least one obligation the sovereign must keep in addition to the divine and natural law. “Only he must duly defend the empire with his arms and his child with his blood...”⁹⁶

With the second view of sovereignty, the sovereign’s power is limited, i.e. bound by laws. As with the first, the sovereign’s authority is self-caused, and thus the sovereign cannot be bound by any authority other than his own. However, this second view differs in that the sovereign binds himself to the law. Bodin explains that these princes

...bind themselves to govern the state in accordance with the laws of the country and the public good...[B]efore the priests the prince swears by immortal God that he will give rightful law and justice to all classes as so far as in him lies will judge with integrity and religious scruple. Having sworn, he cannot easily violate his faith; or if he could, yet he would be unwilling to do so for the same justice exists for him as for any private citizen, and he is held by the same laws.⁹⁷

In the case of limited sovereignty, the sovereign takes an oath before a state’s dignitaries and religious leaders. This oath, dressed in a religious ceremony, signifies that the prince will

⁹³ Bodin, *Method*, 202

⁹⁴ Bodin, *Method*, 202

⁹⁵ Bodin, *Method*, 204

⁹⁶ Bodin, *Method*, 204

⁹⁷ Bodin, *Method*, 204

sacrifice his own will to preserve laws and customs of the state. (Bodin notes the curious coincidence that many of these second types of monarchs were Christians). This then, is the second kind of sovereignty. Already in *Method*, Bodin showed privilege toward the unlimited model, repeatedly stressing that this model was the obvious choice for so many ancient rulers. With respect to the limited model, Bodin writes, “[f]ew princes consider that this law was passed for them-not the kings of the Turks, or the Persians, or the Scythians, or the Britons, or the Abyssinians...they never tied their own hands.”⁹⁸

Published eleven years after his *Method*, *Six Books* is explicitly absolutist. Here, Bodin defines sovereignty as the “absolute and perpetual power of a commonwealth”⁹⁹ (*majestas*). Its distinctive mark is the ability to “impose laws generally on all subjects regardless of their consent.”¹⁰⁰ Being absolute, sovereignty cannot be burdened with obligations.¹⁰¹ “Just as...the Pope can never tie his own hands, so the sovereign prince cannot bind himself, even if he wishes”, says Bodin.¹⁰² Still, the divine and natural law, and promises and covenants, are its only checks. For instance, the queen cannot break promises once made to subjects or estates. But as to law, the monarch wields absolute sovereignty. “The first attribute of the sovereign prince, ...is the power to make law binding on all his subjects in general and on each in particular...[H]e does so without the consent of any superior, equal, or inferior being necessary.”¹⁰³ The second mark of sovereignty is perpetuity; it lasts for the lifetime of the sovereign. Third, subjects cannot resist or disobey the monarch, even under the “pretext that honour and justice require it...”¹⁰⁴

⁹⁸ Bodin, *Method*, 204

⁹⁹ Bodin, *Six Books*, 25

¹⁰⁰ Bodin, *Six Books*, 32

¹⁰¹ Bodin, *Six Books*, 26

¹⁰² Bodin *Six Books*, 28-29

¹⁰³ Bodin *Six Books*, 43 brackets mine

¹⁰⁴ Bodin *Six Books*, 34

In summary, we can see how Bodin's conception of sovereignty in the state of nature had immediate implications for his conception of the political body and sovereignty. In Bodin's state of nature, men have the natural liberty, i.e. the "right under God to be subject to no man living and amenable only to those commands which are self-imposed."¹⁰⁵ In private matters, this natural right takes form as the power over life and death. For Bodin, a rightly ordered political body and the appropriate exercise of sovereignty therein is only possible when modeled on the order of nature. Just as a household consists of several individuals under a single absolute authority, so a state consists of several principalities under an absolute sovereign.

B. Thomas Hobbes

Context

By the middle of the seventeenth century, France was home to another theory of sovereignty, one far more influential and contested from its roots in the early modern period until today. After fleeing his native England to Paris for fear of his life in 1640, Thomas Hobbes (1588-1679) wrote *Leviathan* (1651), his most important political work on the theory of state sovereignty. Few European countries experienced more radical effects of Renaissance and Reformation movements than seventeenth century England, where even as unprecedented wealth poured into the country from the recently colonized East Indies, Africa, and Americas, England was a cauldron of internal conflicts that jeopardized political stability. Unlike Bodin's France, where the Huguenots were the sole challenge to Catholic political and ecclesial prerogative, England was far more thoroughly fragmented along religious and political lines. Where the Peace of Westphalia (1648) ended the lengthy war between Spain and the Dutch Republic and brought a relative peace to the continent, England remained plagued by civil war. Now a vengeful Spanish

¹⁰⁵ Bodin *Six Books*, ch. II-V

Catholic Church wrestled with Anglicans and Puritans for control of both the Church of England and political authority in English affairs.¹⁰⁶

These tensions came to a head at mid-century, when nominalist Anglicans such as John Bramhall (1594-1663) and Richard Hooker (1554-1600), those identified by Hobbes as leaning too much toward authority, faced off with Puritan natural law theorists associated with the likes of John Selden (1584-1654) and Richard Cumberland (1631-1718), which Hobbes saw as desiring too much liberty. Nominalists argued that the king's divine right was above the law, which supported James I and Charles I respective visions for shaping England. Natural lawyers, by contrast, holding that universal and necessary laws govern all things, argued for constitutionalism and for parliamentary right of resistance to the crown. Although Hobbes was a monarchialist in the final analysis, he rejected both of these perspectives as legitimate justifications and searched instead for a mediating position. Hobbes did this because he believed that the traditional intellectual and social structures of Christendom had collapsed, or at least have lost their ability to establish widespread consensus for the legitimacy of political authority.

The State of Nature and the Body

In political theory, Hobbes's most known work, *Leviathan* (1651) reigns, but he did not divorce his political thinking from his interest science. Texts such as *De Cive* (1642), *De Corpore* (1655) and *De Homine* (1658) remind us that like Bodin, Hobbes's theory of sovereignty is grounded in certain views of nature and the human body. However, Hobbes operated with a different understanding of science than Bodin, namely *mechanism*, which emerged during the sixteenth to eighteenth century scientific revolution. Mechanism challenged

¹⁰⁶ See Michael P. Zuckert's *Natural Rights and The New Republicanism* (Princeton: Princeton University Press, 1994), 29-31.

Bodin's view of science, which philosopher Douglas Jesseph calls the "Scholastic-Aristotelian" view of science, by operating with a different causal explanation. Jesseph explains:

Aristotle and his Scholastic followers conceived of substances as composites of form and matter, and their methodology distinguished between formal, material, efficient and final causes. Thus a causal explanation in the scholastic tradition might include reference to a substance's form (the formal cause), its matter (the material cause), the process that produced it (the efficient cause), and the end or purpose for which it was produced (the final cause). The Scholastic way of thinking about nature was rejected by the leading scientific figures of the seventeenth century who championed a mechanistic conception of the world and insisted that natural phenomena be explained exclusively as the result of the motion and impact of material particles.

Hobbes was a devotee of the new "mechanical philosophy" and he combined his insistence on the causal nature of scientific knowledge with the mechanistic maxim that "Nature does all things by the conflict of bodies pressing each other mutually with their motions." His methodology dictates therefore that the scope of natural science be restricted to the investigation of the mechanical causes of natural phenomena, and it entails the rejection of a Scholastic-Aristotelian natural philosophy grounded in the consideration of such nonmechanical principles as substantial forms or final causes.¹⁰⁷

According to Jesseph, the fundamental distinction between Scholastic-Aristotelian natural philosophers and those who subscribed to mechanism is their view of science. Scholastic-Aristotelian thinkers like Bodin operate with a conception of science that takes account of four causes: formal, material, efficient and final. By contrast, mechanistic philosophers take account of two: material and efficient, since these are the only causes that present themselves to empirical analysis.

In taking account of only material and efficient causes, mechanistic thinkers such as Hobbes are also materialists. Materialists, according to philosopher George J. Stack,

hold that all entities and processes are composed of – or are reducible to – matter, material forces or physical processes. All events and facts are explainable, actually or in principle, in terms of body, material objects or dynamic material changes or movements. In general, the metaphysical theory of materialism entails the denial of the reality of

¹⁰⁷ Douglas Jesseph, "Hobbes and the Method of Natural Science" in *The Cambridge Companion to Thomas Hobbes* (New York: Cambridge University Press, 1996), 86-7

spiritual beings, consciousness and mental or psychic states or processes, as ontologically distinct from, or independent of, material changes or processes.¹⁰⁸

Materialism, then, reflects a particular conception of science, one that understands the nature of a thing through material and efficient causes to the exclusion of formal and final ones. Mechanism is one way of construing the totality of relations between these material bodies. These were not only Hobbes, but also of other sixteenth and seventeenth century scientific figures who were representative of the “The New Science” such as Copernicus (1473-1543), Galileo Galilei (1564-1642) and Sir Isaac Newton (1642-1727). For them, matter and physical force are the only existents and agents of change in nature. Nature itself operates mechanistically, i.e. as if it were a grand machine whose separate parts impact one another through the motion of bodies.

Philosopher Mark Wilson explains that in the mechanistic view, objects “obey the three laws of motion articulated by Isaac Newton in 1686 in a *deterministic* manner: once a mechanical system is assembled, its future behaviour is rigidly fixed.”¹⁰⁹

Hobbes’s work in mechanism clearly preceded Newton’s articulation of the laws of motion in his 1687 *Philosophiae Naturalis Principia Mathematica*. However, the themes of mechanical laws, determinism, and a mechanically-predictable future state of affairs pervade Hobbes’s thinking. Hobbes’s view of nature as mechanism was a radical departure from Bodin’s ‘Scholastic-Aristotelian’ conception of nature as created order and cosmic theater. For Bodin, God, a spiritual being, is the first cause of nature, and nature consists of a “web of interconnections” ordered by natural law. Hobbes also speaks of God as the first cause of nature, but as Hobbes scholar Luc Foisneau notes, Hobbes’ language of God refers to the general

¹⁰⁸ George J. Stack, “Materialism”, *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/materialism/> Accessed 7/30/15

¹⁰⁹ Mark Wilson, “Mechanics, classical”, *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/mechanics-classical> Accessed 7/30/15

principle of necessity rather than to a formal cause beyond the natural world.¹¹⁰ In other words, Hobbes conceives of God as the totality of nature's deterministic forces. Finally, Bodin conceived of nature as a web of interconnections, while Hobbes' mechanism renders nature an aggregate of atomized particles rather than a unified whole.

Hobbes's mechanical philosophy also had implications for his view of the human body. With Bodin, the human being consists of a material body and an *immortal corporeal soul*. Hobbes, on the other hand, does not believe that Bodin's Scholastic-Aristotelian natural philosophy is science¹¹¹ and instead embraces a mechanistic science that limits the scope of its investigations to material bodies. Hobbes thus rejects the notion of an immaterial soul, and on Aristotle's *Metaphysics*, Hobbes says it "is for the most part so far from the possibility of being understood, and so repugnant to naturall Reason, that whosoever thinketh there is any thing to bee understood by it, must needs think it supernaturall."¹¹² Hobbes's negative views on Aristotle's writings also extended to his *Politics* and *Ethics* as well, which were grounded in his *Metaphysics*. Hobbes asserts:

And I believe that scarce any thing can be more absurdly said in naturall Philosophy, than that which now is called *Aristotles Metaphisiques*; nor more repugnant to Government, than much of that hee hath said in his *Politiques*; nor more ignorantly, than a great part of his *Ethiques*.¹¹³

For Hobbes, Scholastic-Aristotelian notions of "abstract essences" and "substantial forms", i.e. essences separated from bodies, was nothing more than "jargon."¹¹⁴ While for Bodin, Aristotle was *the* scientific authority, for Hobbes, Aristotle's *Metaphysics* no longer has scientific

¹¹⁰ Luc Foisneau, "Omnipotence, Necessity and Sovereignty: Hobbes and the Absolute and Ordinary Powers of God and King" *The Cambridge Companion to Hobbes' Leviathan* ed. by Patricia Springborg (New York: Cambridge University Press, 2007)

¹¹¹ Thomas Hobbes, *Leviathan* ed. by Richard Tuck (New York: Cambridge University Press, 1996) 463

¹¹² Hobbes, *Leviathan*, 463

¹¹³ Hobbes, *Leviathan*, 461-2

¹¹⁴ Hobbes, *Leviathan*, 463

standing, i.e. renders no helpful knowledge for physics.¹¹⁵ For Hobbes, a truly scientific account of (human) bodies and their operations considers material and efficient causes only, i.e. their matter and motions. Hobbes's mechanistic view of the body can be seen in the early part of *Leviathan*. Hobbes scholar Cees Leijenhorst notes that *Leviathan*, a text in politics, curiously begins "with the genesis and function of sense perception"¹¹⁶ rather than a discussion of political laws, abstract essences, or substantial forms. In Hobbes view, external bodies present themselves to human sense organs, and this feeds the human imagination and intellect. In turn, the imagination and intellect create mental representations of external objects and gives rise to various appetites and aversions, i.e. desires and dislikes. In this way Hobbes takes up human psychology within his mechanistic science. Human beings engage the world through a mental artifice or image of the world rather than the world itself, and human thinking can never demonstrate the reality of supernatural existence. All human thinking thus contains both a perspectival and subjective aspect, as opposed to having an intrinsic universal quality. It is necessarily limited, fallible, and incomplete.

Hobbes' mechanism also has implications for his view on the question of the freedom of the will. As philosopher H. Van den Enden notes, while Hobbes believes in the possibility of free human action, he does not believe in the doctrine of the freedom of the will. Hobbes understands free human action (a.k.a. natural liberty) as action without impediments beyond those intrinsic to the agent.¹¹⁷ "On the other hand" says Van den Enden,

¹¹⁵ Hobbes, *Leviathan*, ch 46, 467

¹¹⁶ Cees Leijenhorst, "Sense and Nonsense about Sense: Hobbes and the Aristotelians on Sense Perception and the Imaginations" *The Cambridge Companion to Hobbes' Leviathan*, 82

¹¹⁷ Hobbes, "The Questions concerning Liberty, Necessity, and chance" as published in *The English Works of Thomas Hobbes of Malmesbury*, collected and edited by Sir William Molesworth, London, John Bohn (Henrietta Street, Covent Garden), 1841, second reprint by Scientia Verlag, Aalen, 1966, vol. V, p 367, quoted by Van den Enden, p 187.

the *will* itself cannot be legitimately called *free* in the sense of it being *indetermined* and incapable of *autonomous self-determination*. The so called “will” can only be understood and explained if it is apprehended as a volitional process which is *determined* by its antecedent causes.¹¹⁸

Van den Enden explains that in Hobbes view, humans are free to act according to their will, but not to determine their will.¹¹⁹ The will is determined by “antecedent factors”, especially mental representations. Representations cause something to appear as desirable or not, and thus motivate an agent to act either for a certain good or to avoid an evil. In this way, human action according to the will is only possible if and only if the will is necessitated by antecedent causes. “The act of willing” says Van den Enden, “is dependent on appetites for specific objects which arise in man’s mind beyond his control. It is not in his power to choose or to determine his appetites and the objects that appear in his imagination.”¹²⁰ Human actions are not predicated on free will. Instead, voluntary action is already determined by mental representations. For Bodin, the variety of nature was ordered by the universal web of interconnections. For Hobbes, however, although the atomistic universe is ordered according to nature’s mechanistic laws, no such similar mechanism exists to coordinate the variety and conflict inherent in desire-driven human action. People act in response to perceived threats, promises, joys, grief, pleasures and pains. In this way, the moral life, for Hobbes, is also fundamentally constituted by the passions. These, rather than reason, frame the conditions of social interaction.

Hobbes’ discusses his actual doctrine of the “state of nature” for only five of *Leviathan*’s four hundred and ninety – page text.¹²¹ Yet this doctrine has created a history of effects that remains with us today on a global scale (chapter four). As we have seen, Hobbes’s philosophy of

¹¹⁸ H. Van den Enden, “Thomas Hobbes and the Debate on Free Will: His present day significance for ethical theory” *Philosophica* 24, 1979 (2), pp. 187

¹¹⁹ H. van den Enden, “Free Will,” 188-9

¹²⁰ H. van den Enden, “Free Will,” 188

¹²¹ See *Leviathan*, ch XIII for Hobbes’ discussion of the state of nature

nature varies significantly from Bodin's. If for Bodin, nature's law gives order and indissoluble coherence to its variety, for Hobbes there is only variety. Hobbes thus conceives of natural human relations as a formless "multitude" rather than a social whole. For Bodin, the varieties of human relations are embedded within nature's order, opening toward a natural coherence and balance in society. In stark contrast to Bodin's harmony and balance, Hobbes's state of nature is marked by war. Hobbes does not begin his doctrine with war, but with observation that "Nature hath made [people] so equall..."¹²² For Hobbes, natural equality, rather than inequality, is a key factor in conditions of war, for such conditions can only arise if "[f]rom this equality of ability, ariseth equality of hope in the attaining of our Ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies,"¹²³ In Hobbes's state of nature, humans do not occupy an intermediary space between angels and demons. Nor are they naturally called to family life, or to lives of virtue and contemplation of God, as it was for Bodin.¹²⁴ Hobbes' natural human is at liberty to pursue desired ends, and for Hobbes, this liberty has destructive effects on human social life. He argues that without a common power (i.e. government) to check human action, relations will be overtaken by the lust for power and the pull of the passions (competition, diffidence, glory).¹²⁵ Hobbes claims that social relations decline, first from relations of competition to diffidence, and then from diffidence to conditions of war. Industry (agriculture, knowledge, arts) withers, society decays, and life is poor, nasty, brutish, and short.¹²⁶ Such is Hobbes's infamous state of nature.

Hobbes notes that the state of nature has never been a historical reality. Mid-late twentieth century scholarship posits that the state of nature is a myth or a rhetorical device. Hobbes had a

¹²² Hobbes, *Leviathan*, 86

¹²³ Hobbes, *Leviathan*, 87

¹²⁴ Bodin, *Six Books*, Book I, chap I-VII

¹²⁵ See *Leviathan* ch x for Hobbes' discussion of the passions.

¹²⁶ Hobbes, *Leviathan*, 89

background in seventeenth century British renaissance humanism. This suggests that *Leviathan* can be read as a work of political rhetoric rather than empirical description, whose goal is to get the audience to participate in the act of contract. For example, in his *Hobbes and the Epic Tradition of Political Theory* (1970) Sheldon Wolin argues that Hobbes hoped to achieve a great and remarkable *deed*, namely to make the world reflect his theory.¹²⁷ He characterizes Hobbes's deed as "epical;" it is a "thought-act" that attempts to redeem a situation by way of a compelling piece of drama-as-literature. Michael Oakeshott's *Hobbes on Civil Association* (1975) notes the mythical aspect of *Leviathan*; in a context of civil war, political upheaval, and epistemological collapse, Hobbes attempts to create a new myth (story of a people's history, fall, and redemption) around which early modern English society could envision a collective dream, and in turn, a civilization.¹²⁸

The Political Body

According to Hobbes, the multitude decides to transition from the state of nature to political society, i.e. to a state of affairs designed for the safety and contentment of all. Thus for Hobbes, the birth of civil society is not natural, as Bodin and Aristotle argued, but artificial. Also, civil society is birthed by a multitude of individuals as opposed to the family. Hobbes understands human beings as naturally social, rather than political, animals. For him, political society is established out of self-interest, while Bodin and Aristotle see humans as *zoon politikon*. Just as God makes and governs the world through the art of nature, so, too does the Hobbesian multitude gather to construct a political body to harmonize their diverse interests.¹²⁹

¹²⁷ Sheldon Wolin, *Hobbes and the Epic Tradition of Political Theory* (University of California: Los Angeles), 1970, 5-10. See also Laura Suzanne Reagan's *Mimesis in Thomas Hobbes's Leviathan (1651): The theater of the modern commonwealth*. (Dissertation, Northwestern University), 2010

¹²⁸ Michael Oakeshott, *Hobbes on Civil Association*, (Liberty Fund: Indianapolis) 1975, 159-63

¹²⁹ "Nature, the art by Which god hath made and governs the world."

If for Bodin each head of household exercises natural liberty over the family, for Hobbes, each individual exercises natural right in the state of nature. As Hobbes's multitude gathers, each individual's interest is represented by the postulate of natural right. Hobbes explains that natural right is:

the liberty each [human] hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own judgement, and reason, hee shall conceive to be the aptest means thereunto.

By liberty, is understood, according to the proper signification of the word, the absence of externall Impediments: which impediments, may oft take away part of [one's] power to do what hee would; but cannot hinder him from using the power left him, according as his judgement, and reason shall dictate to him.¹³⁰

For Hobbes, natural right is the ability to use one's own judgment and reason, and to calculate and act in their own interest however they see fit. It is self-sovereignty. Bodin also spoke of "natural liberty each [one] has to live as [one] chooses,"¹³¹ but Bodin's natural liberty was confined to the household, and only after the head had subjected his own appetites to reason and the will of God. For Hobbes, natural liberty is the liberty to use one's own judgment and capacity as they see fit to preserve themselves. Sovereignty operates in both understandings of liberty. For Bodin, the head of household exercises limited self-sovereignty. Thus, Bodin argues that one should be the head of a household only after their will has been disciplined by reason and faith. The head exercises unlimited sovereignty over the family, i.e. the power of life and death.

It is highly likely that life was precarious for the women, children and slaves who were under the authority of Bodin's head of household. Nevertheless, in comparison to Hobbes, Bodin's state of nature is a far more stable society. For example, heads of households come together as citizens and interact as equals. They conduct public affairs in an organized manner. With Hobbes, there is only self-sovereignty, which renders any public/private distinction precarious in the state of

¹³⁰ Hobbes, *Leviathan*, 91, brackets mine

¹³¹ Bodin, *Six Books*, ch. II-V, brackets mine

nature and totalizes the threat of war. This precariousness motivates Hobbes's multitude to form a state. For Hobbes, natural right is distributed to all, to the multitude at large, as opposed to heads of households only, and thus all agree to form the state. After discussions, negotiations and voting, all agree to raise "a Common Power, to keep them in awe, and to direct their actions to the Common Benefit."¹³² The multitude then binds themselves with a social contract:

I Authorise and give up my Right of governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorize all his Actions in like manner. This done, the Multitude so united in one Person, is called a Common-Wealth, in latine, Civitas. This is the Generation of that great Leviathan, or rather of that Mortall God, to which wee owe under the Immortal God, our peace and defence. For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strength conferred on him [for] Peace at home, and mutuall ayd against their enemies abroad.¹³³

Having found the state of nature to be an existence plagued by fear and war, people form a covenant or social pact with one another. With this, they transfer their natural right to an authority whose task it is to maintain a state of peace and security. The artifice that emerged from the collective imaginations – *Leviathan* – has supreme right. State sovereignty in Hobbes's theory is not predicated on natural attributes of rulership, divine right, or an eternal natural law. It is instead the prerogative of an artifice spurred by rational necessity, shaped from below through deliberative processes, and established by the consent of the multitude. The multitude establishes the authority of rulership through social contract and retains dominion (control) and the *right* of Leviathan's actions.¹³⁴

The inauguration of the contract implies certain duties for subjects and rights for the sovereign. Hobbes leaves subjects only one right: The right to preserve one's body, but this right is not constitutionally protected. His comments concerning subjects are otherwise couched in

¹³² Hobbes, *Leviathan*, 120

¹³³ Hobbes, *Leviathan*, 120

¹³⁴ Hobbes, *Leviathan*, 112.

negative terms. Subjects are not bound to harm themselves, nor can they be forced to wage war (but can volunteer for it). Subjects are relatively powerless in relation to the sovereign – they are not allowed to make any type of separate covenant among themselves that has not been approved by the sovereign. They are never allowed, under any conditions, to cast off sovereign authority or to transfer it. If either occurs, Hobbes notes that a subject is actually breaking the social contract with all others, thus committing a grave and punishable injustice. Indeed, one cannot complain regarding the sovereign’s actions or decisions, since they formed the covenant that authorized the sovereign to act. Those who would protest should remember that being subject to the lusts and unlimited power of the sovereign is better than returning to the state of nature.¹³⁵

On Sovereignty

Conversely, the sovereign retains all power in the commonwealth. He possesses undivided power in legislative, judicial, and executive matters. He decides the rules of propriety for all peoples (what is lawful and unlawful), property rights, and possesses the power to appoint officers to judge controversy and enforce the law. The sovereign has the power to make war and/or act in any way he deems fit to maintain the peace and security of the commonwealth. He can choose who is granted titles of honor and respect in the commonwealth (e.g. model citizens) and can also designate the particular signs of respect to be given them.¹³⁶ These rights, Hobbes claims Hobbes, compose the very “Essence of Sovereignty.”¹³⁷ The greatest of sovereign powers, however are the powers of life and death.

The maintenance of civil society, depending on justice; and justice on the power of life and death, and other lesse Rewards and Punishments, residing in them that have the Sovereignty of the Commonwealth; It is impossible a Common-wealth should stand,

¹³⁵ Hobbes, *Leviathan*, 121-129

¹³⁶ Hobbes, *Leviathan*, 121-129

¹³⁷ Hobbes, *Leviathan*, 127

where any other than the Sovereign hath a power of giving greater rewards than Life; and of inflicting greater punishments, than death.¹³⁸

As the state's supreme magistrate, the sovereign's will is the source of civil justice. The exercise of justice, however, rests on the power of life and death, i.e. on sovereign power, and Hobbes's sovereign also has power over these most precious rewards and punishments. Thus, a state constitution is left to the sovereign's discretion. In an effort to preserve the state, the sovereign may ignore established laws and even compel subjects' wills.¹³⁹ Disobedience cannot be tolerated, not even on urge of divine command. Moreover, while the sovereign should show restraint, no authorized exercise of sovereign power can be considered a breach of contract. The sovereign possesses absolute right over the offices and functions of the commonwealth. Hobbes justifies such unlimited power with three claims: 1) The social contract is between people, not between the people and the sovereign. The sovereign can thus do nothing to violate the covenant. 2) The sovereign is only accountable to God, and thus only obliged by the law of nature – to seek peace 3) Even if the sovereign does bind himself to the people, this covenant is “but words,” having “no force to oblige, contain, constrain, or protect...”¹⁴⁰ Said another way, since there is no one to hold the sovereign accountable by force, promises by the sovereign are tenuous at best.

Hobbes held that representational power was the essence of all political organizations, and thus a critical prerogative of sovereignty.¹⁴¹ His notion of “representation” was derived from the Latin *persona*, a theatrical term for “actor.” As with the *persona* in late antique dramas or British Renaissance plays, those involved in the creation of Hobbes's political artifice have (representational) roles to fulfill if the overall performance is to be judged favorably, i.e. if the

¹³⁸ Hobbes, *Leviathan*, 306-7

¹³⁹ Hobbes, *Leviathan*, 120

¹⁴⁰ Hobbes, *Leviathan*, 123

¹⁴¹ “*Persona*: Reason and Representation in Hobbes's Political Philosophy” by Paul Dumouchel. *SubStance*, Vol. 25, No. 2, Issue 80: Special Issue: Politics on Stage (1996) pp68-80. <http://www.jstor.org/stable/3685330> Accessed 18/10/2013. p70.

political body is to endure. According to Hobbes scholar Paul Dumouchel, Hobbes understands representation as a two-pronged political phenomenon, comprised of authorization and theatrical manifestation.¹⁴² Dumouchel explains that ‘representation as authorization’ deals with the (procedural) forms of political agency (e.g. representative institutions vs. the people’s self/direct representation) and also deals with the legitimacy thereof. Hobbes’s view on this matter was that even the worst forms of government were “held through the accord, agreement, or authorization of those governed.”¹⁴³ Contra Bodin, Hobbes sees the multitude as authors of state, so that even an aberrant state, i.e. one whose representational procedures no longer function appropriately, is a legitimate state. Dumouchel explains that there is also a second aspect to representation, i.e. ‘representation as theatrical dramatization.’ where the governing body displays its power (e.g. police, ‘historians,’ journalists) to enhance the stability of that power. If the first type of representation is procedural, this second type is performative. For Hobbes, the sovereign exercises authority over these aspects of representational power.

In Hobbes’s theory of sovereignty, the multitude’s consent constitutes Leviathan as representative of his subjects, and the rational interests generated by the multitude define Leviathan’s actions. Hobbes stands firmly within the absolutist tradition, primarily because of his failure to deem any citizens’ rights *inalienable* (although some rights are always natural) and his view that the issue of a (legal) constitution is best left to the sovereign’s discretion. As a result, the sovereign’s will is the source of civil justice, and in an effort to preserve the state, he may ignore established laws and even compel subjects’ wills. Since the multitude freely contracts with one another, authorizes the state, and appoints the sovereign, they are unconditionally obligated to the state. Paradoxically, the multitude freely authorizes Leviathan to exercise

¹⁴² Dumouchel, *Persona*, 68

¹⁴³ Dumouchel, *Persona*, 68

supreme right over them. Disobedience, even if for God's sake, cannot be tolerated by the sovereign.¹⁴⁴ While the sovereign should follow Gods' example and restrain herself, in the end the show must go on, and no authorized exercise of sovereign power can be considered a breach of contract.

Conclusion

In Bodin's and Hobbes's theories of sovereignty, there is agreement on the form of government but divergence on the locus of sovereignty. Both advocate monarchical absolutism, but Bodin locates sovereignty in the monarch while Hobbes locates it in the monarch as state. Neither thinker is democratic, but a slight "democratization" of sovereignty occurs from Bodin's theory of monarchical sovereignty to Hobbes's theory of state sovereignty, where the monarch is now a representative of the state as opposed to a divinity. Bodin and Hobbes also diverge in other key aspects of their thinking, most importantly their views on the natural world, the political body and the relationship between the two. For Bodin, the political body emerges from and is modeled on the natural order, i.e. the family, which is itself part of the universal web of interconnected beings. For Hobbes, the political body is a voluntary artifice grounded in the multitude's self-interest and authorized by social contract. The Hobbesian political body emerges out of the context of the threat of war and creates unity in an otherwise precarious and atomistic world. It provides peace and contentment for all its citizens, but can only do so through continued exercise of absolute sovereignty at home and beyond its borders. Here, we also find an unsettling association between liberty and sovereignty, one that makes sovereignty a far more grotesque symbol than originally anticipated. For both Hobbes and Bodin, the exercise of sovereignty, i.e. the power of life and death, is necessary to preserve liberty. This is the case for

¹⁴⁴ For Hobbes's articulation of the legal and institutional powers of the sovereign see *Leviathan*, Chapters XVIII-XX.

Bodin's head of the household and monarch, and Hobbes's natural individual and sovereign. For Bodin, the exercise of this power is limited by God's natural law, while it is unlimited for Hobbes. What, if any, are the criteria for the evaluation of exercise of sovereignty, whether by individuals, associations, heads of families, political figures, and even states?

Bodin and Hobbes saw the world beyond the state differently. Bodin's sovereign was absolute in the commonwealth, but limited beyond the state by a universal web of interconnections. For Bodin, God sits at the summit of nature as supreme governor, and Bodin is clear that there *cannot* be an analogical relation, or any other kind, between the eternal God of heaven and a civil monarch on earth.¹⁴⁵ In Hobbes's mechanistic world, the sovereign must necessarily continue to exercise the right of nature in what is now an international or foreign context. Bodin's and Hobbes's sovereigns operate in similar fashion at home, but differently abroad. Hobbes's sovereign looks out onto a different natural world, one constituted more by variety and chaos than harmony and order. This state of nature forces Hobbes's sovereign to take drastically different measures to preserve the commonwealth, i.e. sovereign measures. This concludes our reflection on theories of sovereignty in the state of nature in early modern political theory, with Bodin and Hobbes serving as representative figures. In the next chapter we turn to theories of sovereignty in the state of nature during the emergence of the early modern capitalist order. In England, we look to the theory of John Locke, and in France we turn to Jean Jacques Rousseau.

¹⁴⁵ See Blair's *Theatrum*

Chapter 2

John Locke and Jean Jacques Rousseau: On Popular Sovereignty

In the last chapter, we saw how sovereignty, as both a political phenomenon and theoretical concept was gradually “democratized,” or at least made slightly less absolutist. While French theorist Jean Bodin argued for monarchial sovereignty, Hobbes argued for the sovereignty of the monarchial state. Hobbes’ monarch was still sovereign, but was demoted to a state representative. The monarchy was now an office as opposed to a hereditary birthright. Chapter one also showed that discourse on sovereignty is not exclusively concerned with the form of government, nor can it be restrict to political science. It is intimately linked to particular understandings of nature, the body and the political body. Thus, the early modern democratization of sovereignty was linked to shifts in thinking in the philosophy of nature and its mimetic offspring, the political body. This chapter continues the discourse analysis on sovereignty by way of our thematic centers: the state of nature, the body and the political body. This time we turn to the discourses of seventeenth century English philosopher John Locke (1632-1704) and eighteenth century French thinker Jean Jacques Rousseau (1712-1778).

Analysis of these discourses finds that the early modern trend of the democratization of sovereignty continues into well into the eighteenth century, and that the trend of democratization is accelerated in the novel context of constitutional regimes and proto-capitalist orders. In Locke’s thinking, sovereignty becomes popular, i.e. a prerogative of the people in representation, and for Rousseau it moves to the general will of the people. The increased democratization of sovereignty is not without modification to the doctrines of the state of nature, the body and the body politic. Locke and Rousseau have different conceptions of the body and the political body, but both thinkers have a rather optimistic view of (human) nature than Bodin and Hobbes in the previous chapter. For Locke the state of nature is such that those who order their actions

according to the natural law (i.e. work ethic) form a peaceful society, even in the state of nature. As such, the political body does not take priority in Locke's thinking, but is displaced by the (constitutional) rights of citizens, who are not nearly as desperate as Hobbes' subjects to come out of the state of nature. Rousseau holds a more optimistic view of nature than even Locke. He understands the state of nature as that space of original goodness and natural justice, a space even more pure than the so-called morals of contemporary society. With Rousseau, the body politic returns with a vengeance, exerting sovereignty over the lives of citizens not only in the form of the general will, where individuals are totally alienated from their natural right, but also in the form of "polite society", whose superficial morals and vain jealousies force us to mask what is most true about ourselves, i.e. our animality and connectedness to nature. Even as Rousseau's conception of the body politic allows for more participatory forms of government than Bodin, Hobbes, and in some ways, Locke, sovereignty still prevails in the end.

In the thinking of Rousseau, then, sovereignty returns in the general, i.e. national form. Rousseau is the first representative of national sovereignty in this dissertation (Hegel and Schmitt would follow). Rousseau's theory foreshadows what would take place in late eighteenth century France, namely the lasting downfall of the French monarchy, itself representative of the shift to a new democratic era in the West. Yet the fall of the monarchy was not the end of sovereignty in France, as was the case in the U.S., and the French rulers of terror on the heels of the revolution testify to this tragic fact. After the guillotine was held over the monarchial head, executionary violence was released on the political body. Locke's theory of sovereignty is not without problems, the most glaring of which was its legitimation of North American colonial slaveocracy. However, Locke's thinking represents the democratization of sovereignty and the rise of the rule of law and inalienable constitutional rights. Rousseau's thinking, on the other

hand, represents the discourse of tragic national sovereignty. In Rousseau's estimation, the nation must trump individual rights, even if regrettably so. Such is the price we must pay to in a social order founded fundamentally on the ownership of private property. I begin with the thinking of John Locke.

A. John Locke

Context

Even after the English civil war came to a close at mid-century, English society continued to battle an oppressive monarchy and antagonistic religious and political differences. Many thought that absolutist rule had come to an end with the rise of the Commonwealth of England in 1649. Hobbes returned to England and adjusted to life under parliamentary rule in the early 1650s. The Commonwealth and Hobbes dreams for state sovereignty ended definitively with Cromwell's demise in 1658 and Charles II's restoration of the Crown in 1660. Absolutism received its most publicly recognized legitimation from Robert Filmer's biblical-theologically grounded *Patriarcha* (1680). Apparently the text had made such an impact on early modern English society that Locke found it appropriate to confront Filmer's thinking in his *Two Treatises of Government* (1689). Here, Locke reminds us of Filmer's argument for absolute monarchical sovereignty. According to Locke, Filmer argues that sovereignty is a hereditary divine right, first bequeathed to Adam in the Garden of Eden, and now, after a long line of succession throughout the ages, to Charles II in England. In essence, this

Divine unalterable Right of Sovereignty" supported "Absolute, Arbitrary Unlimited, and Unlimitable Power, over the Lives, Liberties, and Estates of his Children and Subjects; so that he may take or alienate their Estates, sell, castrate, or use Persons as he pleases, they being all his Slaves, and he Lord or Proprietor of every Thing, and his unbounded Will their Law."¹⁴⁶

¹⁴⁶ John Locke, *Two Treatises of Government* ed. by Peter Laslett (Cambridge University Press, 1689, 1999) Ch II, 9, 148

In ways akin to the classical Roman notion of *dominium*, Filmer also argued that the king of England rightly possessed the “fatherly authority” to exercise absolute power and control over English subjects and lands. Locke’s thinking on sovereignty in the *Two Treatises*, then, was published as a response to Filmer’s absolutism. Symbolically, Locke published his work even as William III of England (1689-1702), the champion of parliament against absolutism, was being crowned.¹⁴⁷ Locke’s thinking aimed to assist this transition from absolutism to a democratic republic and to thus “establish the Throne of...King William; to make good his Title, in the Consent of the People...And to justifie to the World, the People of England, whose love of their Just and Natural Rights.”¹⁴⁸

The State of Nature and the Body

Locke’s vision of the state of nature draws on a mechanistic philosophy of nature similar to that observed in Thomas Hobbes’ thought. Like Hobbes, then, Locke’s view of nature was informed by the New Science’s mechanistic thinking, specifically thinkers like Pierre Gassendi (1592-1655) and Robert Boyle (1627-1691).¹⁴⁹ This means that Locke understood nature to perform its operations through the conflict of bodies in motion. Locke’s state of nature is an abstracted pre-political narrative of the human species as equipped with natural powers; i.e. natural right and the rational capacity for inductive reasoning. Locke’s natural human is equipped with these powers by the deistic God of nature, whose primary activity is not to miraculously intervene in the affairs of humankind, but to create and establish the natural (mechanistic) order. Also spurred by the thinking of Gassendi and Boyle, Locke embraced a

¹⁴⁷ Although the Glorious Revolution of 1688 certainly influenced Locke, a large portion of his *Two Treatises of Government* was written well before this event. Peter Laslett argues for a range of editions that span from 1679-1689. See *Two Treatises*, 65.

¹⁴⁸ Locke, *Two Treatises*, 137

¹⁴⁹ See “Locke’s Philosophy of the Body” by Edwin McCann in *The Cambridge Companion to John Locke* ed. by Vere Chappell, (New York: Cambridge University Press, 1999)

specifically corpuscularian conception of the body.¹⁵⁰ This view sees the matter of all bodies as extended solid substance. It also holds that all bodies are either a) individual atoms or b) collections or aggregates of atoms, and that all bodies are subject to change in texture as the result of impact or contact of one body upon another.

Although Locke's view of nature shares several features with Hobbes's, one key moment of distinction occurs with Locke's dualistic conception of the relationship between the body and the mind.¹⁵¹ For Hobbes, the mind is essentially an aspect of body, thus mental activity can never be completely severed from nature's mechanistic laws. With Locke, however, the mind and body deal with categorically different properties, even as mind and body are united in the same substance. Properties of the body pertain to materiality as mechanistic laws of nature while and those of the mind pertain to mentality as operations of the mind apart from mechanics. Locke understands that the mind and body are able to affect one another; the raw material of the mind is given by sense experience, and the mind thinks so as to set the body into motion. Nonetheless, mind and body are fundamentally distinct. In addition to thinking, the great action of the mind is volition, which is provoked not by drives and desires as in Hobbes, but by an uneasiness or desire in mind or the body. As in the thinking of Hobbes, Locke's natural human being is endowed with natural right, but the distinction between mind and body means that some are able to exercise restraint, check their passions and order their actions according to natural law, which they discover by revelation or rational demonstration."¹⁵²

In so doing, they exercise what Locke call "natural liberty" in distinction from "natural right." Natural law's presence as a substantive moral obligation in the state of nature means that

¹⁵⁰ "Locke's Philosophy of the Body" by McCann

¹⁵¹ See "Locke's philosophy of Mind" by Jonathan Bennett in *The Cambridge Companion to Locke*.

¹⁵² Locke, *Two Treatises*, Ch II. 4, 269, brackets mine

natural right is not completely determined by the passions, and in turn, that society does not decline into a state of war:

And here we have the plain *difference between the State of Nature, and the State of War*, which however some [people] have confounded, are as far distant, as a State of Peace, Good Will, Mutual Assistance, and Preservation, and a State of Enmity, Malice, Violence and Mutual Destruction are one from another. [People] living together according to reason, without a common Superior on Earth, with Authority to judge between them, is properly the *State of Nature*. But force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal to for relief, *is the State of War*; ¹⁵³

For Locke, war is certainly possible in the state of nature but not pervasive in the state of nature that this becomes its sole feature. Ordered society is still possible in the state of nature for Locke. This order comes about as natural humans order their actions according to the natural law. As they do this, something fascinating happens, natural man gains property. According to Locke, the acquisition of property in the state of nature occurs through labor. Locke says that all people have a property/*dominium* in their own person in the form of natural right, but again, this natural right is limited by the natural law. The natural law reminds us that all people are God's property and again, constrains the exercise of natural right to natural liberty. ¹⁵⁴

Therefore, it is impossible that anyone could possess absolute *dominium*, for this would be to occupy the position of God, and both reason and divine revelation make it clear that God has given the earth to "Mankind [sic] in common" so that no one possesses an original private dominion over nature. ¹⁵⁵ Locke not only denied absolute *dominium* to the monarch, then, but also denied such unlimited authority to anyone making similar claims with regard to subjective or property rights. All things are for the use of all people, and all people are servants of God. ¹⁵⁶

That being said, Locke also argues that God's workmanship have an obligation to subdue and

¹⁵³ Locke, *Two Treatises*, Ch III. 19, 280, brackets mine

¹⁵⁴ Locke, *Two Treatises*, Ch. II.6 ,271

¹⁵⁵ Locke, *Two Treatises*, Ch V, 25, 286

¹⁵⁶ Lustig, B. Andrew (1991), "Natural Law, Property and Justice: The General Justification of Property in John Locke" [*Journal of Religious Ethics*](#) 19 (1):119 – 149.

cultivate the earth. Fulfilling one obligation to God requires that one be endowed with the authority to appropriate (common) property, and labor is the process whereby one acquires that authority.

For Locke, then, the activity of labor ascribes to one the authority to take common property for oneself. “Whatsoever then he removes out of the State that Nature hath provided, and left in he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes is his *Property*.”¹⁵⁷ There are limits to the appropriation of property. As with natural right, the acquisition of private property is limited by the natural law. Locke explains that acquisition should be limited by the “rule of propriety”, or by “as much as [one] could make use of...”¹⁵⁸ to what one can use before it spoils. “The same Law of Nature,” Locke says, “that does by this means give us *Property*, does also *bound* that *Property* too. *God has given us all things richly*, 1 Tim vi. 17, is the Voice of Reason confirmed by Inspiration. But how far has [God] given it us? *To enjoy*. As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a *Property* in.”¹⁵⁹ Private property, and thus *dominium*, is lawful, and even necessary to fulfill God’s purposes, but it is never absolute. It is always originally common, can only be acquired through labor, and its use governed by the natural law and the rule of propriety.

Locke’s labor theory of property extends to land as well, and its implications were tested in seventeenth century English and colonial American politics. “I think it is plain,” Locke says, “that *Property* in [land] too is acquired as the former. *As much Land* as [one] Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his *Property*. He by his Labour

¹⁵⁷ Locke, *Two Treatises*, Ch V, 28, 288

¹⁵⁸ Locke, *Two Treatises*, Ch V, 36, 293

¹⁵⁹ Locke, *Two Treatises*, Ch V, 31, 290

does, as it were, inclose it from the Common.”¹⁶⁰ In addition to labor as a requisite for landed property, Locke also claimed that rights to land use are distinct from all of other forms of property in that they are given only to “the use of the Industrious and Rational...not to the Fancy or Covetousness of the Quarrelsome and Contentious.” Only the rational have the authority to acquire property, that is, only those who in turn exponentially increase the value of land. As long as one improves the land’s value and avoids spoiling its products, its privatization cannot be considered unlawful. “[People] have agreed,” he argues, “to disproportionate and unequal Possession of the Earth...by a tacit and voluntary consent...a man may fairly possess more land than he...can use the product of...”¹⁶¹

Locke’s theory of landed property has implications for seventeenth century English society. According to economic historian Robert L. Heilbroner, the English landscape had been in the process transformation for roughly a century before Locke’s time as a capitalist social order emerged.¹⁶² Pastures once available to entire parishes for grazing cattle were enclosed and declared the private property of the lords of manors. Until this time, land enclosures were unlawful apart from the consent of the common will, but now enclosures were maintained, fortified, and eventually secured by state law. Disenfranchised farmers of the common lands became agricultural proletarians, beggars, robbers, or paupers, and English parliament created the first modern ghettos to “remedy” the disturbances caused by riots. The newly impoverished class was confined there, and wanderers were whipped, branded, or mutilated. Against the disenfranchised classes, then, Locke sanctified and naturalized property ownership for the emergent bourgeoisie apart from the consent of the common will.

¹⁶⁰ Locke, *Two Treatises*, 290-1, brackets mine

¹⁶¹ Locke, *Two Treatises*, 302, brackets mine

¹⁶² Robert L. Heilbroner, *The Worldly Philosophers: The Lives, Times and Ideas of the Great Economic Thinkers* (New York: Touchstone, 1953, 1995), ch. I, II

Locke not only justified landed bourgeois property ownership against disenfranchised classes, but also justified making human property of slaves (slave labor) and criminals. In Locke's thinking, although all persons possess natural right, the natural law determines who is slave and free. On the one hand then, Locke affirms against absolutists like Filmer that individuals are unable to transfer their natural right to an absolute power because they do not possess such a power in the first place: "No body can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it."¹⁶³ On the other, he argues that slavery is lawful as an instance of forfeiture, i.e. as punishment for a crime, offense, or error. "And thus in the State of Nature," he says,

*one Man comes by a Power over another; but yet no Absolute or Arbitrary Power, to use a Criminal when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own Will, but only to retribute to him, so far as calm reason and conscience dictates, what is proportionate to his Transgression, which is so much as may serve for Reparation and Restraint. For these two are the only reasons, why one Man may lawfully do harm to another, which is that we call punishment.*¹⁶⁴

According to Locke, then, one's natural right becomes null and void to extent that one becomes a criminal, which for him is not merely a sign of one's economic condition but of a distinctive ontological status. Unlike those who order their actions according to the natural law, criminals have become "degenerate," they have "quit the principles of Human Nature" and become "a noxious Creature."¹⁶⁵ These persons have not merely stolen property, but have forfeited their very status as persons. Locke notes that such a status is actually punishable by death, but the lawful conqueror/owner is free to enact this penalty when he so desires. Until said time, the criminal – in life, liberty, and labor – belongs to the conqueror. Locke's theory of property as slaves has direct connections developments in the New World, where Locke himself helped to

¹⁶³ Locke, *Two Treatises*, Ch IV, 23-24, 284

¹⁶⁴ Locke, *Two Treatises*, Ch II, 8, 272

¹⁶⁵ Locke, *Two Treatises*, Ch. II, 10, 273

draft the *Fundamental Constitutions of Carolina*, a document, which granted every free man “absolute power and Authority over his Negro slaves.”¹⁶⁶

In Locke’s state of nature, then, adherence to the natural law results in natural liberty and produces a peaceful social life, private property and the unlimited accumulation of money. However, Locke’s idyllic state of nature also has an underside. Those unable to order their actions according to the laws of nature are not only unable to own land, but also forfeit their natural liberty as they are condemned to an existence in which their efforts are appropriated by the bourgeois class. The implications of this are simple: the unequal distribution of prepolitical goods (land, labor, capital) is legitimate in the eyes of God and nature.

The Political Body

The formation of Locke’s political body occurs as those in the state of nature endeavor to form a political community. As we have seen, Locke’s natural human is markedly different from Hobbes’, and thus political society is not formed to prevent war, but to preserve the property that Locke’s laboring man acquired in the natural condition. The Hobbesian individual was consumed with the egotistical desire for power and glory. Virtue and vice, good and evil are caught up in the whims of power, for Hobbes. There was competition in his state of nature, but not even the market, property, or sport can prevent social relations from sometimes declining into war. Locke’s natural woman is not driven by the passions, but is capable of ordering her actions according to the natural law. Locke’s natural human is industrious, rational and calculating. She is more disciplined and productive. She works and acquires property and capital. Life in the Lockean state of nature is ordered. In forming the political body, then, they do not

¹⁶⁶ “The Fundamental Constitutions of Carolina” March 1, 1669, Source: avalon.law.yale.edu/17th_century/nc05.asp. For counterargument, see James Farr’s “Locke, Natural Law and New World Slavery” *Political Theory* August 2008 vol. 36no. 4 495-522. Farr argues that Locke did *not* justify slavery.

transfer all of their right. They relinquish the right to punish, but they retain the right to *act*, and this has implications for both Locke's theory of representation and sovereignty. Locke begins by articulating the purpose of political society, which again, is to protect those social arrangements and goods established in the state of nature. With the founding of the state, these goods come under the direction of the will of the majority. Locke explains,

Men being...by Nature, all free, equal, and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*. The only way whereby any one divests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living amongst one another...they are thereby presently incorporated, and make one *Body Politick*, wherein the *Majority* have a right to act and conclude the rest.¹⁶⁷

As with Hobbes, the people retain (ultimate) authority when they transfer natural right to the state, but Locke also enables the people – those people capable of ordering their actions according to natural law – to retain the right to political action. Popular sovereignty is established through the social contract, and the right to action manifests itself in the people's right to elected representatives. Locke uplifts representative democracy as the best form of government where legislative power is allocated to the powers of state as opposed to the people. In this way Locke brings his aversion to *dominium* into the political community.

Representatives, rather than the sovereign people, establish laws in accord with common consent. Representatives also provide indifferent judges as well as executive force by which the executive power supports legislative and judicial power for the protection of property. In turn, this means that the powers of the state are not used, as with Hobbes, for rational utility; "The power of society, or legislative constituted by them, can never be supposed to extend farther than the common good; but is obliged to secure everyone's property by providing against [defects] that made the State of Nature so unsafe and uneasy."¹⁶⁸ For Locke, the cost of utility is too great to the social body, and absolutism too great a cost to liberty and natural right. Political society is only established and maintained by the willful consent of those who voluntarily transfer their natural liberty to the authority of the community, and this for the preservation of those goods acquired in the state of nature.

¹⁶⁷ Locke, *Two Treatises*, Ch VIII, 95, 330-1

¹⁶⁸ Locke, *Two Treatises*, Ch IX, 131, 353

On Sovereignty

With Locke, supreme authority remains with the people, and although they are not the source of law, the political community still has both a constitution as well as means to a modicum of political action through (indirect) representation. In turn, the authority and scope of both legislative and executive powers are radically limited in comparison to Bodin and Hobbes. The legislative power make laws, but does not possess either the authority to create legislators or the authority to circumvent or repeal established laws. Executive prerogative is legitimate only as authorized by the people. The government no longer rules for glory or according to the general rule of utility, but now has the sole function of protecting the natural liberty of subjects.

Locke delineates a separation of powers, which circumscribes the scope of civil powers and effectively maintains both the authority of the people and their right to act through the majority's will. In Locke's view, absolute sovereignty can never be lawfully instituted, since the political community cannot transfer a power to authorities that it does not possess due to the natural law (more on this below). While a supreme legislative power is established and individuals are required to wholly relinquish their right to punish, their continued exercise of natural right is limited only to the extent that it jeopardizes the viability of the state. This implies that the power and acts of government are constrained by the will of the political community just as individuals' wills are limited by God's natural law.

And whoever has the Legislative or Supream Power of any Common-wealth, is bound to govern by established *standing Laws*, promulgated and known to the People, and not by Extemporary Decrees; by *indifferent* and upright *Judges*, who are to decide Controversies by those Laws; And to imploy the force of the Community at home, only in the Execution of such Laws, or abroad to prevent or redress Foreign Injuries, and secure the Community from Inroads and Invasion. And all this is to be directed to no other *end*, but the *Peace, Safety, and publick good* of the People.¹⁶⁹

¹⁶⁹ Locke, *Two Treatises*, 353

Legislative power is supreme, but it is a fiduciary and non-transferrable power. Locke re-emphasizes that it cannot be arbitrary but must be bound by known, settled, standing laws *and* authorized judges. It cannot take any part of one's private property without consent (including raising taxes), and this only when necessary.¹⁷⁰ Another bulwark against absolutism is established when Locke separates legislative and executive powers. Even if a monarch has a share in state power as executive head, he is supreme only in an executive, not legislative, sense, and the executive's prerogative is only just as authorized by the people. Executive powers must always be in existence, but must never usurp legislative power from the majority. The state alone is authorized to exercise these various powers, and again, only in accord with the public good as determined by the will of the majority. Should the powers of state ever use force without authority or the will of the majority violated, the people are placed in a state of war and retain the power to alter or remove the legislative by force, and if necessary, by revolution.

With Locke, sovereignty rests with the people. He has no desire to see a sovereign imperial will exercised through the organs of government. He argues instead for a separation of powers and a representative government, which are explicitly anti-monarchical and pro-democratic formations. Yet, at the social level, Locke's thinking reflects the logic of sovereignty as *dominium* where rational property owners naturally have claim to the bodies and labor of irrational slaves. Locke was an unapologetic defender of both the capitalist social order and England's colonial projects, with the result that his theory is complicit in the justification of land enclosures and the conjoined pauperization of a significant portion of the English population during the seventeenth century. Locke's theory of property justified, among other things, the commodification and exploitation of human flesh during the transatlantic slave trade (1500s-

¹⁷⁰ Locke, *Two Treatises*, 365

1800s), and this in spite of the undeniable emergent cosmopolitanism in his own thought, which, out of reverence for individual liberty, limits the powers not only of the English commonwealth but *all* commonwealths, regardless of their forms of government. This means that while Locke's natural law implies constitutional limits to governmental power, it also provides metaphysical legitimation for racist social hierarchies. In the end, Locke's natural right to natural liberty does not translate into universal civil or political rights. Finally, Locke has an anemic account of the representational role of subjects, for even as they possess the power of election and the right to revolution, citizens cannot engage in direct and/or active forms of (self) representation. These more politically conservative aspects of Locke come into sharp relief when compared with Jean-Jacques Rousseau. For Rousseau, notions of private property and indirect representation come under the most vicious criticism as he held that a politically active citizenry was necessary to preserve the state. Yet, Rousseau's thinking contains problematic aspects of its own, most notably the return of absolutism, this time in the form of the nation.

A. Jean Jacques Rousseau

Context

In contrast to Locke's England, where the Glorious Revolution (1688) secured a constitutional monarchy, French kings still wielded absolute sovereignty over the *ancien regime* well into the eighteenth century.¹⁷¹ In French feudal society, clergy had the highest order of rights and status, followed by nobility with the Third Estate shoring up the least privileged. The old French feudalism was not without its old religious feud between Catholics and Calvinists. When Louis XIV (1638-1715) revoked the Edict of Nantes (1598) in 1685, the Huguenots lost their civil liberties and civil war was incited once again between them and the Catholic establishment. At

¹⁷¹ "Persecution of the Huguenots in the 18th Century" by Shelby T. McCloy. *Church History*, Vol 20, No. 3 (Sep., 1951), pp. 56-79, <http://www.jstor.org/stable/3161896>. Accessed: 29/05/2013 13:01. p 61

mid-century, against this background of ecclesial and social tumult, a capitalist social order came into formation. This new order challenged the old feudal order as some in the Third Estate were able to shake off a low status (*routier*) and embrace a new bourgeois identity. New cultural and intellectual leaders of France, those called the *philosophes*, saw the emergent order not only as a sign of the progress of the arts (e.g. poetry, theater), sciences (physics, astronomy), but even more, as progress of human nature itself. For example, figures like Denis Diderot (1713-1784) and Voltaire (1694-1778) argued that such progress was a sign of the ‘perfectability’ (*perfectibilite*) of human beings.¹⁷² This new order would educate and culture individuals away from “lower” forms of life (e.g. intolerant religion, laziness) toward higher, rational forms. The *philosophes* envisioned the French state as a “Republic of Letters,” i.e. as a state directed by the public opinion formed in the public discourses of Enlightenment thinkers. This wider public, rather than the church or crown, would be the legitimating audience for official knowledge, political criticism, and the formation of public opinion. However, Jean-Jacques Rousseau (1712-1778) noticed problems with this emergent state of affairs, especially the widened gap between social orders. He also believed that idealistic Enlightenment thinkers failed to see that all social life is marked by the destructive love(s) of self, conquest, wealth, fame or glory. As French society poised for evolution, then, Rousseau would call the French republic to account on a number of social ills.

The State of Nature and the Body

Rousseau’s doctrine of the state of nature is more admittedly a work of art than science. He did not like the title of “philosopher” but in his *Emile* (1762, 2000) Rousseau indicates that he rejects the “New Science’s” mechanistic view of nature and embraces the empirical approach of

¹⁷² See *The Newton Wars and the Beginning of the French Enlightenment* by J.B.Shank (Chicago: The University of Chicago Press, 2008) 245. See also Robert Wokler’s *Rousseau, the Age of Enlightenment, and Their Legacies* (Princeton University Press: Princeton, 2012)

“The Science of Man”, represented by figures such as David Hume (1711-1776) and Adam Smith (1723-1790). A character in *Emile*, the Vicar, reflects on his own experiences of the moral life and concludes that the will, as known in action, cannot be confined to any mechanistic logic.¹⁷³ Rousseau’s use of *sentiments*, rather than desire or reason, as the core concept in his moral theory also reflects influences of the “The Science of Man.” Scholar Jacquelyn Taylor notes that David Hume developed the highly influential thesis that human understandings of morality and justice are based in natural sentiments.¹⁷⁴ Sentiment is that (social) feeling of acceptance or rejection by others. We see the concept at work in Rousseau’s doctrine of the state of nature as imagined in “Discourse on the Origin and Foundations of Inequality Among Men” where humanity exists in a state of natural goodness and order. Individuals are ruled by natural sentiment, and this gives them a healthy balance of the passions. The individual’s natural love of self (*amour de soi*) works alongside compassion for one’s fellow creatures (*pitié*) in a way that enables humanity to live in perfect freedom, equality, and peace with nature without coercion or obligation. In contrast to the Hobbesian multitude, Rousseau’s savages are “free, healthy, good, and happy as far as they could by their Nature be, and continued to enjoy the gentleness of independent dealings with one another...”¹⁷⁵

From this state of innocence, however, humanity experiences moral decline rather than progress, such decline in fact that the multitude is eventually forced from the state of nature into political community. Humans begin in a state of moral innocence, where they do not need and

¹⁷³ Says the Vicar, “I will to move my body and it moves, but if an inanimate body, when at rest, should begin to move itself, the thing is incomprehensible and without precedent. The will is known to me in its action, not in its nature.” *Emile*, trans. by Barbara Foxley, (London: Everyman, 2000), 282

¹⁷⁴ “Hume’s Later Moral Philosophy” by Jacqueline Taylor in *The Cambridge Companion to Hume*, 2nd ed. ed. by David Fate Norton and Jacquelyn Taylor (New York: Cambridge, 2009)

¹⁷⁵ Jean-Jacques Rousseau, “Discourse on the Origin and Foundations of Inequality Among Men” in *The Discourses and other early political writings* ed. by Victor Gourevitch (New York: Cambridge University Press, 2009) 167

have not yet developed moral or political life.¹⁷⁶ Natural sentiment is an adequate guide. As people come into contact with one another, ideas, industry, technology and language advance. But these advances are accompanied by the progressive deformation of human sentiments away from natural innocence toward ambition and vice; away from *amour de soi* and *pitié* toward *amour-propre*. In other words, for Rousseau, civil society itself is the cause of human social and even personal moral ills.

While life in the state of nature is characterized by natural pity for fellow humans, other animals and nature in general, social life in civil society is increasingly characterized by the destructive love of self, conquest, wealth, and the search for fame and glory. With the demise of natural feeling and the growth of reason, it becomes clear that humanity has traded natural liberty for the enslaving chains of civil society. Rousseau is especially mindful of the ways in which the accumulation of landed property contributes to this decline in social relations. Rousseau expounds on this decline at length:

So long as [people] were content with their rustic huts, so long as they confined themselves to sewing their clothes of skins with thorns or fish bones, to adorning themselves with feathers and shells, to painting their bodies different colors, to perfecting or embellishing their bows and arrows, to carving a few fishing Canoes or a few crude Musical instruments with sharp stones; In a word, so long as they applied themselves only to tasks a single individual could perform, and to arts that did not require the collaboration of several hands, they lived free, healthy, good and happy as far as they could by their Nature be, and continued to enjoy the gentleness of independent dealings with one another; but the moment one [individual] needed the help of another; as soon as it was found to be useful for one to have provisions for two, equality disappeared, property appeared, work became necessary, and the vast forests changed into smiling Fields that had to be watered with the sweat of men, and where slavery and misery were soon seen to sprout and grow together with the harvests.¹⁷⁷

¹⁷⁶ Rousseau, “Discourse on the Origin and Foundations of Inequality of Men”, 150

¹⁷⁷ Rousseau, “Discourse on the Origin and Foundations of Inequality of Men”, Part II, [19], 167, brackets mine

Unlike previous theorists of sovereignty, Rousseau offers the first critical perspective on civil society. As we have seen, Locke imagines civil society as an ordered and tranquil social state, one fundamentally organized according to the dictates of natural law. In almost mechanistic fashion, Locke's natural individual labors, acquires possessions and property, and in this way achieves happiness. Likewise, although Hobbes is less optimistic of redemptive aspects of civil society, he understands it as an improvement over the natural condition. With Rousseau, however, we see a distinctive shift to a critical interpretation of human society. The less venerable moral qualities of humans such as jealousy, insecurity and the desire for fame and attention, make it so that civil society turns out to be less morally and socially beneficial for humans than the state of nature.

According to Rousseau, the vile nature of civil society becomes especially pronounced with the accumulation of landed property. That possession, which Locke venerates, Rousseau disparages:

[People] are not naturally enemies, if only because when they live in their primitive independence the relation among them is not sufficiently stable to constitute either a state of peace or a state of war. It is the relation between things and not between [people] that constitutes war, and since the state of war cannot arise from simple personal relations but only from property relations, private war or war between one [individual] and another can exist neither in the state of nature, where there is no stable property, nor in the social state where everything is under the authority of the laws.¹⁷⁸

Again, Rousseau notes that

The first [individual] who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society. How many crimes, wars, murders, how many miseries and horrors [Humankind] would have been spared by him who, pulling up the stakes or filling in the ditch, had cried out to his kind: Beware of listening to this impostor; You are lost if you forget that the fruits are everyone's and the Earth no one's...¹⁷⁹

¹⁷⁸ Jean Jacques Rousseau, *The Social Contract and other later political writings* ed. by Victor Gourevitch (New York: Cambridge University Press, 1997), Book I, Ch. 4, [7], 46, brackets mine

¹⁷⁹ Rousseau, "Discourses on the Origin and Foundations of Inequality of Men", Part II, [1], 161, brackets mine

Property acquisition, the bane of healthy human sociality, becomes the final tipping point both for the decline of natural pity and for the transition from the state of nature into civil society. With the original state of nature having forever vanished, the multitude consents to convert their wills into one in an effort to insure claims to property. On one hand, then, the rise of political community is an acknowledgement that natural goodness and liberty are lost forever. On the other, it is a means, perhaps the only one which remains, by which individuals may protect their property against the evils of civil society and a permanent state of war. It remains the only avenue by which political liberty and moral virtue might be secured for civilized, weak, and warmongering peoples.

Rousseau's view of the body is comprised of at least a few influences. It not only reflects influences from "The Science of Man" and the *philosophes*, but also Christian Jansenist theology. Following Hume, Rousseau claims that natural sentiment is the basis of the moral life rather than free will or reason. He also partially embraced the *philosophe's* notion of *perfectibilité*. Rousseau scholar Susan Meld Shell explains that "[t]he essential quality of man, so understood, is not reason, as ancient thinkers insisted and early modern thinkers still in part assumed, but the freedom or perfectability that allows us to connect man in the present age with man as he must have been originally."¹⁸⁰ Meld depicts 'perfectibility as a "flexibility that allows men to adapt to different circumstances and also allows them to adopt ends independent of nature's own direction."¹⁸¹ Rousseau thus agreed with the *philosophes* that the arts and sciences could "perfect" the mind (e.g. knowledge) and body (nutrition). However, Rousseau was not content with a purely optimistic view of human nature. Although he appreciated the thinking of

¹⁸⁰ Susan Meld Shell, "Emile: Nature and the Education of Sophie" in *The Cambridge Companion to Rousseau* ed. by Patrick Riley (New York: Cambridge University Press, 2001), 274

¹⁸¹ Shell, "Emile: Nature and the Education of Sophie," 275

the British moralists as well as the French *philosophes*, he was also convinced that humanity suffered from deeply entrenched a moral scar and that civil society was ultimately destructive to human moral and physical capacities.¹⁸² Thus, while the arts and sciences are venerable, it is unrealistic to expect them to provoke a voluntary commitment to virtue, i.e. the preference for the common good over one's own interests. Rousseau scholar Mark S. Cladis argues that Rousseau found the moral languages of eighteenth century Jansenist theologians more helpful in conveying the permanence of human moral corruption.¹⁸³

According to Cladis, Jansenist theologians influenced by the thinking of St. Augustine (354-430) used the concepts of disinterested love (*charite*), selfish love (*amour-propre*), and neutral or benign self-love (*amour de soi*) to depict the human condition.¹⁸⁴ "In the seventeenth century," Cladis contends, "Augustine was a central object of study in France. His works were widely read because Montaigne had taken an interest in him and because controversy had erupted over the views of the Augustinian Jansenists at Port Royal. To many, the Jansenists appeared seditious because they condemned the opulence of the government and the wealthy, and because they advocated, implicitly if not explicitly, a retreat from the corrupt secular and political domains."¹⁸⁵ The Jansenists tripartite distinction was admittedly a modification on Augustine's dualistic one, namely "the love of "self (concupiscence), which tends toward hatred of God and marks the citizens of the earthly city, and the love of God (*caritas*), which tends toward hatred of self and marks the citizens of the heavenly city."¹⁸⁶ Yet, social thinkers like Rousseau found

¹⁸² For Rousseau on the effects of civil society on the physical constitution of human beings, see his "Discourse on the Origin and Foundations of Inequality of Men", Part II, [6]-[14]

¹⁸³ See "Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy" by Mark S. Cladis *The Journal of Religious Ethics*, Vol. 28, No. 2 (Summer, 2000), pp. 221-251. URL <http://www.jstor.org/stable/40024623>
Accessed: 13/06/2013.

¹⁸⁴ Cladis, "Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy" 225

¹⁸⁵ Cladis, "Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy" 227

¹⁸⁶ Cladis, "Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy" 225

Jansenists modified tripartite vocabulary helpful for making an important distinction “between benign and vicious self-love,” between *amour-propre* and *amour de soi*.¹⁸⁷ For Rousseau, this vocabulary depicted not only the perennial human struggle, but was also indicative of humankind’s moral decline as it evolved from the natural condition to civil society. In the original state, humanity is marked primarily by *amour de soi*, but with the advance of civil society, humankind is overtaken by *amour-propre*. Rousseau found this description of the human condition more compelling than Enlightenment narratives of progress and optimism, and it plays a central role in Rousseau’s view of the body. Rousseau understands the body as caught up in the larger, morally corrupting forces of social life. These forces pull us away from innocence toward ambition and vice, indeed, away from *amour de soi* and *pitié* toward *amour-propre*.

The Political Body

St. Augustine not only exercised an influence on Rousseau’s conception of the body, but on his view of the political body as well. Given Rousseau’s depiction of humanity’s moral condition, his “remedy” must necessarily exceed those of the sciences and arts. These could only cover the vices of civil society with a superficial urbane politeness. Rousseau wanted to bring about moral transformation in French society, whereby sentiments are pulled away from self-interest toward fraternity, love of the fatherland and sacred bond with fellow citizens. Cladis expounds on the relationship of Augustinian moral theology to Rousseau’s conception of the political body:

Rousseau shared the commonly held Augustinian view that love of self is the foundation of all loves. Many French theologians had asserted that even love of God begins as love of self. The task, then, in Rousseau's view, was neither to defeat self-love nor to coordinate the agitated activities of individuals being driven by self-love; the task was to train the individual to see her or his own body as an intrinsic part of the political body, in order that love of self and love of country might become one. Augustinian pessimism runs deep here. It is understood, for example, that vanity cannot be vanquished; it can,

¹⁸⁷ Cladis, “Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy” 225

however, be deflected from the private body to the public body that contains it. On the extreme path, there are neither egoists pursuing private interests nor altruists sacrificing interests. When the corporate body is seen as one's own true body, altruism loses its meaning, for the difference between public and private aims collapses.¹⁸⁸

The first move toward the general redemption of human society occurs with the establishment of the social pact, and the second, discussed below, is the general will. In theorizing the social pact, Rousseau locates himself in the wider “social contract” tradition of political thought, which includes previous theorists of sovereignty such as Thomas Hobbes and John Locke. With them, Rousseau’s myth features the coming together of individuals in the state of nature to pledge a social pact, thus constituting the political body. Rousseau explains:

Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.

At once, in place of the private person of each contracting party, this act of association produces a moral and collective body made up of as many members as the assembly has voices, and which receives by this same act its unity, its common *self*, its life and its will. The public person thus formed by the union of all the others...now assumes [the name] of *Republic* or of *body politic*, which its members call *State* when it is passive, *Sovereign* when active, *Power* when comparing it to similar bodies. As for the associates, they collectively assume the name *people* and individually call themselves *Citizens* as participants in the sovereign authority, and *Subjects* as subjected to the laws of the State.¹⁸⁹

The social contract forms the body politic. This association possesses the power to provide lasting protection to its members, both from (civil) war and moral decline. Toward this end, Rousseau’s natural humans consent to a *total* alienation of their natural rights. In turn, *the people* become sovereign. “Just as nature gives each man absolute power over his members, the social pact gives the body politic absolute power over all of its members.”¹⁹⁰ The total alienation of one’s rights is not to be confused with despotism, and Rousseau attempts to clear himself of this charge in Book I of *The Social Contract*. He argues that force does not make right, that any

¹⁸⁸ Cladis, “Redeeming Love: Rousseau and Eighteenth-Century Moral Philosophy” 236

¹⁸⁹ Rousseau, *The Social Contract*, Book I, Ch. 6, [9]-[10], 50-1, brackets mine

¹⁹⁰ Rousseau, *The Social Contract*, Book II, Ch. 4, [1], 61

convention that stipulates absolute authority on one side and unlimited obedience on the other is “vain and contradictory,” even the terms ‘right’ and ‘slavery’ are mutually exclusive.¹⁹¹ For Rousseau, the only way that one might completely commit their force and freedom to an association without harming themselves is if that association is guided by a “general will,” which they help to construct and which has the common interest as its motivation and end. In this way, the people retain sovereignty for “sovereignty is nothing but the exercise of the general will.”¹⁹²

On Sovereignty

Rousseau locates sovereignty, then, in the general will, which emerges from the public assembly and which is directed toward the interest of the state. Rousseau explains that after the people have assembled to discuss the common interest, with “every Citizen” stating his own opinion, the general will for the common good emerges.¹⁹³ Again, Rousseau notes that “[*e*]ach of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.”¹⁹⁴ Much like the monarch in Bodin’s discourse, this general will operates as the principle of political life and sovereign guide in matters of civil law and justice. In the general will, the ‘good of all’ takes precedence over individual or associational interests; the whole precedes the parts. In other words, what generalizes the will is not so much the number of voices as it is the common interest which unites them. “If there were not some point on which all interests agree,” Rousseau says, that “no society could exist. Now it is solely in terms of this common interest that society ought to be governed.”¹⁹⁵ This would-be associational interest is made the legitimate general will only if the people gather in public assembly. The sovereign is necessarily a collective being that can

¹⁹¹ Rousseau, *The Social Contract*, Book I, Ch. 4 [6], 46

¹⁹² Rousseau, *The Social Contract*, Book II, Ch. 1 [2], 57

¹⁹³ Rousseau, *The Social Contract*, Book II, Ch. 59-60

¹⁹⁴ Rousseau, *The Social Contract*, Book I, Ch. 6 [9], 50

¹⁹⁵ Rousseau, *The Social Contract*, Book II, Ch. 1 [1], 57

only represent itself. The people are not only members of the state, then, but become the sovereign body upon assembling.

The general will is not immutable, as was the case with Locke's natural law. Moreover, it does not produce a lasting constitutionalism. Rousseau refuses to give any substantive content to the general will: it is neither reducible to 'the will of all' or is it the sum of particular wills (majority), which may be contrary to common interest. Nevertheless, it is "always upright and always attends to the public utility," and it is only by this will that the desires of citizens and magisterial decisions are rightly directed.¹⁹⁶ Rousseau's comparison of the general will to particular interest shows that the substance of the general will comes from the fact that it emerges from the public assembly, the space most reflective of original freedom and natural justice. Particular will emerges from *amour-propre*, the lustful, self-interested and competitive passions of everyday social life, but the general will emerges from *amore de soi*, a patriotic, fraternal love.

In Rousseau's view, this public sovereignty is not absolute because although the people grant authority to the law, which is derived from the assembly, they are not the source of law. A *lawgiver* is required for this purpose. However, the lawgiver is not an office of the state or a part of the people, not even the empire. This rather extraordinary function must be performed by a non-resident whose only task is to draft and propose laws for the state.¹⁹⁷ The people assemble to determine the general will, and the ethos generated by the assembly creates the conditions for the

¹⁹⁶ Rousseau, *The Social Contract*, Book II, Ch. 2 [3], 59

¹⁹⁷ Rousseau, *The Social Contract*, Book II, Ch. 7

lawgiver to constitute the best possible kinds of laws, which the people then approve. In this way, the people “freely obey the yoke of public felicity.”¹⁹⁸

It is significant that Rousseau’s sovereign play both a public and private role, directing both public laws and private sentiment. He believed that the exercise of sovereignty by way of the general will not only rightly directs the political body, but also enraptures participants in an experience that transformed their moral sentiments and corrects their wills. Having been part of a ritual wherein the people assemble, state their opinion, and determine the general will, and where a lawgiver comes forth with divine authority, a conversion of sorts occurs. *Amour-propre* (self-interest) gives way to *amour de soi* (common interest) Love of freedom replaces the love of wealth, and devouring greed and unsettled spirits subside even as public service becomes the principal duty of all. In this moment, as sentiments shift in the wake of the general will during the people’s self-representation, a modicum of original goodness is “recovered,” even if only in an artificial sense, and freedom, at both the political and moral level, is realized. So, Rousseau beckons, “let us endeavor to derive from the evil itself the remedy which will cure it. By means of new associations, let us correct, if possible, the lack of a general association....Let us enlighten [man’s] reason with new knowledge, fire his heart with new sentiments.”¹⁹⁹ Collectively, the people become the sovereign, whose will is upright to the extent that it is guided by the general will. Individually, persons are cleansed of the vices bequeathed to them by civil society. Their wills become upright and their characters virtuous to the extent that they deny themselves and tend to the common interest.

¹⁹⁸ Rousseau, *The Social Contract*, Book II, Ch. 7 [10], 71

¹⁹⁹ SC Geneva Manuscript, 159

Rousseau did not imagine the general will as despotic, but his lack of recognition of inalienable rights implies that sovereignty is indeed absolute. Rousseau explains his goals for political society further in his *Considerations on the Government of Poland* (1772), where he notes that his conception of political association stems primarily from three ancient institutions: the Jewish national body (established by Moses), Sparta, (by Lycurgus), and Rome (Numa).²⁰⁰ Each of these institutions, he says, were fastened by bonds that “attach Citizens to the fatherland and to one another, and they found them in distinctive practices, in religious ceremonies which by their very nature were always exclusive and national.”²⁰¹ According to Rousseau, this sacred bond of fraternity gave to ancients’ souls a vigor unknown to moderns, and from these vigorous souls emerged the most magnificent institutions. For example, “Sparta was but a city, it is true; but by the sheer force of its institution this city gave laws to the whole of Greece.” Moses made a free and lasting people out of a “wandering and servile troop.”²⁰² Rousseau imagines that the general will would perform a similar function in modern societies, that is, that it would transform individual citizens into a united community. Indeed, Rousseau envisioned an aristocratic society modeled on Rome, where all illustrious men – those who lived in the country, owned property, and cultivated the land, acted together as sovereign. He believed that the alienation of rights would not despoil these individuals, but further secure their legitimate possession.²⁰³ By way of property, as well as the maintenance of political liberty through the exercise of civil freedom (the general will), then, these people remain free. This civil freedom must forever remain with the

²⁰⁰ Rousseau, “Considerations on the Government of Poland and on its Projected Reformation” in *The Social Contract and other later political writings*, [2], 180

²⁰¹ Considerations on Poland, [7], 181

²⁰² Considerations on Poland, [3], 180

²⁰³ Rousseau, *The Social Contract*, Book I, [6], 56

people, for as seen with Rome, relinquishing of self-representation and subsequent dedication to blind obedience was one of the principal causes of its ruin.²⁰⁴

Nonetheless, citizens remain without inalienable rights, so that the exercise of the general will has alienating effects on those whose opinion differs from the general will. Also, the process by which the general will is determined excludes the lower orders of society. In relation to Hobbes and Locke, Rousseau's social pact first appears to be radically inclusive. He takes pains to insist that neither the institution of the state nor the formation of the state's general will is valid unless all of the people are assembled, and more, that the pact/general will arise from concord and unanimity. It is also true that the social pact establishes equality among Citizens such that all are committed to similar conditions and must all enjoy the same rights. However, Rousseau notes that "one law...by its nature requires unanimous consent. That is the social pact over other laws are voted on by order."²⁰⁵ In eighteenth century French politics, this meant that each order would meet in separate chambers to vote on the general will rather than as a collective assembly. In fact, Rousseau claims that by the time legislation reaches the *people's* assembly, it is all but law, and it matters little whether they agree or not. Rousseau argues, "when a law is proposed in the people's assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs; everyone states his opinion about this by casting his ballot, and the tally of the votes yields the declaration of the general will."²⁰⁶ As the National Assembly of 1789 would demonstrate, this procedure, which tallied votes per order as opposed to per head, always truncated the political interests of the Third Estate (that is, the poor), which was far more

²⁰⁴ Rousseau, "Discourse on Political Economy," [57], 29 in *The Social Contract*

²⁰⁵ Rousseau, *The Social Contract*, Book IV, [5], 123

²⁰⁶ Rousseau, *The Social Contract*, Book IV, [8], 124

numerous than other orders. Yet, Rousseau appears unconcerned with this aspect of his theory of sovereignty. “If...there are some who oppose it,” he says, “their opposition does not invalidate the contract, it only keeps them from being included in it; they are foreigners among the Citizens.”²⁰⁷

Conclusion

In Locke and Rousseau’s theories, sovereignty continues the trend of democratization that began in the thinking of Bodin and Hobbes, but in Rousseau it recoils in the form of national sovereignty. The story of the democratization of sovereignty began with Bodin, for whom the monarch was sovereign, and continued with Hobbes’ sovereign monarchical state. This trend continues with Locke and Rousseau. For Locke, the power of the natural law pervades the state, thus limiting the powers of government and protecting the inalienable rights of the people. In Locke’s thinking, the state is never substantive enough to compel subjects to completely alienate their natural right. However, as I have discussed in the introduction of this chapter, Rousseau tells a different tale of sovereignty. Although we live in a free and civilized society, we have lost our original goodness and natural justice. Thus, it is necessary that nations determine for themselves what is good and just, and this determination overrides all other claims. In Rousseau, the sovereignty of the general will vitiates the democratic potentialities of his thinking. Also notable is that the democratization of political representation occurs along with the democratization of sovereignty. In both Hobbes and Bodin, the sovereign’s power consisted in part in denying the people various forms of representation and political action. In Locke and Rousseau, the power of representation moves to the people. According to Locke, the people represents itself through elected officials and retains the right to revolution should faith in elected

²⁰⁷ Rousseau, *The Social Contract*, Book IV, [6], 123

officials fail. Likewise, in Rousseau's discourse, the people retain the right to self-representation in public assembly.

However, the accelerated democratization of sovereignty and representation is counterbalanced by the hierarchicalization of beings in the state of nature. Hobbes's state of nature is chaotic, but fundamentally egalitarian. In the midst of the rise of capitalist orders and constitutional regimes predicated on individual rights, Locke and Rousseau feel the need to rank humans on a natural scale of sorts. For Locke, nature itself has a ranking system. On the one hand, it rewards those who are willing work hard and make rational use of their resources with property and peace. On the other, it punishes those who are unwilling to conform to this fundamental law of nature, specifically in the form of slavery, a state of existence where the lines between humanity and property become blurred and indistinguishable. In similar fashion, Rousseau conceives of nature on an evolutionary scale. Although less civilized societies are more free and in harmony with nature, the West remains fundamentally more advanced such that the general will must be formed in accord with exclusive national interest.

Thus, his appeal to the "noble savage", i.e. that idea that less civilized societies are more "innocent" than those with more wealth and technology, fails to mask his fundamentally racist portrait of the state of nature. Even as sovereignty is democratized in the form of government, then, nature's ranking system still precludes some from the freedoms of citizenship at an ontological level. Rousseau's doctrine of national sovereignty not only alienates everyone from their natural right; it alienates the lower estates, the noble savage, and women altogether. The general will also legitimates the use of coercive and paternalistic powers on these same vulnerable classes. Locke enslaves those who do not conform to the natural law, not only in theory, but quite literally, in practice. Even as his (critical) thinking on sovereignty provided an

avenue for the establishment of a democratic state, his philosophy of nature and the body still reflect a racial logic, support for the institution of slavery, and a linking of the two.

Finally, analysis on the discourse of sovereignty in Locke and Rousseau shows that the nature of the political body has implications for obligation, injury and justice. In Rousseau, the total alienation of rights produces a categorical obligation to the state. The injuries that impact the political body take priority over personal injuries. This grounds civil justice in a more virtuous sentiment, and justice itself becomes the prerogative of popular will rather than natural law in the Lockean sense. In Locke's discourse, citizens are minimally obligated to the political body and personal injury takes priority over that affecting society. This keeps justice oriented toward the natural law. In the following two chapters, we witness yet another transformation in the discourse on sovereignty, namely, from its democratization to its *rationalization* as Immanuel Kant removes sovereignty from the (revolutionary-prone) people and locates it in reason. And as was the case with previous thinkers, this transition in sovereignty cannot be separated from shifts in thinking on the state nature and the body. We now turn to Immanuel Kant's late eighteenth century theory of sovereignty.

Chapter 3 **Immanuel Kant: The Sovereignty of Reason**

This chapter analyzes the discourse on sovereignty in the thinking of Prussian philosopher Immanuel Kant (1724-1804). The outline of the chapter follows the others: first I discuss Kant's context, then his doctrine of the state of nature and the body, followed by his views on the political body, and finally his doctrine of sovereignty. Kant effects a sharp transition in the discourse on sovereignty. If Locke and Rousseau accelerated the democratization of sovereignty, Kant rationalizes sovereignty. That is, he removes sovereignty from all human hands and places it in Reason, itself freed from the restraints of traditional rationalism (God, self and nature). The fate of the political community thus becomes less tied to a monarch or a political body and more attached to the universal laws of reason. For Kant the state is *not* founded on voluntary contract; citizens move from the pleasurable state of nature into the civil state out of obligation to rational duty. Thus the notion of a political body, constituted by its many members, fades away in Kant's theory.

In the state, reason floats transcendent over civil society with objective validity, critically regulating its thoughts and practices and evaluating its motives and ends. In these and other functions, reason displaces the role that nature played in previous discourses on sovereignty. The loss of the political body in Kant is not without consequence, for Kant still imagines human nature in ways similar to Hobbes rather than Locke, that is, as primarily driven by desire and passion. As a consequence, Kant's discourse on sovereignty inaugurates the modern state's turn toward militarization. With the loss of the political body, a standing army comes to take on the coercive duties of political authority. We begin with Kant's historical context, and from there take account of his views on nature and the body before moving to his political theory.

Context

East of France, the Holy Roman *Imperium* (800AD -1806) entered its final decades as the eighteenth century came to a close. In the wake of imperial decline, Austria and Prussia – each seeing themselves as rightful heirs to German imperial heritage – began to assert their supremacy the one against the other, resulting in costly wars that drained the resources of both countries. The German Reich had come into financial troubles in mid-eighteenth century, and a post-Seven Years War (1756-1763) recession set in that lasted well into the 1770s.²⁰⁸ However, such dismal events did not completely determine German social life, for an emergent *Aufklärung* (Enlightenment movement) provided hope for a renewed and prosperous Germany. New social clubs were organized for purposes of improving society. As in France, social reforms began to take place in Germany; torture was abolished, the social status of Jews improved, peasants were emancipated, and education was more widely promoted. German society became more hospitable to public, rational debate. As traditional religious authorities were openly criticized, many transferred their allegiance from religious groups to the German nation. This nascent nationalism was marked by a stress on civic virtue and responsibility, as well as an expectation of social progress. Although Frederick William II (1744-1797) stifled the enlightenment ethos near the end of the century, the changes administered under the rule of his predecessor, Frederick the Great (1712-1786), were so firmly embedded that William II could not rid Germany of their cultural effects. Simultaneous with events in France, these conditions in Germany kept the social effects of enlightenment at the forefront of political, religious, and philosophical concern.

²⁰⁸ See James J. Sheehan's *German History 1770-1866* (Oxford: Clarendon Press, 1989)

The State of Nature and the Body

Over the course of his career, Kant's thinking on nature experienced a shift from a traditional rationalist to an idealist view. According to philosopher Peter J. Markie, rationalism "is the view that reason, as opposed to, say, sense experience [empiricism], divine revelation or reliance on institutional authority [traditionalism], plays a dominant role in our attempt to gain knowledge."²⁰⁹ Idealism, on the other hand, is defined by T.L.S. Sprigge as "the view that the mind is the most basic reality and that the physical world exists only as an appearance to or expression of mind, or as somehow mental in its inner essence."²¹⁰ (Sprigge notes that Kant's idealism is mitigated by a "more basic reality behind the mental and physical scenes.") In his early career, Kant firmly identified with the rationalist philosophical tradition, which proceeds from the thinking of Rene Descartes (1596-1650).²¹¹ Philosopher Anthony Kenny explains that Cartesian rationalism begins its search for knowledge of the first causes of existence, i.e. the unconditioned causes of the universe and the human being. Kenney explains that in his *Discourse on Method* (1637), Descartes method of introspection first proceeds by way of hypothetical doubt, through which he radically doubts all that can be doubted. That is, in the process of doubting, Descartes notices that the 'I' doing the doubting had to itself be a thing. "And observing that this truth," says Descartes, "I am thinking, therefore I exist,' was so solid and secure that the most extravagant suppositions of sceptics could not overthrow it, I judged that I need not scruple to accept it as the first principle of philosophy that I was seeking."²¹²

Kenny explains that from this rational foundation, the *cogito ergo sum*, Descartes derives the key claims of rationalism. First, the human being "is a substance whose whole essence is to

²⁰⁹ Peter J. Markie, "Rationalism," www.rep.routledge.com/articles/rationalism Accessed 8/10/15, brackets mine

²¹⁰ T.L.S. Sprigge, "Idealism," www.rep.routledge.com/articles/idealism Accessed 8/10/15.

²¹¹ Anthony Kenny, *A New History of Western Philosophy* (Oxford: Oxford University Press, 2010), 528

²¹² Kenny, *A New History*, 529 quoting Descartes from his 1637 *Discourse on Method*

think; being a body is no part of my essence.”²¹³ This implies that “whenever I conceive something clearly and distinctly, I am assured of its truth.”²¹⁴ With this first claim established, Descartes then turns to material objects to establish a second claim, namely that when one sees that shape, size and movement are the properties of material bodies, one perceives that “matter is extension in motion.”²¹⁵ Kenny explains, for Descartes, “everything is to be explained in terms of a dualism of mind and matter.”²¹⁶ Thus the cosmos is divided into two kinds of substances, mind, i.e. thought and matter, extension, i.e. to take up space. Descartes’ third postulate assures thinkers of the soundness of his or her perceptions of God. He surmises, “only the truthful nature of God, to whom I owe my existence as a thinking thing,” guarantees that what I perceive clearly and distinctly is true.²¹⁷ God is for Descartes then, the guarantor of (true) knowledge, that is, clear and distinct ideas in contrast to “opinion” or falsehood.

The Cartesian method was widely dissimulated not only by a thinker such as Baruch de Spinoza from the Netherlands but in Germany by thinkers such as Gottfried Leibniz (1646-1716) and Christian Wolff (1679-1754). Philosophers Paul Guyer and Allen Wood note that from this method, rationalists went on to establish a four part metaphysical system. “The Leibnizian-Wolffian tradition,” explains Guyer, “as presented in Alexander Gottlieb Baumgarten’s *Metaphysica* (first edition, 1738), which Kant used as the textbook for his lectures on metaphysics for virtually his entire career, was divided into four parts: ontology, psychology, cosmology, and theology.”²¹⁸ Leibniz and Wolff were canonical in eighteenth century German

²¹³ Kenny, *A New History*, 529

²¹⁴ Kenny, *A New History*, 529

²¹⁵ Kenny, *A New History*, 529

²¹⁶ Kenny, *A New History*, 528

²¹⁷ Kenny, *A New History*, 528

²¹⁸ Paul Guyer and Allen Wood, trans. and eds., “Introduction to the Critique of Pure Reason” from Immanuel Kant’s *The Critique of Pure Reason* (New York: Cambridge University Press, 1781, 1998) <http://strangebeautiful.com/lmu/readings/kant-first-critique-cambridge.pdf> Accessed 8/11/15, p14, brackets mine

philosophical circles and held great influence over Kant's early thinking, says Kenny.²¹⁹ Kant's *Thoughts on the True Estimation of Living Forces* (1746-7), *Universal Natural History and Theory of the Heavens* (1755), and *Physical Monadology* (1756) stand firmly within this rationalist tradition.²²⁰

According to Frederick C. Beiser, a well-recognized Kant scholar, traditional rationalism uses the human faculty of reason to demonstrate a metaphysical foundation of physics and nature, one constituted by God, providence, and immortality.²²¹ “[The] task of the metaphysics of nature,” says Beiser, “is to discover the inner forces of things, the first causes of the laws of motion and the ultimate constituents of matter.”²²² Metaphysics determines the dynamics of the world, what Beiser calls the “ultimate forces and particles of nature,”²²³ namely “God, providence and immortality”²²⁴ (Kenny uses the term “freedom” for Beiser’s “providence”).²²⁵ Rationalist metaphysics grants maximal assurance of the truth of these realities by rational demonstration alone. Rationalists believe in apodictic certainty, i.e. rational demonstrations in the analysis of nature, knowledge of the laws of nature may be established *a priori*. Such knowledge is most certain, which is necessary and universal. These rational demonstrations do not only provide certainty about ultimate forces, but provide rational grounding for human moral choices, which are moved by free will and not necessity.²²⁶ Apodictic reasoning thus provides certain knowledge of God, providence or freedom, and immortality of the soul. Knowledge these realities enable one to discover their true vocation and moral obligation.

²¹⁹ Kenny, *A New History*, 576-7

²²⁰ See Frederick C. Beiser, “Kant’s Intellectual Development” in *The Cambridge Companion to Kant* ed. by Paul Guyer (New York: Cambridge University Press, 1992), 31

²²¹ Beiser, “Kant’s Intellectual Development”, 26.

²²² Beiser, “Kant’s Intellectual Development”, 31

²²³ Beiser, “Kant’s Intellectual Development”, 43

²²⁴ Beiser, “Kant’s Intellectual Development”, 37

²²⁵ Kenny, *A New History*, 577

²²⁶ Kenny, *A New History*, 555

Over the course of his career, Kant transitioned from rational search for the metaphysics of nature to a rational inquiry into the (metaphysics of) the human mind. The shift was gradual, not instant, but formative for Kant in this respect was the thinking of the Scottish Enlightenment, including figures such as Francis Hutcheson (1694-1746), Edmund Burke (1729-1797) and David Hume (1711-1776). According to philosopher Patrick Frierson, “Hume was to have the most lasting influence on Kant.”²²⁷ Hume, a Scottish radical empiricist, argued that all human judgments are based on sense experience. As a traditional rationalist who believed that reason, rather than sense experience, plays a dominant role in gaining knowledge, Kant found Hume unsettling, to say the least. Kant articulates with clarity the differences between radical empiricism and metaphysical thinking in his 1783 *Prolegomena to Any Future Metaphysics*:

Let us consider first the sources of metaphysical knowledge. The very concept of metaphysics ensures that the sources of metaphysics can't be empirical. If something could be known through the senses, that would automatically show that it doesn't belong to metaphysics; that's an upshot of the meaning of the word 'metaphysics'. Its basic propositions can never be taken from experience, nor can its basic concepts; for it is not to be physical but metaphysical knowledge, so it must lie beyond experience. Outer experience is the source of physics properly so-called, and inner experience is the basis for empirical psychology; and metaphysical knowledge can't come from either of these. It is thus knowledge a priori—knowledge based on pure understanding and pure reason.²²⁸

In this passage Kant expresses a strong distinction between empirical knowledge and metaphysical knowledge. This opposition is grounded in Hume's skepticism regarding the concept of “necessity”, which Kant defines in his *Prolegomena*:

Hume's primary starting-point was a single important metaphysical concept, namely that of the connection of cause with effect (including derivative concepts like those of force and action and so on). Reason purports to have given birth to this concept, but Hume challenged reason thus: Explain to me what entitles you to think there could be a thing x such that: given that there is x, there must necessarily also be something else y—for

²²⁷ Immanuel Kant, *Observations on the Feeling of the Beautiful and the Sublime*, ed. by Paul Guyer and Patrick Frierson (Cambridge University Press: New York, 2011), viii

²²⁸ Immanuel Kant, *Prolegomena to any Future Metaphysic that can Present itself as a Science* (Jonathan Bennett, 2010), 7, <http://www.earlymoderntexts.com/assets/pdfs/kant1783.pdf> Accessed 8/12/15

that's what the concept of cause says. He showed beyond question that it is completely impossible for reason to have—in an a priori way and purely through concepts—with no input from experience—the thought of such a union of x with y, because the thought of such a union includes the thought of necessity. We cannot at all see why, given that one thing exists, some other thing necessarily must exist, or how the concept of such a connection could arise a priori. From this he inferred that reason is utterly deluded regarding the concept of cause, wrongly thinking it to be among her own children when really it is a bastard child of the imagination that was got in the family way by experience.²²⁹

Kenny notes that Hume challenged the important concept of necessity, i.e. the necessary connection between a cause and its effect. This notion was not birthed from reason but custom.²³⁰ In reading Hume and realizing that the concept of necessity could not be proved either by deductive reasoning or experimental inquiry, Kant abandoned his earlier traditional rationalism and embraced the empiricist method. Kenny moreover notes that Kant attacked his former “metaphysical psychology, metaphysical cosmology and metaphysical theology,” all of which are grounded in rational proofs and are thus held *a priori*, i.e. certain, necessary and universal, truths.²³¹ Kant destroys the “notions of an immaterial immortal soul, of a surveyable cosmic whole, and of an absolutely necessary being” says Kenny.²³² Like all other empiricists, Kant now held that all human knowledge about the self, the world and beyond begins with the senses and is contingent, particular and fallible. If rationalism were grounded on *a priori claims*, then empiricism is grounded on *a posteriori claims*. Thus, humans can never claim absolute knowledge about a real or true world beyond appearances.

Although Hume's argument converted Kant to empiricism, his conversion was highly mitigated as he considered that radical empiricism had discredited the scientific status of *a priori*

²²⁹ Kant, *Prolegomena*, 2, quoted by Michael Friedman in “Causal Laws and the Foundations of Natural Science” in *The Cambridge Companion to Kant*, 162

²³⁰ Kenny, *A New History*, 564

²³¹ Kenny, *A New History*, 580

²³² Kenny, *A New History*, 580

truth claims but not what Kant called “synthetic *a priori* judgments.”²³³ According to Paul Guyer Kant defines “the ordinary function of judgment as that of subsuming a particular under a universal that is antecedently given to us...he now calls that function ‘determining judgment’...[or with] ‘reflecting judgement’...we are given a particular for which we must seek to find a universal, a concept or rule of some kind that we are not immediately given.”²³⁴ To Kant’s mind, radical empiricism threatened the possibility of human judgment because it had destroyed the universals of traditional rationalism (self, world, God). However, radical empiricism had not discredited synthetic *a priori* judgments, or judgments as particulars brought under synthesized universals. According to philosopher J. Michael Young, synthesis is “[t]he act of... ‘putting different representations together and of grasping what is manifold in them in one cognition,” it “‘gathers the elements for cognition and unites them to form certain content,’...[a]nd hence it is what first gives rise to cognition.”²³⁵ Synthetic *a priori* judgments are thus those judgments that provide the necessary conditions for the possibility of human cognition and experience of objects. As Paul Guyer says, these judgments “go beyond what can be derived from the mere analysis of concepts yet also claim universal and necessary validity.”²³⁶

Kant says:

All synthetic *a priori* principles are simply principles of possible experience; they can never be applied to things in themselves, but only to appearances as objects of experience. Hence pure mathematics as well as pure natural science can never bear on anything except appearances.²³⁷

²³³ See Kant’s *Critique of Pure Reason*

²³⁴ See Paul Guyer’s “Editor’s Introduction” in Immanuel Kant’s *Critique of the Power of Judgment*, ed. by Paul Guyer (Cambridge: Cambridge University Press, 2000), xx11. Also see Paul Guyer’s *Kant’s System of Nature and Freedom*, (New York: Oxford University Press, 2005), 11-12.

²³⁵ J. Michael Young, “Functions of thought and the synthesis of intuitions” in *The Cambridge Companion to Kant*, 104

²³⁶ Paul Guyer and Allen Wood, “Introduction to the Critique of Pure Reason” from *The Critique of Pure Reason*, <http://strangebeautiful.com/lmu/readings/kant-first-critique-cambridge.pdf> Accessed 8/11/15, p 29

²³⁷ Kant, *Prolegomena*, 45

These synthetic *a priori* principles, or principles of possible experience, cannot be justified based on sense experience. Yet they are still objective, determinate conditions that ground the possibility of human observation and perception and bestow unity and order to the world of appearances.²³⁸ Thus although Kant agreed with the radical empiricist claim that the concept of causality was not “a merely logical or analytic necessity arising from reason alone (purely ‘from concepts’),”²³⁹ he nevertheless recognized that experience itself required that humans notice the “law-governedness” of appearances, a notion that experience could not justify.²⁴⁰ Philosopher J. Michael Young notes that Kant associates the notion of synthesis with apperception, of grasping up an appearance and assimilating it to an established body.²⁴¹ Kant thus wrestled with a paradox, namely that humans somehow operate with the notion of a law-governed natural world, even though this notion could not be justified rationally or empirically. As Kenny notes, synthetic *a priori* principles show that “there cannot be a world of mere appearances...that do not fall under any categories or instantiate any rules. But we cannot conclude from this that there is a non-sensible world that is established by the intellect alone.”²⁴² Thus Kant found himself torn between his roots in traditional rationalism and the torrential Humean winds of radical empiricism.

For Kant, the human capacity for synthetic *a priori* judgments implied that the priority of metaphysics should not be nature, but the human mind. Metaphysics is now concerned with the mental capacities by which we perceive nature’s apparent objects. In tracking the development of

²³⁸ Paul Guyer and Allen Wood, “Introduction to the Critique of Pure Reason” <http://strangebeautiful.com/lmu/readings/kant-first-critique-cambridge.pdf> Accessed 8/11/15, p 39, quoting Kant’s *Reflexionen*. Guyer explains that “*Reflexionen*,” are the notes from his Handschriftliche Nachlaß (handwritten remains), as printed in Vols. 14-19 of the Akademie edition (edited by Erich Adickes and Friedrich Berger from 191 I to 1934)” Guyer and Wood, 705

²³⁹ Friedman, Causal Laws,” 162

²⁴⁰ Kant, *Prolegomena*, 25

²⁴¹ J. Michael Young, “Thought and Synthesis”, 110

²⁴² Kenny, *A New History*, 579, brackets mine

Kant's doctrine of the state of nature, then, we see that his doctrine of the state of nature necessarily follows the path of his metaphysics into human psychology. We see this as early as his 1770 *Dissertation of the Form and Principles of the Sensible and Intelligible Worlds*. According to Beiser, Kant first argues here that metaphysics should not be about "speculation about the world of spirits...[but] to determine the first principles or basic concepts of our reason. Metaphysics [is]...not an ontology in the traditional sense of a science about some kind of thing. Rather, its aim should be to determine the conditions under which it is possible to think any object whatsoever according to reason."²⁴³ If the previous task of metaphysics was to arrive at *a priori* proofs for the objects of an immortal self, the world and God, the new task of metaphysics is to understand the universal features of human cognition. Thus with Kant's the state of nature shifts from the cosmological to the psychological field of analysis. The state of nature meets now the criteria established by the features, powers and limits of the human understanding.

According to philosopher Gary Hatfield, Kant criticized both traditional rational psychology and empirical psychology.²⁴⁴ Kant defines rational psychology as "the science of the object inner sense, or the 'I': 'the expression 'I', as a thinking being...[based on] what can be inferred independently of all experience (which determines me more specifically and *in concreto*) from this concept 'I', so far as it is found in all thought."²⁴⁵ Hatfield notes that for Kant, many of rational psychology's claims (e.g. the immortality and incorruptibility of the soul) "exceed the bounds of possible experience and hence advance claims that transcend the domain of possible metaphysical knowledge."²⁴⁶ Kant also recognized the limits of empirical psychology. Empirical psychology, for Kant holds that "empirical study of the human mind can

²⁴³ Beiser, "Kant's Intellectual Development", 49-50

²⁴⁴ Gary Hatfield, "Empirical, rational and transcendental psychology: Psychology as science and as philosophy" *The Cambridge Companion to Kant*

²⁴⁵ See Hatfield, "Transcendental Psychology," 201-2

²⁴⁶ Hatfield, "Transcendental Psychology," 203

importantly inform investigations of the characteristics and limitations of human cognition,” says Hatfield.²⁴⁷ While empirical psychology was of some use, it was an inadequate answer to Kant’s “philosophical questions about what he termed the ‘origin’ and ‘validity’ of cognitive claims...or the possibility of necessary judgments.”²⁴⁸

Kenny explains that Kant’s own psychology begins with both an acknowledgment of sense experience as the source of all human knowledge and a sharp distinction between senses and the intellect. “But within the intellect,” says Kenny, “he makes a new distinction of his own between understanding (*Verstand*) and reason (*Vernunft*).”²⁴⁹ All rational beings sensibly apperceive representations of experience under a “law-governedness” and unite them in one consciousness.²⁵⁰ The understanding accomplishes this task in cooperation with the senses. “[T]hrough the senses objects are given to us; through the understanding they are made thinkable. Experience has a content, provided by the senses, and a structure, determined by the understanding.”²⁵¹ The pure concepts of the understanding (e.g. substance, quality, quantity, modality) organize sense experience and perceptions, thus enabling a conversion from subjective to objective perceptions, i.e. from subjective judgments to metaphysical claims.²⁵² Says Kant:

²⁴⁷ Hatfield, “Transcendental Psychology,” 205

²⁴⁸ Hatfield, “Transcendental Psychology,” 204-5

²⁴⁹ Kenny, *A New History*, 578

²⁵⁰ Kant, *Groundwork of the Metaphysics of Morals* in *The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy* trans. and ed. by Mary J. Gregor and Allen Wood (New York: Cambridge University Press, 1996, 2006), 99, 4:452

²⁵¹ Kenny, *A New History* 579, brackets mine

²⁵² Kant, *Groundwork*, 4:305, as noted by Paul Guyer and Allen Wood. They note that the pure concepts of the understanding, also called the categories, are “fundamental concepts of an object in general, or the forms for any particular concepts of objects, and in conjunction with the a priori forms of intuition are the basis of all synthetic a priori cognition.” (p8) Guyer lists the (twelve) categories after noting four logical features of judgment: “There are four main logical features of judgments: their *quantity*, or the scope of their subject-terms; the *quality* of their predicate-terms, whose contents are realities and negations; their *relation*, or whether they assert a relation just between a subject and predicate or between two or more subject-predicate judgments; and their *modality*, or whether they assert a possible, actual, or necessary truth. Under each of these four headings there are supposed to be three different options: a judgment may be universal, particular or singular; affirmative, negative or infinite; categorical, hypothetical or disjunctive; and problematic, assertoric, or apodictic. Corresponding to these twelve logical possibilities, Kant holds there to be twelve fundamental categories for conceiving of the quantity, quality, relation, and modality of objects.” Guyer explains that the pure concepts of the understanding endow judgments with

Now since all possible perception depends on the synthesis of apprehension, but the latter itself, this empirical synthesis, depends on the transcendental one, thus on the categories, all possible perceptions, hence everything that can ever reach empirical consciousness, i.e., all appearances of nature, as far as their combination is concerned, stand under the categories, on which nature (considered merely as nature in general) depends, as the original ground of its necessary lawfulness (as *natura firmiter spectata*). The pure faculty of understanding does not suffice, however, to prescribe to the appearances through mere categories a priori laws beyond those on which rests a nature in general, as lawfulness of appearances in space and time. Particular laws, because they concern empirically determined appearances, cannot be completely derived from the categories, although they all stand under them. Experience must be added in order to come to know particular laws at all; but about experience in general, and about what can be cognized as an object of experience, only those a priori laws offer instruction.²⁵³

Thus Kant ‘rescues’ the possibility of metaphysics after Hume’s devastating critique by transferring the grounds for the possibility of general laws of nature from either the inherent structure of the cosmos or human experience alone to the powers of human intellection. Again, Kant sees the faculty of the understanding as distinct from that of reason. The understanding works to orient perception and judgment of sense experience, but it ultimately needs the sensible world in order to operate. However, reason is “autonomous” or “pure” because it is in no way determined by empirical conditions such as causal laws of nature or human sentiments. Reason “distinguishes the world of sense and the world of understanding from each other and thereby [marks] out limits for the understanding itself.”²⁵⁴ It is this faculty of pure reason, then, that distinguishes human beings from all other things.

According to Friedman, although Kant identified “synthetic *a priori*” principles in general, those he focused on most consistently were space and time.²⁵⁵ In his *Prolegomena to Any Future Metaphysics* (1783), Kant identifies space and time as universal and necessary laws

universal and necessary validity. (p4) from Paul Guyer and Allen Wood, “Introduction to the Critique of Pure Reason” <http://strangebeautiful.com/lmu/readings/kant-first-critique-cambridge.pdf> Accessed 8/11/15, p 8-9

²⁵³ Kant, *Critique of Pure Reason*, 263-4, B 165, quoted by Friedman, 166, brackets mine

²⁵⁴ Kant, *Groundwork*, 99, 4:452

²⁵⁵ Kant focused on space and time most notably in his *Prolegomena* and First Critique (*The Critique of Pure Reason*)

that provide the conditions for possibility of experience and govern representations such that they operate within these laws. He does so as he distinguishes his criteria for truth from that of Anglo-Irish philosopher George Berkeley (1685-1753). Says Kant:

It follows from this contrast between Berkeley and me that because truth rests on universal and necessary laws as its criteria, experience **for Berkeley** can have no criteria of truth, because its appearances (according to him) have nothing underlying them *a priori*, from which it follows in turn that they are nothing but sheer illusion; whereas **for me** space and time (in combination with the pure concepts of the understanding) prescribe their law *a priori* to all possible experience, and this at the same time yields the sure criterion for distinguishing truth from illusion in experience.²⁵⁶

For Kant, truth rests on the universal laws of time and space. These laws cannot be discerned by perception. Nevertheless, because these laws are required for any possible experience at all, Kant argues that they, and not the laws of causality, are his new metaphysics of nature. They are the laws that bring objective unity and order to nature's particulars. Philosopher Karl Ameriks explains Kant's understanding of the universal laws of space and time in relation to the famed German rationalist Gottfried Leibniz. He notes that although Kant held that all experience postulates space and time, space is not "a certain order in the community of substances" and time is not "the dynamic sequence of their states."²⁵⁷ The understanding does not extract these synthetic *a priori* "laws" from nature, says Friedman. Rather, the understanding "prescribe[s] them to, nature."²⁵⁸ This notion, that the understanding prescribes synthetic *a priori* laws to nature, signals Kant's rejection of traditional rationalist metaphysics and the birth of (transcendental) idealism.

In the end, Kant's transcendental idealism leaves open the possibility for what he called "transcendental principles", namely space and time as the conditions of possible experience and

²⁵⁶ Kant, *Prolegomena*, 78

²⁵⁷ Ameriks, "The Critique of Metaphysics: Kant and traditional ontology" in *The Cambridge Companion to Kant* 255 quoting Kant (A 275, B 331)

²⁵⁸ Kant, *Prolegomena*, 40, quoted by Friedman, 166

thought. His transcendental thinking is the result of the amelioration of rationalism and empiricism. “My principles, “says Kant, “which limit the use of reason to possible experience, could in that way become transcendent, and the limits of our reason might pass themselves off as limits of the possibility of things in themselves.”²⁵⁹ Philosopher Charles Parsons explains that Kant’s transcendent principles “are [the] forms of our sensible intuition...they do not apply to things as they are in themselves and are thus in some way subjective.”²⁶⁰ Kant therefore left a window open to metaphysical thinking as transcendental idealism even as Hume closed off the possibility of *a priori* human judgments. Kant’s thinking leaves room for transcendental schemes, i.e. doctrines of the soul, the world, and knowledge of God that conform to the laws of possible experience in space and time determinacy.

Kant’s thinking signals a watershed event in the discourse on sovereignty. The significance of Kant’s shift in metaphysical thinking for this dissertation is that with the rise of transcendentalism idealism, practical reason takes over the duties once ascribed to nature and history, including its role as a backdrop to the notion of the political body. The early signs of the shift in Kant’s understanding of the task of reason can be seen as early as 1764 in his *Observations on the Feeling of the Beautiful and the Sublime*.²⁶¹ Kant notes how he had been deeply influenced by Rousseau’s *Discourse on the Arts and Sciences* (1750), where Rousseau laments that the arts and sciences did little to improve the moral condition of civil society. “Rousseau has set me right,” says Kant. He continues, “This blinding prejudice vanishes, I learn to honor human beings, and I would feel by far less useful than the common laborer if I did not believe that this consideration could impart value to all others in order to establish the rights of

²⁵⁹ Kant, *Prolegomena*, 61

²⁶⁰ Charles Parsons, “The Transcendental Aesthetic” in *The Cambridge Companion to Kant*, 67

²⁶¹ See Beiser, “Kant’s Intellectual Development”, 43

humanity.”²⁶² Kant did not interpret Rousseau’s critique as the death blow to the arts and sciences, but as impetus for reason to take on the task of rightly ordering and directing the arts and sciences.²⁶³ “If there is any science that the human needs,” says Kant, “it is that which teaches [one] properly to fulfill...the position that has been assigned to [one] in creation, and from which [one] can learn what one must be in order to be a human being.”²⁶⁴ With traditional rationalism, the task of reason was to be the ultimate judge of the validity of any claims to knowledge immaterial being.²⁶⁵ Upon reading Rousseau, however, Kant begins to transform reason into the ultimate judge of the validity of claims to knowledge in the arts and sciences, that is, into the sovereign.

It is now (pure) reason which unifies classifies, specifies and relates the various particulars of nature. (Pure) reason now grounds both theoretical and practical arts and sciences, and it is also their ultimate judge of the validity of any claim to knowledge. Theoretical reason operates in scientific inquiry and in discerning empirical truth, and practical reason performs the highest human function, producing a good will through its moral law.²⁶⁶ Philosopher Thomas Wartenberg notes that for Kant, reason takes on a regulative, rather than constitutive role for both of these forms of reason.²⁶⁷ Kant’s “use of the term ‘regulative,’” Wartenberg says, “characterizes the knowledge of reality determined by this principle of reason ‘as synthetic *a priori* propositions, that have objective but indeterminate validity’...That is, in characterizing the use of reason as regulative rather than constitutive, Kant is making reference to the relation of

²⁶² Kant, *Observations on the Feeling of the Beautiful and the Sublime*, ed. by Paul Guyer and Patrick Frierson (Cambridge University Press: New York, 2011), 96.

²⁶³ Says Patrick Frierson, “Kant’s unpublished reflections during this period [in which he work on his *Observations*], many of which are found in *Remarks in the Observations*, shows the evolution of this struggle towards the rationalist moral theory that will eventually be formulated in *Groundwork*.” See Immanuel Kant’s *Observations*, xiii

²⁶⁴ Kant, *Observations*, 96

²⁶⁵ George Di Giovanni defines (Kantian) reason as the “ultimate judge of the validity of any claims to knowledge.” See “The first twenty years of the critique: The Spinoza connection” in *The Cambridge Companion to Kant*, 422

²⁶⁶ Kant, *Groundwork*, 52, 4:396

²⁶⁷ Thomas Wartenberg, “Reason and the Practice of Science” *The Cambridge Companion to Kant*, 237

this use of reason to empirical objects, phenomena. Kant is claiming that the use of reason is not constitutive of such objects.”²⁶⁸ Reason doesn’t create the world’s objects, but is necessary for experience as such. More than this, it becomes the sovereign authority over both theoretical and practical sciences.

Some twenty years after *Observations*, Kant extends the role of reason definitively in his essay “An Answer to the Question: ‘What is Enlightenment?’” (1784). Kant argues that German society should be an enlightened society, which Kant describes as one where people use their own understanding (as opposed to that of religious authority, for example) and publicly voice their own opinion. Kant affords this privilege not only with respect to religion, but law as well. “But the attitude of mind of a head of state who favors freedom in the arts and sciences,” Kant says, “extends even further, . . . there is no danger even to his legislation if he allows his subjects to make public use of their own reason and to put before the public their thoughts on better ways of drawing up laws, even if this entails forthright criticism of legislation.”²⁶⁹ In the previous chapters we have seen with thinkers such as Bodin, Locke and Descartes that the moral and physical laws of nature were intrinsic to the structure of the cosmos. The faculty of the understanding discerns these laws to procure a good life. With Kant this shifts, so that the law-governedness of the world is an artifice of the human mind rather than a demonstrably intrinsic property of objects in nature. The transcendental laws of the human mind frame the conditions of the possibility for mental representations of nature under the objective and determinate conditions of time and space. Thus human reason takes on the task ascribed to nature in previous theorists on sovereignty (Bodin, Hobbes, Locke, Rousseau), namely establishing relations among nature’s particulars through an ordering principle, determining whether people are fundamentally

²⁶⁸ Thomas Wartenberg, “Reason and the Practice of Science” *The Cambridge Companion to Kant*, 237

²⁶⁹ Immanuel Kant, “An Answer to the Question: ‘What is Enlightenment?’”
https://web.cn.edu/kwheeler/documents/What_is_Enlightenment.pdf, 3

good or evil, directing moral and political affairs, and establishing rightful claims to various phenomena such as property, the fruit of labor and (enslaved) human bodies.

Just as theoretical reason (e.g. mathematics, natural science, metaphysics) allows empirically derived forms of knowledge (i.e. Newtonian laws of nature) to present themselves as synthetic *a priori* truths, so, too, Kant says, does practical reason (ethics, politics) impose “itself upon us of itself as a synthetic *a priori* proposition...”, that is, as a moral law.²⁷⁰ The moral law, like other synthetic *a priori* principles, is an objective, determinate condition which provides the condition of possibility for moral judgments. Grounded in pure practical reason, the imperative of the moral law are categorical rather than prudential. Thus moral obligations are intrinsically necessary apart from human nature or empirical determinants such as sentiment, self-love, or happiness. Indeed, the form of the moral law is a universal command. Kant offers a form of the categorical imperative: “act only in accordance with that maxim through which you can at the same time will that it become a universal law.”²⁷¹

The most critical implication of this law is the rational necessity of human freedom. According to Paul Guyer, Kant has a tripartite account of freedom, consisting of two negative and one positive aspect. Negatively, freedom is both freedom from domination by one’s own natural drives and freedom from domination by others. “On the one hand” Guyer says, “freedom consists in a person’s ability to determine his ends independently of domination by his own inclinations and desires; on the other hand other, freedom consists in a person’s ability to select and pursue his own ends independently of domination by other persons.”²⁷² Guyer explains that these two forms of negative freedom are only attainable through positive freedom, which Kant

²⁷⁰ Kant, *Critique of Practical Reason*, 164, 5:31

²⁷¹ Kant., *Critique of Practical Reason*, 73, 4:421

²⁷² Paul Guyer, *Kant’s System of Nature and Freedom*, (New York: Oxford University Press, 2005), 117

defines as “the ability to determine oneself by reason.”²⁷³ Beiser’s interpretation is similar, defining freedom as “the power of the will to prescribe universal laws.”²⁷⁴ Freedom is not discovered by either deductive reasoning or empirical reality. Reconciling freedom with reality, one must simply assent to the “dialectic of reason”; even as reason can never comprehend or explain the necessity of freedom, it can neither negate its determinacy. Human freedom is a postulate of pure practical reason and as such it is a nontransferable right of nature (natural right).²⁷⁵

According to renowned Kant scholar J. B. Schneewind, Kant’s rational agent, the one whose will is directed by reason, is thus “capable of being fully self-governing in moral matters. In Kant’s terminology, we are ‘autonomous.’”²⁷⁶ Autonomy consists of two basic features, says Schneewind. First, “no authority external to ourselves is needed to constitute or inform us of the demands of morality. We can each know without being told what we ought to do because moral requirements are requirements we impose on ourselves.” Second, “in self-government we can effectively control ourselves. The obligations we impose upon ourselves override all other calls for action, and frequently run counter to our desires.”²⁷⁷ Therefore, rational agents are those who are not governed by their desires or heteronomy, but “must be allowed a social space within which we may freely determine our own action.”²⁷⁸

²⁷³ Guyer, *Kant’s System of Nature and Freedom*, 118, quoting Kant from *Notes on the Lectures of Mr. Kant on the Metaphysics of Morals* ed by Johann Friedrich Vigilantus, 1793 (27:494)

²⁷⁴ Beiser, “Kant’s Intellectual Development”, 44

²⁷⁵ Kant, *Critique of Practical Reason*, 101-8, 4:456-463,

²⁷⁶ See J.B. Schneewind’s “Autonomy, Obligation, and Virtue: An Overview of Kant’s moral philosophy” in *The Cambridge Companion to Kant*

²⁷⁷ Schneewind, “Autonomy, Obligation,” 309

²⁷⁸ Schneewind, “Autonomy, Obligation,” 310

The Political Body

Kant's moral theory lays the foundation for political right (juridical laws). In turn, the doctrine of right functions as the legitimating foundation and authoritative check for political sovereignty. According to Kant Scholar Wolfgang Kersting, Kant's concept of right is defined as "the totality of conditions, under which the will [*Willkur*] of one person can be unified with the will of another under a universal law of freedom"²⁷⁹ The principle of right helps us to distinguish equitable and inequitable distributions of freedom. This doctrine deals with two branches, first, *private*/natural right, which consists of property, domestic, and contract right. The other branch is *public* right, which is the state's rights for the preservation of the rights of man. Here, Kant notes that possession (*possessio*) may only be called *rightful* possession if it is recognized as such within a civil/rightful condition. Compared to Locke, private possession is not based on labor, physical holdings, force, or other empirical conditions, but on the authority of reason; only reason provides the authority to obligate others to refrain from using private objects of choice (e.g. land, contracts, and domestic servants). Since rational freedom is the only innate right, "rightful possession" must be grounded in principle on practical reason, for only then does one's control of an external object of which one does not physically possess make it rationally legitimate. In the state of nature, then, right of possession is provisional, and only become conclusive under civil conditions. Right of possession based on civil society's claims trump "savage" claims to original acquisition. Such an argument was no doubt useful in Russia, Prussia, and Austria's partitioning and annexation of Poland in 1772.

According to Kersting, right is analytically connected with the authorization of coercion for the purposes of protecting one's property against the unfree. For Kant, right "defines the domain

²⁷⁹ Wolfgang Kersting, "Politics, Freedom and Order: Kant's Political Philosophy" in *The Cambridge Companion to Kant*, 344

that each may consider his own, occupy as he pleases, and defend against injuries to its boundaries”²⁸⁰ Kersting points out that Kant’s doctrine of right is a universal principle of obligation and coercion, for all are obligated to conform their wills to the laws of freedom. This obligation entails yet another to coerce those who are not autonomous.²⁸¹ Kant insists that one’s property isn’t authorized unless they subject their right to juridical confirmation in a rightful condition.²⁸² This claim should not be understood apart from European claims that their rightful condition necessitated that “savages” (e.g. American Indians, Hottentots, and New Hollanders) be forced into conditions of slavery or colonization.²⁸³ Kant makes another claim about private right, namely that the “right of human beings” limits one’s capacities (*potestas*) as master in cases of domestic and contractual possession. The right of human beings is the right of rational beings to be treated as intrinsic ends and never as mere objects for the master’s use. The master may only act as *owner* and use an objects as he pleases when dealing with *things* like apples or land, and only here does an object become property (*dominium*). Says Kant:

An external object which in terms of its substance belongs to someone is his *property* (*dominium*), in which all rights in this thing inhere (as accidents of a substance) and which the owner (*dominus*) can, accordingly, dispose of as he pleases (*ius disponendi de re sua*). But from this it follows that an object of this sort can only be a corporeal thing (to which one has no obligation). So someone can be his own master (*sui iuris*) but cannot be the owner of *himself* (*sui dominus*) (cannot dispose of himself as he pleases) – still less can he dispose of others as pleases, since he is accountable to the humanity in his own person.²⁸⁴

Kant’s emphasis on rightful coercion as coercion in accord with the principles of right signals his rejection of a political body, voluntarily constructed or otherwise. With previous theorists of sovereignty (Hobbes, Locke, Rousseau), the state was founded on the collective will of the

²⁸⁰ Kersting, “Freedom and Order,” 346-8

²⁸¹ Kersting, “Freedom and Order,” 346

²⁸² Kersting, “Freedom and Order,” 353-8. Also see Kant’s “*Toward Perpetual Peace*, where he advocates the creation of standing armies. (I,3) http://www.earlymoderntexts.com/assets/pdfs/kant1795_1.pdf

²⁸³ Kant, *Groundwork*, 416, 6:264 and 417, 6:266

²⁸⁴ Kant, *Groundwork*, 421, 6:270

people: the united act of authorization for Hobbes and the social compact for Locke and Rousseau. For Bodin the political body was even more determinate, since natural rather than artificial. Kant's distrust of the human will which is mired in the vicious passions of nature prevents him from allowing it to serve as foundation for state. Kersting compares Kant's thinking on the social contract to other social contract theorists:

In classical modern political philosophy the path from the natural condition to the civil, juridical, political condition, or the state, leads through a contract of each person with every other...Where, as in the case of Kant, the transition from the natural to the civil condition is conceived of as juridically necessary and commanded by reason, and where it is a duty to leave the state of nature rather than something that is merely prudent and in the interest of each person, then, naturally, the presuppositions of a voluntaristic foundation for the state and a recourse to individuals who bind themselves by a contract for the purposes of its legitimation no longer hold.²⁸⁵

With Kant, the political body falls away as the iron hand of reason emerges to compel the conditions of civil society. Kersting notes that Kant has a noncontractualist, non-voluntaristic theory of consensus.²⁸⁶ One's commitment to political community is a command of reason and a duty rather than a choice. The implications of this are that neither the monarch nor the state, nor the people are sovereign. All stand under the sovereignty of reason. Thus we find that with the decline of metaphysical thinking on nature and the rise of sovereign reason's transcendental principles, there is also the decline of the political body and the rise of a polarized autonomy/coercion logic. Those who conform to the obligations, duties and laws of freedom are also free in the state, but those who fail to acknowledge reason's sovereignty are subjected to its coercive forces.

Public right consists of those laws promulgated to bring about a rightful condition, that is, that its power of procedural rational bureaucracy is legitimate insofar as it provides the conditions for the administration of justice and the rightful use of force and authority. More,

²⁸⁵ Kersting, "Freedom and Order," 354

²⁸⁶ Kersting, "Freedom and Order," 354-6

public right grounds claims to united consent concerning possessions and property. Kant does not offer a narrative of the transition from a state of nature to civil society, but claims that public right is established by the general *united* will of all citizens as Rousseau. This will is exercised in the relationship amongst three authorities in the state: the *sovereign authority* in whom reason of sovereignty rests as legislative power; the *executive authority* who guarantees the law; and the *judicial authority*, the arbiter of the law (*potestas legislativa, rectoria et iudiciaria*).²⁸⁷ Combined, these three authorities are superior to and command the state's subjects. However, none of these authorities is unlimited. Instead, they are "*subordinate (subordinatae)* to one another, so that one of them, in assisting another, cannot also usurp its function; instead, each has its own principle, that is, it indeed commands in its capacity as a particular person, but still under the condition of the will of a superior."²⁸⁸ Thus these authorities are limited by their *coaction*.

On Sovereignty

In the state, the legislative authority is supreme, and it can only belong to the will of the people. All right proceeds from this *general united will*. 'The people' are citizens, i.e. those who are independent insofar as they owe their own existence and preservation to their own rights and powers. They may vote and represent themselves as political actors. Those dependent on citizens' wills, as a "servant to a master or wife to husband," are passive citizens and cannot participate in active management of the state. The people, however, are required to institute laws that correspond to the laws of freedom for all so that "anyone can work his way up from this passive condition to an active one."²⁸⁹ Because sovereignty rests in the general united will, one cannot rightfully rebel or revolt against the state. The executive authority is the guarantor of the people's sovereignty, so that ruler (monarch) takes on the right of the people, exercising it as a

²⁸⁷ Kant, *Groundwork*, 457, 6:314

²⁸⁸ Kant, *Groundwork*, 459, 6:316

²⁸⁹ Kant, *Groundwork*, 459, 6:315

representative or servant of the people's will in accordance with the principles of right. The ruler is authorized by the sovereignty of the people to direct the operations of government and administration even while, subject to the law without violating his patriotic duty to serve the native land or becoming a despot. Should he exercise authority in violation of right, the people may take away the ruler's authority. Neither the legislative nor executive authorities can judge in such matters of state, for such authority is reserved to juridical power. The courts, occupied by judges appointed by the people, have the sole authority to apply the law. Only the people, then, can give judgment upon one of its members, but only indirectly through representatives. Ultimately, all of these co-acting powers of the state are limited in that they stand under right, a principle of sovereign reason.

With Kant, the fate of the political community becomes less tied to a common past, a collective agreement, wise rulers, or patriotic Citizens. Instead, Kant weds the fate of politics, both local and global, to a community's conformity to the universal laws of reason. This in essence neutralizes the causes of revolutionary action while still maintaining a public space to express one's political opinions. We might further illuminate Kant's thinking by comparing it with Rousseau's. Even as Rousseau and Kant restrict the privilege of political participation to male property owners, Kant's view of participation is less active than Rousseau's. That is, Kantian subjects do not achieve virtue through political participation in a context of fraternity and love of country as with Rousseau, but as an outgrowth of a rationally governed life lived in conformity with the universal moral law. Thus political participation and patriotism are de-emphasized. While civil freedom, in the form of voting, is important to Kant, autonomy or moral freedom is the true *telos* of the Kantian subject. With Kant, the subject trades the passionate civic conversion of Rousseau for the autonomous, self-legislated life of reason.

Finally, in sharp distinction from Rousseau, Kant embraced an enlightenment narrative of the rational progress of the arts and sciences and thus of civil society and history. While Rousseau was the first to introduce historical consciousness into the science of politics, he was by no means a philosopher of history, i.e. he did not offer a theory of the unity, continuity, and goal of history. With Kant, however, history assumes a definite historical *telos* under reason's sovereign guidance of civil society. In gradual, nonlinear fashion, Kant imagines that history progresses from the irrational and brute conditions of physical life (barbarism) toward civil life and a "kingdom of ends" where all are treated as ends in themselves and not as means only. Such a state of affairs is possible as the wills of people is determined not by natural drives but by the laws of freedom. Right relations are facilitated by the public use of critical reason in scholarly argument and by human actions that are in accord with the laws of freedom. As reason thrives in these ways, society expands in knowledge and enlightens its public will, humanity is oriented in rightful moral and political relations, and states collectively move toward the highest political good and universal *telos*, which is perpetual peace.

Conclusion

In Kant's discourse on sovereignty, the fate of the political community becomes less tied to wise rulers or patriotic citizens. Instead, Kant weds the fate of politics, both local and global, to the universal laws of reason. It is now reason, rather than nature itself, which orders the particulars of nature. It thus plays an authoritative role in aesthetics, anthropology, gender relations, and national character.²⁹⁰ Kant also assigns reason an active role in both statecraft and governance, so that reason, rather than the monarch or the people, now floats sovereign over the state, regulating its actions and aims and evaluating its motives and ends. Politically, Kant's emphasis on reason emphasizes the individual rights of autonomous agents as citizens, and does

²⁹⁰ This is the layout of Kant's *Observations on the Feeling of the Beautiful and the Sublime*

so to the effect that the notion of the political body evaporates in his theory. In its place, Kant imagines an international cosmopolitan political community consisting of rational citizens under the authority of the universal laws of freedom.

However, these liberal aspects of Kant's theory must be taken up along with his heightened emphasis on the state's use of coercive techniques, most notably his recommendation that the state develop a standing army. For Kant, spaces of freedom are only afforded to the rational; those who remain in non-rightful spaces and irrational states of mind (such as the African) bear the brunt of that state's coercive forces. Thus, Kant's universal laws of freedom are promulgated by means of what Cornel West calls "escalating authoritarianism" and "aggressive militarism."²⁹¹ While these political dynamics ensure a secure and comfortable life for the global society of free persons, they run counter to democratic energies for the great majority of the globe's population, especially the non-rational natives of Africa and the Americas. In the following chapter we turn to German philosopher GWF Hegel, who also emphasizes the sovereignty of reason, but takes account of reason as both a metaphysical subject and as its actualization in the form of nationalist spirit. In his theory, Kantian autonomy is subsumed under the rationality of state, which, as an iteration of the absolute spirit, is inherently a vehicle of freedom, regardless of its particular form of government.

²⁹¹ See *Democracy Matters* (2004)

Chapter 4

G.W.F. Hegel: Sovereignty and the Rationality of State

This chapter continues the critical discourse analysis of sovereignty in canonical Western texts, this time turning to G.W.F Hegel (1770-1831). From the beginning until the end of his theory, Hegel seems intent on emphasizing the social, cultural, and historical dimensions of human existence over solitary ones, and consciousness' ultimate unity in absolute spirit. As a result, Hegel downplays (Kantian) individuality and re-emphasizes both the monarchialism seen in theorists such as Bodin and Hobbes (chapter 1) as well as the nationalism that first appeared in Rousseau (chapter 2). Hegel *is* a constitutional monarchialist, but the constitution is easily subsumed by monarchial right, especially with respect to the decision to engage in war explicitly to generate patriotic sentiment. Hegel's doctrine of national sovereignty is thus far more insidious than Rousseau's. Not only is it combined with monarchialism, but it also takes form as compelled patriotism where national sentiment is introduced into the everyday lives of citizens, whereas Rousseau's nationalism was far more "episodic." In addition, Hegel's patriotism takes its highest form as war, whereas Rousseau's to form as the general will.

Although Hegel theorizes sovereignty as monarchial right and patriotic sentiment, his fundamental claim is that the dialectics of sovereignty, i.e. the life and death struggle in its various forms, forms the foundation of reality itself. Thus, Hegel's theory of sovereignty has far more thoroughgoing implications. Long before sovereignty is a feature of the nation or the monarch, it is an aspect of nature itself and a method by which nature transcends itself. The state of nature is not merely a state of war, but of face to face life and death struggle. One must not only accord sovereignty to the nation, but must also actively seek recognition in civil society. One must not only ascribe sovereignty to the monarch, but must also understand war as the highest expression of monarchial right. In Hegel's thinking, sovereignty is no longer simply

about the preservation of one's life, property or state, but also their existence and recognition within it and within the grand unfolding of history.

Context

Historian Eda Sagarra notes that “[a]t the beginning of the nineteenth century, the people of Germany were subjects of secular and ecclesiastical rulers governing more than 300 sovereign political units.”²⁹² Moreover, “[s]ome 1,500 territories...[had] semi-sovereign status.”²⁹³ Some states such as Austria and Prussia bragged of being substantial European powers, others were “no larger than an English gentleman's country estate,” says Sagarra.²⁹⁴ Around 1800, Germany had no capital city, and its social structure was reflective of an earlier age of traditional feudal orders. Nobility enjoyed privileged legal, political, social, and fiscal status to the neglect of serfs and peasants. Germany lacked a large indigenous mercantile class, even as it enjoyed a vibrant intellectual life. Being so fragmented, Germany lacked an active public sphere. Matters of trade were regulated by guilds in towns. However, the rise of Napoleon acted as catalyst for the German state infrastructure. He rationalized the German Reich by reducing its number of sovereign states to one-tenth their number. Thus, from 1806 – 1813, the “Confederation of the Rhine” was the most authoritative body. It was comprised of client states of the first French Empire and constituted by member monarchies of the Reich.

Although the political structure remained monarchial, the Napoleonic code instituted religious toleration, especially for Jews and the abolition of feudal rights. French occupation not only brought with it the centralization and reduction of political powers, it also stimulated the rise of the capitalism: serfs were emancipated, municipal self-government were introduced, and

²⁹² Eda Sagarra, *Germany in the Nineteenth Century: History and Literature* (New York: Peter Lang Publishing, Inc., 2001), 1

²⁹³ Sagarra, *Germany in the Nineteenth Century*, 1

²⁹⁴ Sagarra, *Germany in the Nineteenth Century*, 1

selling of land increased mobility. With the Treaty of Luneville (1801), Napoleon declared that the 'secularization' of ecclesial lands were to be turned over to German and other princes, thus fundamentally changing the estate structure by reducing the number of ecclesiastical princes from eighty one to only three.²⁹⁵ This was the beginning of the end for the Holy Roman Empire that endured from 1006-1806.

With Napoleon's defeat in 1815, the Confederation of the Rhine was displaced by the German Confederation (1815-1866). Thus began the Great Restoration, where a modified monarchic system enabled German princes to be restored to their territories and renew the pre-French revolutionary alliance of the crown-nobility-church. With the 'restoration,' Germany began its shift from the feudal order to a capitalist political economy. Aggressive land reforms were introduced and populations were forcibly mobilized as Germany experienced the first pangs of capitalization: pauperism, mobility, social unrest, growth factories and new communications network. German society once based on the feudal order and its hierarchies was transformed into a mobile political economy characterized by education, greater wealth, increased mobility, and better diets that transformed social stratification. Contracts gradually replaced custom and traditional rights and property in the form of capital, which increasingly determined the social pecking order. Thus emerged a 'fourth class', analogous to France's Third Estate, marking a changeover from a corporate society based on estates to modern class societies. In corporate society, hierarchies were seen as God ordained. They were based on privileged estates, each with its singularly defined function. Nobility marked the first estate; the clergy the second, and then the peasants. In the turn to class based society, peasants no longer live off the land and, although a small merchant class accumulated wealth and experienced upward mobility, a great majority of the population felt the pangs of pauperization.

²⁹⁵ Sagarra, *Germany in the Nineteenth Century*, 6-10

Until 1848 most of the German population appeared content to deal with the less desirable aspects of capitalization.²⁹⁶ Their loyalty was largely sustained by German nationalism. Concepts such as revolution, emancipation, and equality among citizens became associated for many Germans with conquest, exploitation, and national humiliation. German nationalism galvanized support for the German monarchy, for this represented a return to German culture, history and tradition. Many of the German intelligentsia and cultural leaders thus traded off their “idealist” hope in a universal moral reason of sovereignty for the “historicist” attitude,²⁹⁷ which stems from their rejection of a philosophy of history that posited the fundamental unity of history (i.e. universal history). The history with which Jean Bodin set out to establish sovereignty so long ago had been shattered into fragments.

For historicists, if there is a principle at work in history, one must turn to the historical basis of life itself and the particular history of one’s ethnic or national group. The historicist attitude assumes that the most important questions for philosophy of mind are not those dealing with sources that transcend history but with those based on “historical origins, historical causes, historical effects, and historical evolution.”²⁹⁸ For German historicists, many who were also romantic, German history and cultural artifacts (*denkmal*) functioned as hermeneutical frames that grant access to the forgetfulness of past cultural understanding (*verstehen*). This cultural understanding stood over against the unstable natural passions and universal *raison*. From this cultural germ, German thinkers resisted the hyper rationalism of the German enlightenment

²⁹⁶ Sagarra, *Germany in the Nineteenth Century*, Ch. 2

²⁹⁷ In addition to these influences in the turn to history was Darwin’s *Origin of Species*, wherein he claimed that his natural scientific evolutionary theory claimed granted insight into the nature of both static natural and living historical reality. However, this work was released in 1859, and although natural scientific ideas no doubt impacted Hegel’s work, Darwin could not have influenced Hegel’s *Philosophy of Right*, written some forty years earlier.

²⁹⁸ Richard Kroner, “History and Historicism”, *Journal of Bible and Religion*, Vol. 14, No. 3 (Aug., 1946), pp. 131-134, Oxford University Press, <http://www.jstor.org/stable/1456004>. Accessed: 31/12/2012 21:14. p 131

represented by Kant and his followers and restored their native *Volk* spirit in the wake of French imperialism.²⁹⁹

The State of Nature and Geist

We have already seen in Kant the passing away of the perennial myth of the state of nature and its imagined multitudes that so preoccupied the thinking on sovereignty from Bodin to Rousseau in the French context, and Hobbes and Locke in England. Moreover, where human interests prevailed as the ground motive for sociality, whether by threat of a state of war or the loss of a primordial innocence, with Hegel the dialectical force of human consciousness of being in becoming constitutes the speculative basis for Hegel's historico-idealist anthropology and the condition for the possibility of the nation-state's supreme rationality. Thus for Hegel, absolute spirit is sovereign over all of nature, and this takes the form of the sovereignty of an imperial nation-state. In Hegel's view, the nation, as a moment of actualization of consciousness in becoming, stands sovereign over the citizen. Thus the national spirit stands as the supreme earthly actualization of the spirit, whether in a democratic, aristocratic, or as Hegel preferred, a monarchical state.

Although Hegel appreciated the social sciences, he remained skeptical of what philosopher Paul Franks calls its "speculative materialism". Franks explains that Hegel criticized the positivistic natural science of his day,³⁰⁰ which conceived of nature as a "holistic monism". "Such a system," Franks explains, "is (a) *holistic*, insofar as every finite element is what it is only in virtue of its role within the whole. And (b) it is *monistic* in the sense that the whole is constituted as a whole – as opposed to a mere aggregate – by a single immanent first

²⁹⁹ See A. Crane's *Collecting and Historical Consciousness in Early Nineteenth Century Germany* (Ithaca, NY: Cornell University Press, 2000)

³⁰⁰ See Paul Franks' "Ancient Skepticism, Modern Naturalism, and Nihilism in Hegel's Early Jena Writings" in *The Cambridge Companion to Hegel and Nineteenth-Century Philosophy* ed. by Frederick C. Beiser (New York: Cambridge University Press, 2008)

principle.”³⁰¹ The holistic monist system is “virtuously circular: the totality of the finite requires the infinite first principle as its ground, but the immanence of the infinite first principle means that it cannot be without the totality of the finite.” Thus the infinite is “*hen kai pan*, one and all, [thus] it lacks any contrast by virtue of which it could be determinate, so it is *ouden kai panta*, nothing and all things.”³⁰² In this way, the positive science of nature destroys nature’s qualitative aspects, the human mind, and God, so that “no matter what [one] says about God, his system is atheistic. And no matter what he says about freedom, his system is fatalistic...it cannot make room for individuality, whether divine, human, or natural.”³⁰³ Franks designates this view, traceable to the philosophy of Baruch de Spinoza (1632-1677), as “speculative materialism” because “it contextualizes modern natural science within a “conceptualized mechanism”.”³⁰⁴ Hegel was concerned that this system was fatalistic and that it threatened the possibility of any kind of individuality. However, Hegel did not follow Kant in emphasizing the individual against a system or determinacy. Franks explains that Hegel instead embraces the nihilistic attitude of speculative materialism to its logical conclusion in order to root out philosophical dogmatisms. Franks notes that Hegel’s method ultimately gives birth to both phenomenology and speculative logic.

According to philosopher and Hegel scholar Stephen Houlgate, Hegel’s metaphysics begins by letting the simplicity of thought unfold according to its own “inherent living determinations” or its intrinsic principles.³⁰⁵ This can be seen especially in both Hegel’s *Science of Logic* (1817), and his earlier *Phenomenology of Spirit* (1807). Philosopher Kenneth Westphal shows in *Logic*

³⁰¹ Franks, “Ancient Skepticism,” 65

³⁰² Franks, “Ancient Skepticism,” 65 brackets mine

³⁰³ Franks, “Ancient Skepticism,” 66

³⁰⁴ Franks, “Ancient Skepticism,” 67

³⁰⁵ Stephen Houlgate, “Hegel’s Logic” in *The Cambridge Companion to Hegel and Nineteenth Century Philosophy*, 126

how Hegel deploys speculative logic with respect to the “inherent logical features” of the ontological categories (e.g. being, existence, quantity, essence...), the principles of logic (e.g. identity, excluded middle, non-contradiction), and the concepts and principles of natural science (force, matter, measure, cognition; etc).³⁰⁶ Westphal explains that Hegel’s examination discloses three aspects concerning the features and relations of these concepts. First, Hegel “show[s] that the concepts and principles analyzed...are in fact instantiated in nature and are reflected...in natural scientific knowledge. [S]econd, [Hegel] show[s] that the concepts, principles, and forms of classification and explanation used in natural science in fact capture genuine features of nature and so are not merely conventional expression...[and] third...[he] show[s] the great extent to which the world, nature, is knowable.”³⁰⁷ In other words Hegel engages in this “examination in order to justify his rationalist aspiration to show that all the fundamental features of the world are knowable and knowable by us, even if philosophy makes only a limited contribution to that knowledge.”³⁰⁸ Westphal explains that these three features combine in force to demonstrate “the necessity of the concept” or “the extent to and the ease in which we are justified in using various concepts and principles in genuine cognition of natural phenomena.”³⁰⁹

In beginning with *thought*, Hegel distinguishes himself from past metaphysical preoccupations with *a priori* determinations of being, and thus aligns himself with Kant. Being is not an immaterial essence that exists prior to thought. As was the case for Spinoza, Being is for Hegel described as ‘substance,’ ‘nature,’ ‘actuality’ in extension and thought. Thus, Houlgate notes that Hegel can assert that “there *is* being and...that the structure of being itself can be

³⁰⁶ Kenneth Westphal, “Philosophizing about Nature: Hegel’s Philosophical Project” *The Cambridge Companion to Hegel and Nineteenth-Century Philosophy*, 297

³⁰⁷ Westphal, “Philosophizing about Nature,” 304, brackets mine

³⁰⁸ Westphal, “Philosophizing about Nature,” 304

³⁰⁹ Westphal, “Philosophizing about Nature,” 308

discovered in the structure of the *categories* of thought.”³¹⁰ Kant had already attempted to evade methodological naturalism by turning from the natural world to the pure concepts of the understanding. For Kant, human beings apperceive the natural world through synthetic *a priori* judgments (i.e. space and time). Following these judgments, the content of sense experience is brought under the (universal) concepts of the understanding so that the natural world may be properly represented. With Hegel, the categories do not only allow us to represent the natural world, but enable us to discover the very structure of being itself. Houlgate explains that the “speculative [logician] philosopher does not, therefore, look out into the world in order to discover the nature of being, but sets out to derive and clarify the categories of thought in order to discover the nature of being in them.”³¹¹

The nature of being itself, transcends both the determinacy and the contingency of the natural world and acquires a “self-reliance” that serves a self-grounding function. Logic thus sits at the root of relations among actualizations of the spirit in life in the natural world. The structure of logic gives coherence and unity to nature’s particulars, and also organizes the various moments in nature within a certain order. The movement of logic enables one to assimilate all knowledge and science, discover their essence, and endow them with universal value in light of absolute truth. As Westphal notes, it allows Hegel to discern a “conceptual sequence of stages and substages” of concepts and principles that would serve to structure and organize all of life, including human social, moral and political life.³¹²

If the nature of reality is logical, this also implies that reality is both dialectically related and progresses along a dialectical historical path. For Hegel, the method of speculative logic is able

³¹⁰ Houlgate, “Hegel’s Logic,” 124. Houlgate argues that to the extent that Hegel’s metaphysics relies on thought as opposed to *a priori* determinations of being, it is actually ‘nonmetaphysical.’

³¹¹ Houlgate, “Hegel’s Logic,” 124, brackets mine

³¹² Westphal, “Philosophizing about Nature,” 306-7

to discern the nature of being because it (unlike speculative materialism) observes reason's intrinsic "dialectical" movement in history and nature. It is this dialectical movement that enables human beings to transcend the limitations of natural life, and also that which allows individuals to find meaning and purpose beyond the immediacy of the gratification of desires. For our purpose, perhaps no other moment in Hegel's dialectical discourse has gotten as much discussion as his Master/Bondsman dialectic.

Hegel's *Phenomenology* is thus a history of the dialectical unfolding of consciousness in and beyond the natural world. Just as thought unfolded in Hegel's *Logic* to critically reconstruct the categories' relations, so the dialectical history of consciousness unfolds in *Phenomenology* to critically (re)construct the relation of moments of consciousness (e.g. individual, family, nation) to one another. Hegel's story goes on to include the transition of consciousness from self-consciousness to reason, from reason to Spirit, or *Geist*, and after this, to Absolute Spirit, which is disclosed in various forms of natural, aesthetic, and revealed religion.³¹³ Reason, as Absolute Spirit, is sovereign, and not merely in the transcendental capacity to which Kant appointed it. For Hegel, reason is metaphysically sovereign, that is determinate of the course of nature and history. Hegel's entire narrative of the dialectic of consciousness from its several incomplete forms into Reason as Absolute Spirit cannot be recounted in this dissertation, but certain key moments have become canonical in interpretations of Hegel's narrative. Thus, Hegel's Lord/Bondsman or Master/Slave dialectic--as it is often called--describes the dynamic of sovereignty as it unfolds in the notions of ethical spirit of nationalism.

³¹³ Hegel, *Phenomenology*, 306

The Political Body

In *Philosophy of Right*, Hegel applies the speculative method to the Idea of ‘right.’ (*Recht*). Just as philosophy proper observes the immanent development of reason from the concept to the Idea, the philosophy of right observes the immanent development of right from concept to its actualization.³¹⁴ This grounds the legitimation of public right beyond historical conditions toward the eternal realm of the spirit, which is the realm of the free will. Or as Hegel says, “The basis [*Boden*] of right is the *realm of spirit* in general and its precise location and point of departure is the *will*; the will is *free*, so that freedom constitutes its substance and destiny [*Bestimmung*] and the system of right is the realm of actualized freedom, the world of spirit produced from within itself as a second nature.”³¹⁵ Hegel stresses that *Philosophy of Right* is an *observation* of the historical stages in the development of will on its way toward its final *telos*-- completed Idea of the will. Thus the state is not a voluntary social contract amongst free individuals, but a distinctive moment of right’s actualization within the immanent development of the will, which in this text includes a progression from formal or abstract right (as personality) to subjective individuality (as morality) and finally concludes in a three-tiered final stage of the ethical life (as family, civil society and state). For our purpose, I will highlight certain themes relevant for this discourse analysis of sovereignty in Hegel’s philosophy.

For Hegel, the state is the highest moment in the development of the spirit. The state is distinct because it alone harmonizes all particular human interests with universal ends while civil society merely mediates individual interests separated from objective ends. The state is then the true ground and substantial unity of all other moments or determinations of the actualization of right. “In actuality,” Hegel explains, “the *state* in general is in fact the *primary* factor; only

³¹⁴ Hegel, *Philosophy of Right*, §3 p29-30

³¹⁵ Hegel, *Philosophy of Right*, §4, p 35

within the state does the family first develop into civil society, and it is the idea of the state itself which divides into these two moments.”³¹⁶ As such, the state can neither be reduced to an artificial being predicated on arbitrary individual wills and social contract nor can the primary purpose of the state be to protect private property. Rather, “[t]he state in and for itself is the ethical whole, the actualization of freedom.”³¹⁷ Hegel goes on to drive home his conception of state sovereignty:

The state consists in the march of God in the world, and its basis is the power of reason actualizing itself as will. In considering the Idea of the state, we must not have any particular states or particular institutions in mind; instead, we should consider the Idea, this actual God, in its own right [*fur sich*].³¹⁸

As a unity of objective and subjective freedom, the state is the true actualization of the Idea of freedom, the highest actuality of the ethical spirit, and even the rational destiny of world history. Thus, Hegel likens the state to God, a voluntary God who arbitrary will construes right and law of its own accord. This is a God much like the God theorized by Duns Scotus and embraced by Jean Bodin and Thomas Hobbes. Because the state is the highest determination of the spirit, it possesses the highest right and absolute power. In this world, the state has all power and is guided by the sovereign command of absolute spirit.³¹⁹ In the modern world, the state’s task is to organize its powers in the formation of a “political constitution” in which both individual freedom and obligation to the state as an absolute authority are actualized.³²⁰

For Hegel, a political constitution refers to an organic system of mediating relations that links the powers and operations of government to the two essential pillars: family life and civil

³¹⁶ Hegel, *Philosophy of Right*, §256 p274

³¹⁷ Hegel, *Philosophy of Right*, §258 p279

³¹⁸ Hegel, *Philosophy of Right*, §258 p279

³¹⁹ Hegel, *Philosophy of Right* §257-59, p275-282

³²⁰ Hegel, *Philosophy of Right*, §260 p282

society.³²¹ Hegel was one of the French revolution's most well-known advocates. Although he held that the emergence of constitutional monarchy, rather than the republic, was the achievement of the modern world,³²² he agreed with Rousseau that ethical feeling and patriotism were necessary for the establishment and guarantee of the modern nation-state. Hegel thus claims that the state constitution is in one sense "the spirit of a nation (*Volk*)...both the law which permeates all relations within it and also the customs and consciousness of the individuals who belong to it."³²³

Indeed, Hegel links the state constitution fundamentally to national and racial character from the beginning of the *Philosophy of Right*. Early on we find Hegel repeating a theme that he highlighted in *Phenomenology*, which is the stress on national and racial allegiance as the most meaningful and substantive end in this life. For Hegel, positive determinations of right, which are the highest forms of the spirit in the natural world, are *first* disclosed in the racial and national character of a people, and only after that in laws and their particular application.

According to Hegel:

Right is in general positive (a) through its form of having validity within a [particular] state; and this legal authority is the principle which underlies knowledge [*Kenntnis*] of right, i.e. *the positive science of right*. (b) In terms of *content*, this right acquires a positive element (α) through the particular *national character* of a people, its stage of *historical* development, and the whole context of relations governed by *natural necessity*; (β) through the necessity whereby a system of legal right must contain the *application* of the universal concept to the particular and *externally* given characteristics of objects [*Gegenstande*] and instances- an application which is no longer [a matter of] speculative thought and the development of the concept, but [of] subsumption by the understanding; (γ) through the *final* determinations required for *making decisions* in actuality.³²⁴

³²¹ Hegel, *Philosophy of Right*, §265 p287

³²² Hegel, *Philosophy of Right* §273, p308

³²³ Hegel, *Philosophy of Right*, §274, p312, see also §267 p288

³²⁴ Hegel, *Philosophy of Right*, §3 p28

If the state is sovereign for Hegel, its content is located first in the national character of a people. Thus commitment to one's nation or patriotism is paramount to virtue for Hegel, and unlike Rousseau, who understood patriotism as an occasional experience that occurred in public assemblies, patriotism for Hegel is an everyday, ordinary attitude and way of life. "The political *disposition*, i.e. patriotism in general," Hegel says, "is certainly based on *truth*...and a volition which has become *habitual*...Patriotism is frequently understood to mean only a willingness to perform extraordinary sacrifices and actions. But in essence, it is that disposition which, in the normal conditions and circumstances of life, habitually knows that the community is the substantial basis and end."³²⁵ For Rousseau patriotism was a moment of redemption. For Hegel it is a disposition. Although the customs and consciousness of a particular nation "depend on the nature and development of self-consciousness" and thus influenced by the contingencies of history and society, they have the authority of a natural "law" to the extent that they form the ethical substance of a people.³²⁶

Although Hegel lauded the revolution, like Kant he saw *sentiment* as its key flaw, no rather, its totalizing grip on the will of the state to the point that executive and legislative powers dissolved into one another. Patriotism and feeling are needed, but are not "qualified to determine the powers of state on its own."³²⁷ Feeling operates in more strategic and peaceful ways when absorbed by the estates, which sit as mediating institutions between civil society and the powers of government. In this way, German governmental powers would not be overwhelmed by the blind passion of patriotism. The authority of customs also take on more explicit form in the

³²⁵ Hegel, *Philosophy of Right* §268, p288-89

³²⁶ Hegel, *Philosophy of Right* §151, p195

³²⁷ Hegel, *Philosophy of Right* §272, p308

(legal) constitutional guarantee of the freedom of press, speech, and the right of the estates to assemble.³²⁸

Although the state is in one sense the national spirit, then, the true source of the powers of state is the authority of the Idea, and only the Idea (not patriotic passion) can correctly determine the appropriate scope and role of executive, legislative, and sovereign powers.³²⁹ In a way, Hegel notes, the particular form of government is irrelevant, since the uniquely modern responsibility of states – to protect the freedom of conscience of its subjects and itself as a whole – can be achieved under any form of government.³³⁰ In another sense, Hegel claims, the more rationally progressed constitutions are marked by the monarch as the “absolutely decisive moment of the whole.”³³¹ The monarch as sovereign best embodies and actualizes the unity of the state and is thus a natural symbol of the Idea. Like the Idea of state, the monarch has the unique capacity to actualize himself as either an individual or totalizing will at different moments, for the latter is the state’s salvation in times of crisis.

In the sense that the absolute spirit is sovereign, Hegel signals a rejection of Rousseau’s notion of popular sovereignty. He thought that Rousseau was right to consider the “will” as the principle of the state but Rousseau did so without any reference to a *self-determining* higher will. (e.g. the Idea).³³² Rousseau tried to give the state a rational basis, but having failed to take account of the Idea, the totalization of “the people’s” self-representation was disastrous culminating in lawlessness and an oppressive despotism both in the regime of Robespierre and Napoleonic military aggressivism. With Hegel, executive powers of the state (the judiciary and the police) carry out the sovereign’s decision and confirm every official that civil society elects

³²⁸ Hegel, *Philosophy of Right* §301 p339-342

³²⁹ Hegel, *Philosophy of Right* §273 p308, §276 p314

³³⁰ Hegel, *Philosophy of Right* §273

³³¹ Hegel, *Philosophy of Right* §279, p 317

³³² Hegel, *Philosophy of Right* §258, p277

to the estates.³³³ Laws determined by tripartite body of the monarch, the executive powers and the estates. Although the sovereignty investing the monarch is absolutely self-determining, the monarch is not ruled by an arbitrary or despotic will but by absolute spirit and thus acts for the “the welfare of the state” and to protect the freedom of conscience.³³⁴ To the extent that the ruler of the state stands under the sovereignty of reason, Hegel resembles Kant’s thinking. However, unlike Kant, who attempted to articulate normative principles for the operations of state, Hegel holds that Right enables one “*to comprehend and portray the state as an inherently rational entity*. As a philosophical composition, [philosophy of right] must distance itself as far as possible from the obligation to construct a *state as it ought to be*...but rather at showing how the state, as the ethical universe, should be recognized.”³³⁵ For Hegel, the state is no longer accountable to a norm, but is always already to be recognized as a moment of concrete actualization of absolute spirit and sovereignty in the rationality of state.

The Dialectics of Sovereignty

One of the most influential aspects of Hegel’s history of consciousness is the dialectic of the Lord and Bondman, or Master and Slave. Hegel introduces his discussion of lord/bondsman as two opposed shapes of self-consciousness, each of which exists in that it “exists for another self-consciousness; that is to say, it *is* only by being acknowledged or “recognized.”³³⁶ Ideally, there would be mutual recognition between the two. “They [would] recognize themselves as mutually recognizing one another.”³³⁷ However, self-consciousness relates to another within a context of “disparity”, where there has been a “break-up of the middle term into the extremes, which, *qua* extremes, are opposed to one another, and of which one is merely recognized, while

³³³ Hegel, *Philosophy of Right* §287 p328

³³⁴ Hegel, *Philosophy of Right* §278, §281

³³⁵ Hegel, *Philosophy of Right*, 21, brackets mine.

³³⁶ Hegel, *Phenomenology*, 87

³³⁷ Hegel, *Phenomenology*, 88

the other only recognizes.”³³⁸ When one self-consciousness faces another, it disturbs their sense of certainty about themselves. In Hegel’s words, self-consciousness “has come outside itself...it has lost its own self, since it finds itself as an *other* being; secondly it has thereby sublated that other, for it does not regard the other as essentially real, but sees its own self in the other.”³³⁹ For Hegel, the forces of anxiety and antagonism at play between the two shapes of self-consciousness eventually bring their conflict to a head in the extreme condition of a face to face mortal combat.

The relation of both self-consciousnesses is in this way so constituted that they prove themselves and each other through a life-and-death struggle. They must enter into this struggle, for they must bring their certainty of themselves, the certainty of being for themselves, to the level of objective truth, and make this a fact both in the case of the other and in the own case as well. And it is solely by risking life that freedom is obtained; only thus is it tried and proved that the essential nature of self-consciousness is not bare existence, is not the merely immediate form in which it at first makes its appearance, is not its mere absorption in the expanse of life...[E]ach must aim at the death of the other, as it risks its own life thereby.³⁴⁰

Although the relation between these two forms of self-consciousness is posited in the extreme terms of a life and death struggle, Hegel surmises that such a confrontation diffuses or settles into hierarchical relations between two types of self-consciousness - master and slave. Hegel distinguishes these by noting one whose “essential nature is to be for itself; the other is dependent, and its essence is life or existence for another. The former is Master, or Lord, the latter the Bondsman.”³⁴¹ According to Hegel, the lord is the self-consciousness that has the capacity to retain independence in relation to a thing, that is, to defeat its desire for the object. On the other hand, the bondsman is bound to the master only because of a deeper servitude to fear of death. Thus “[t]he master relates...to the bondsman mediately through independent

³³⁸ Hegel, *Phenomenology*, 88

³³⁹ Hegel, *Phenomenology*, 87

³⁴⁰ Hegel, *Phenomenology*, 88

³⁴¹ Hegel, *Phenomenology*, 89

existence, for that is precisely what keeps the bondsman in thrall; it is his chain, from which he could not in the struggle get away, and for that reason he proved himself to be dependent, to have his independence in the shape of thinghood.”³⁴²

One of the key themes in Hegel’s theory of the Master and the bondsman is that society is fundamentally and permanently based in one-sided and unequal forms of recognition. According to philosopher Robert B. Pippin, Hegel understands self-consciousness as “a social struggle for recognition between independent and dependent subjects.”³⁴³ Not only is the self intrinsically “social”, but Hegel is clear that this social dimension of self-consciousness is not one marked by universal freedom, but by complex webs of dependence and independence. The master is “the power controlling this state of existence”, and thus also the power dominating the bondsman. He “gets the enjoyment...without qualification and without reserve,”³⁴⁴ as well as all of the recognition as an independent, and thus true, self-consciousness. The bondsman, on the other hand, cannot annihilate this situation so he does what he can, that is, “he merely works on it”.³⁴⁵ The bondsman’s dependent social position gives rise to a perverse form of self-recognition.

Hegel explains:

...the other consciousness [the bondsman] cancels itself as self-existent, and, *ipso facto*, itself does what the first does to it...But for recognition proper there is needed the moment that what the master does to the other he should also do to himself, and what the bondsman does himself, he should do to the other also. On that account a form of recognition has arisen that is one sided and unequal.”³⁴⁶

Hegel’s theory is not a simple theory of natural inequality, nor one grounded in labor as with Locke or autonomy with Kant. For Hegel, the social condition of inequality as master/slave

³⁴² Hegel, *Phenomenology*, 89

³⁴³ Robert Pippin, “You Can’t Get There from Here: Transition problems in Hegel’s *Phenomenology of Spirit*” in *The Cambridge Companion to Hegel*, ed. by Frederick C. Beiser (New York: Cambridge University Press, 1993), 58

³⁴⁴ Hegel, *Phenomenology*, 90

³⁴⁵ Hegel, *Phenomenology*, 90

³⁴⁶ Hegel, *Phenomenology*, 90

dialectic initially begins as a condition where self-consciousness has the potential to defeat both its desire and another (self) consciousness. As Hegel scholar Paul Redding notes, “it is important that the bondsman’s role has been *chosen*, rather than simply accepted as ‘given.’ His existence is *implicitly independent*... The bondsman has, we might say, *committed* himself to this identity in exchange for his life and he *holds himself* to this commitment in his continual acknowledgement of the other as *his* lord by treating him as such.”³⁴⁷ Given these conditions, Hegel theorizes that self-consciousness will always relates to others within this master/bondsman frame, where the master, is recognized as such for having retained his “for-self” character and the bondsman, being at root “for-another”.

According to Redding, Hegel’s Lord and Bondsman myth is central to understanding his social thinking, as it endows social agents with guiding concepts for permanent social roles. “This structure of holding and being held to commitments” says Redding, “is constitutive of such social roles and is, for Hegel, fundamentally *conceptual* or rule governed, the interactions of lord and bondsman being mediated by the linked pair of action-guiding concepts, “lord” and “bondsman”. Because of this participation of conceptuality, this primitive form of sociality is an instantiation of reason within the realm of life, albeit a primitive one.”³⁴⁸ Hegel does acknowledge a shift in these relations. The lord can only be recognized as such and assured in his self-existence by another independent self-consciousness, and thus feels unrecognized and unsure in his self-existence. The lord also recognizes that “[t]he truth of the independent consciousness is accordingly the consciousness of the bondsman...[L]ordship showed its

³⁴⁷ Paul Redding, “The Independence and Dependence of Self-Consciousness: The Dialectic of Lord and Bondsman in Hegel’s *Phenomenology of Spirit*” in *The Cambridge Companion to Hegel and Nineteenth Century Philosophy*, ed. by Frederick C. Beiser (New York: Cambridge University Press, 2008), 106

³⁴⁸ Redding, “The Independence of Self-Consciousness”, 106-7

essential nature to be the reverse of what it wants to be...”³⁴⁹ Just as there comes about a reversal in the status of lordship, “so, too,” says Hegel, “bondage will, when completed, pass into the opposite of what it immediately is: being a consciousness repressed within itself, it will enter into itself, and change round into real and true independence.”³⁵⁰ Labor is the vehicle to freedom for the bondsman. “Through work and labour, however, this consciousness of the bondsman comes to itself...in fashioning the thing, self-existence comes to be felt explicitly as his own proper being, and he attains the consciousness that he himself exists in its own right and on its own account.”³⁵¹ However, Hegel is clear that the conditions of labor must be marked by “fear and service”, and Hegel has no imaginings of such conditions passing away.

Hegel’s Lord-Bondsman myth maybe interpreted in one of two ways, says Redding. The first is a Marxist reading, as represented by Alexandre Kojève’s *Introduction to the Reading of Hegel* (1969). On this reading, “the lord-bondsman episode, and the struggle for recognition which it exemplifies, are taken as the interpretive key...describing the bondsman’s – effectively humanity’s – historical self-liberation through the collectively achieved conscious fashioning of the world.”³⁵² Redding rejects this interpretation for his own, which is that “the lord-bondsman dialectic is just one of a series of similar dialectics within which the notion of ‘recognition’ plays a central role.”³⁵³ On Redding’s reading, struggle is not the central concept, but recognition, Hegel “seems to be inviting us, as philosophical readers” Redding says, “to recognize *ourselves* in the history of developing forms of consciousness: it is our *history*, and in grasping this we return from this ‘meta’ position to the world itself. With this, the circle of spirit as self-conscious life is finally closed. *Qua* readers of the *Phenomenology* we supposedly have now been brought

³⁴⁹ Hegel, *Phenomenology*, 90

³⁵⁰ Hegel, *Phenomenology*, 90

³⁵¹ Hegel, *Phenomenology*, 91

³⁵² Redding, “The Independence of Self-Consciousness”, 109

³⁵³ Redding, “The Independence of Self-Consciousness”, 109

to the standpoint of science – philosophy – itself.”³⁵⁴ In Redding’s view, Hegel’s myth, and the *Phenomenology* overall, is a story of the fundamental human quest for reciprocal recognition, a quest which may be realized when we learn to recognize ourselves as entangled in the greater flow of history, i.e. the unfolding of consciousness into the Idea. We should be mindful, however, of the ways in which Hegel’s master/slave dialectic, rather than doctrine of natural right, frames the conditions for the possibility of political community. An African American political theology acknowledges the strengths and limits of both of these interpretations. With respect to the Marxist view, which foregrounds the struggle for recognition, African American political theology acknowledges struggle as an essential aspect of recognition. However, it is also mindful to interrogate the methods and aims of struggle. With respect to Redding interpretation, which emphasizes recognition over struggle, African American political theology agrees that we should recognize ourselves within the context of a larger consciousness. It also agrees that this consciousness is spirit, at least in part. However, African American political theology disagrees with orthodox Hegelians regarding the nature and content of this consciousness. African American political theology is also be mindful of the ways that this second reading may justify complicity with current problems rather than provoke criticism, since awareness of a larger consciousness may provoke political quietism rather than revolution.

In addition to the Hegelian myth of the Lord/ Bondsman dialectic, Hegel’s construal of consciousness as ethical life, or nationalism, is another key moment in Hegel’s thinking on sovereignty. Baillie sheds light on Hegel’s general view of social life when he says that “[w]hen self-conscious individuals are regarded s merely ‘together’, as coexisting without consciously controlling common purposes, they resemble a community or herd of animals...It is not an accidental but essential aspect of society; it is indeed the indispensable basis of community

³⁵⁴ Redding, “The Independence of Self-Consciousness”, 110

which is in one respect like a community of ants...”³⁵⁵ Although Hegel sees value in Kantian autonomous individuality, Baillie notes that Hegel also believes that individuality is finally only satisfied as it is taken up into a higher mode of consciousness, since “individuality is itself only realized as a part of a concrete whole of individuals: its life is drawn from common life in and with others.”³⁵⁶ As Hegel sees it, individuality contributes to the construction of human law,³⁵⁷ while one’s family, race and nation are what lie at the root of political allegiance. Consider the following passage below:

This moment which expresses the ethical order in this element of immediacy or mere being, which, in other words, is an immediate consciousness of self (both as regards its essence and particular thisness) in an ‘other’ – and hence, is a *natural* ethical community – this is the *Family*. The family, as the inner indwelling principle of sociality operating in an unconscious way, stands opposed to its own actuality when explicitly conscious; as the basis of the actuality of a nation, it stands in contrast to the nation itself; as the immediate ethical existence, it stands over against the ethical order which shapes and preserves itself by work for universal ends; the Particulars of the family stand in contrast to the universal spirit.³⁵⁸

For Hegel, the life of the nation, which begins in the family, stands as the supreme form of consciousness for the individual self-consciousness. Hegel expresses this view not only in *Phenomenology*, but in *Philosophy of Right* (1820), as we will see below. In *Phenomenology*, Hegel expounds at length on the significance of “community” for politics:

Spirit finds in this way its realization or its objective existence, and the family is the medium in which this realization takes effect. But spirit is at the same time the force of the whole, combining these parts again within the unity which negates them, giving them the feeling of their want of independence, and keeping them aware that the life only lies in the whole. The community may thus, on the one hand, organize itself into the systems of property and of personal independence, or personal right and right in things; and on the other hand, articulate the various ways of working for what in the first instance are particular ends – those of gain and enjoyment – into their own special guilds and associations, and may thus make them independent. The spirit of universal assemblage and association is the single and simple principle, and the negative essential factor at

³⁵⁵ J.B. Hallie, “Translator’s Note” in Hegel’s *Phenomenology of Spirit*, 178

³⁵⁶ J.B. Hallie, “Translator’s Note” in Hegel’s *Phenomenology of Spirit*, 195

³⁵⁷ See *Phenomenology*, 201

³⁵⁸ Hegel, *Phenomenology*, 201

work in the segregation of isolation of these systems. In order not to let them get rooted and settled in this isolation and thus break up the whole into fragments and let the common spirit evaporate, government has from time to time to shake them to the very centre by War. By this means it confounds the order that has been established and arranged, and violates their right to independence, while the individuals...are made, by the task thus imposed on them by government, to feel the power of their lord and master, death.³⁵⁹

Hegel's reflections on sociality, family, community and nation have different interpretations. For Hegel scholar Michael Forster, Hegel's point in the *Phenomenology* is to show that "none of the various ways in which one might try to validate our commonsense intuition that meaning is something which could in principle be purely individual, and which can be achieved determinately by an individual at a particular point within his life, is defensible."³⁶⁰ For Forster, the *Phenomenology* is fundamentally a refutation of individualism and a treatise for collectivism of some kind. For Baillie, however, Hegel's theory pointedly argues that "the substance of social life is constituted out of the quasi-natural phenomena of human genus and species, of race and nationality, on the one hand, and purely natural element of specialized individual sex, on the other." Baillie explains that "[t]hese two aspects go together; the sex-relations of individuals maintain race and nationality, the nation lives in and through its sexually distinct individuals. The social order as an order is realized and maintained in the medium of these elements."³⁶¹

Indeed, Hegel's nationalism does carry with it an incipient racism as Nordic exceptionalism. In his grand metaphysical scheme (found in *Science of Logic* and *Phenomenology of Spirit*), all things find their ultimate unity and determinacy in the "absolute Idea", which Houlgate explains is "the conception of being as a self-determining totality. This totality includes all the determinations that have been analyzed in the course of speculative logic

³⁵⁹ Hegel, *Phenomenology*, 204

³⁶⁰ Michael Forster, "Hegel and Hermeneutics" in *The Cambridge Companion to Hegel and Nineteenth-Century Philosophy*, 189

³⁶¹ J.B. Hallie, "Translator's Note" in Hegel's *Phenomenology of Spirit*, 199-200

[the phenomenology of spirit].”³⁶² The absolute idea, Houlgate explains, unites all of these determinations into a “self-determining whole.”³⁶³ Hegel does unite difference. However, as Hegel’s dialectic unfolds, consciousness unleashes violence on itself and on other objects in the world, the dialectic of consciousness takes on relations of master/slave, and race and nation become supreme forms of consciousness over the individual. Thus, while Hegel argues that the German state, as a moment of the world spirit, has been given the task of implementing the “Nordic principle”³⁶⁴ of faith, hope and love, his fundamental logic of the master/slave dialectic and the life and death struggle neutralize Hegel’s good intentions. Hegel was aware that the theory of sovereignty posed the danger of an “arbitrary will of increasingly monstrous proportions.”³⁶⁵ Still, he would argue that the Nordic principle will carry world history beyond the temporary setbacks of sovereignty to the self-realization of absolute spirit as the rationally ordered state. These trends toward racism and authoritarianism will find their force of violence as the discourse on sovereignty continues in the political theology of Carl Schmitt in the next chapter, and in chapter six, Hannah Arendt will make clear the implications of the race-thinking and the nation-state for modern politics.

Conclusion

To summarize, Hegel’s political thought is not so much normative as it is hermeneutical. Its aim is to understand the sovereignty of the modern state as a rational entity to critics of the established regime. He justifies this attitude, i.e. legitimacy of the established regime within the context of a nation imbued with the historicist attitude, because history itself was guided by a transcendent and unifying rationality. Unlike Kant, who delays the complete fulfillment of the

³⁶² Houlgate, “Hegel’s Logic,” 133

³⁶³ Houlgate, “Hegel’s Logic,” 133

³⁶⁴ Hegel, *Philosophy of Right*, §358-59, p 379-80

³⁶⁵ Hegel, *Philosophy of Right*, §357, p379

modern state until an unknown future moment, Hegel realizes the present moment of the state as the actualization of the spirit. Thus national sovereignty in support of monarchical directives takes priority over private right. Hegel's nationalism is more insidious than Rousseau's. It takes the form of daily governmental indoctrination and subservient labor. Without much recourse to political action other than patriotism, subjugated bondsmen must endure the abuses of a political community that persists under the control of the lords. Moreover, for the sake of cultivating the spirit of patriotism among citizens, the state must periodically go to war, and subjugated bondsmen and women no doubt supplied many of the bodies for the state's military. In the grand scheme of things, none are freed from the life and death struggle, but in civil society, the property owners are granted life while the laborers are delivered over to death. In the following two chapters, we observe the history of effects of Hegel's discourse on sovereignty in the political theology of German jurist and political theorist Carl Schmitt (chapter 5) and political theory of Hannah Arendt (chapter 6).

Chapter 5

Carl Schmitt: The Political in Totalized Sovereign Dictatorship

This chapter continues the discourse analysis on sovereignty in Western canonical political thought, this time in the thinking of early twentieth century German jurist and Nazi affiliate Carl Schmitt (1888-1985). For the past two chapters we have followed the trail of sovereignty through Prussia-cum Germany in the late eighteenth and early nineteenth centuries, and now we study its discourse in the early twentieth century. In the wake of the decline of German idealism (a la Kant and Hegel) and the rise of Bolshevism at the beginning of the twentieth century, Carl Schmitt argued for a totalized dictatorial sovereignty, bolstered by an ideologically defined political body. For Schmitt, the recently established Weimar Republic (1919-1933) sat on the unstable foundation of liberalism, and thus could not account for what Schmitt called “the political”, i.e. the possibility of state enemies that impose life or death decisions on people, as well as other problems that could not be solved by discussion or trade. The unpleasant reality of the political requires that political bodies jettison (morally) optimistic liberal views of the state of nature and the body and instead internalize a myth more akin to Hobbes’s. For Schmitt, a key aspect of this myth is that it creates unity by having the state wage war on a common enemy. Schmitt’s racist myth echoes his predecessor Hegel a century before him, as does his call for a nationalist form of sovereignty. Yet, Schmitt no longer lives in the era of monarch. He thus calls for a sovereign dictator, whose key power is the power to decide on the exception, that is, when the law does and does not apply, and to whom the full and direct powers of the bureaucracy are granted.

Schmitt is also noted as reviving the phrase and study of “political theology”, and he does this specifically when theorizing sovereignty. Schmitt understood the problem of sovereignty as intrinsically tied to the renewal political-theological discourse. Thus his thinking on matters of

state, law, the appropriate form of government and the question of sovereignty include theological reflection. Schmitt represents the (post) modern revival of the relevance of theological discourse for politics and statecraft. In addition to philosophy and law, Schmitt also (critically) returns to the writings of fourth century Catholic theologian St. Augustine (354-430), especially his *City of God* (426 AD). Schmitt finds affinity with much of Augustinian theology, but Schmitt's post-liberal context led him to jettison Augustine's clear distinction between the "city of heaven," founded on the truth of the one true God, and the "earthly city" founded on fratricide and false gods.³⁶⁶

According to Schmitt, inquiries into the nature of the state can no longer be categorically separated from (Christian) theology. In the American context, similar implications can be drawn from American neopragmatist thinkers such as Victor Anderson (*Pragmatic Theology*, 1998) and Jeffrey Stout (*Democracy and Tradition*, 2004), both of whom argue that theology cannot be excluded from the American public and its problems. However, Schmitt's argument will always be somewhat unsettling in a land where a venerable tradition of the separation of church and state endures. This chapter begins historically, setting Schmitt's context. It then surveys his views on the state of nature and the body as well as his conception of the political body and sovereignty.

Context

According to Arendt, late nineteenth and early twentieth century German politics (1884-1914) was marked by a mindset of eternal unlimited expansion or what she also called imperialism.³⁶⁷ These expansionist policies had decimated the body politic of the state and

³⁶⁶ See St. Augustine's *City of God*, esp. books VI, VII, and XI

³⁶⁷ See Hannah Arendt's *Imperialism* (New York: Harcourt Brace & Company, 1968), 3

intensified antagonistic tensions among German populations.³⁶⁸ As the twentieth century opened, Germany was riddled with the social fragmentation effected by the state's culture struggle with both the Catholic Church (the *Kulturkampf*) and socialists (the *kampfzeit*). Germany's international relations suffered as well. The German empire imagined itself responsible for setting the international agenda, extending goodwill to nations on its own terms (or not), and even engaging in pre-emptive continental war to rid European lands of German enemies. According to Arendt, German imperialism would thus contribute to the breakdown of the European comity of nations and would serve as a catalyst for the Great War of the early twentieth century.³⁶⁹ This, along with the more immediate 1914 assassination of Archduke Franz Ferdinand (1875-1914), heir to the throne of Austria-Hungary, provoked an allied military response (France, Great Britain and Italy) against the German Empire that declined into the First World War between the Allied and Central Powers (1914-1918). The Allied powers defeated the German Empire and other Central powers (Austria-Hungary, Ottoman Empire), and this in turn freed German citizens to wage revolution against their oppressive regime in 1918. Just before the revolution, Social Democrats, Democrats, and the Catholic Center Party had formed a coalition, and this proved to be the decisive factor in the institution of the Weimar Republic. In Germany (1919), emperors and kings were deposed and a democratic republic was established. However, from the beginning, the republic was unstable.

Although the republic had been established, the social problem – mass suffering in the wake of industrialization and economic deregulation – continued to plague the state.³⁷⁰ The costs of war and a destructive totalitarian government were only made worse with the Treaty of

³⁶⁸ Arendt, *Imperialism*, 17

³⁶⁹ See *Imperialism*, ch. 1

³⁷⁰ See Carl Schmitt's *Constitutional Theory*, ed. by Jeffrey Seitzer (Duke University Press, 2008), 44-9

Versailles (1919), which left Germany alone responsible all losses of the war.³⁷¹ From the postwar period until 1923, Germany faced a host of problems, most notably a currency crisis and political polarization. A radical right sought a return to the monarchy or some kind of nationalist alternative. Although many leftists, and the key coalition formed among the Social Democrats, Democrats, and Catholic Center Party gave initial support to the republic, workers grew increasingly disenchanted with the revolution and the new constitution because their gains were at best modest. This tenuous political situation meant that president Friedrich Ebert (1919-1925) had a difficult time governing, and frequently resorted to the exercise of emergency powers as granted by the Weimar Constitution (Art. 48). Horrible working and living conditions were made worse by tax hikes, dilapidated educational facilities, and eventually by the emergency instantiation of absolute veto power by Prussian political authorities regarding military, tax, and constitutional matters.³⁷² Germany experienced a period of relative stability from 1923-1928, but even this was minimal, for although there were no attempted coups during this period, the government was generally unable to rely on a broad base of support. Nor was it able to institute more major reforms. In 1929, with the onset of the Great Depression, even this unstable cohesion was lost, and the republic began its slide toward 1933 and the rise of the Third Reich. At one point during the Depression roughly six million Germans were unemployed.

Post WWI Germany was not simply dealing with social unrest. According to Arendt, WWI exploded the European comity of nations beyond repair, and in Germany, an atmosphere of social disintegration developed alongside the rise of the constitutional (Weimar) republic.³⁷³ Arendt says that “[n]ow everybody was against everybody else, and most of all against his

³⁷¹ See chap. 6 of this dissertation for a discussion of totalitarianism

³⁷² See Constance L. Benson’s *God and Caesar: Troeltsch’s Social Teaching as Legitimation* (New Brunswick, NJ: Transaction Publishers, 1999) 28-31

³⁷³ Arendt, *Imperialism*, 148

closest neighbors – the Slovaks against the Czechs, the Croats against the Serbs, the Ukrainians against the Poles.”³⁷⁴ Here we witness the proliferation of what Michel Foucault would later call “dividing practices,” whereby a social and personal identity is imposed on an internal marginal population as part of a larger process of exclusion and domination.³⁷⁵ In the case of the Jews, German authorities had labeled them the “scum of the earth”³⁷⁶ Arendt notes that anti-Semitism had existed in Germany for some time. Ironically, although the Jews (and *not* the bourgeois) had been willing to finance the state’s beginnings’ in the nineteenth century, they were still victims of discrimination at the height of imperialism. Now, in the early twentieth century, having been tied to the label of scum of the earth – and thus undeserving of citizens’ rights – Jews found themselves subjected to the authoritarian government of the Nazi regime. In 1933, Adolf Hitler was appointed chancellor of the Weimer Republic, and began to consolidate power by eliminating opposition even as the physical condition of then President Paul von Hindenburg (1847-1934) worsened. Through policies like the Reichstag Fire Decree (1933), which removed many German civil liberties, and the 1934 Enabling Act, which allowed Hitler and his cabinet to pass laws without consent of president or constitution, Hitler gradually consolidated power so that when Hindenburg passed of lung cancer in 1934, he was able to declare a state of emergency, suspend the Republic’s constitution, and effectively institute a fascist government, the Third Reich (1933-1945).

Schmitt was writing in the wake of a post-imperialist society, wherein the German (and Russian) state had been overrun by totalitarian movements, and where an entirely new population of stateless, rightless people had been produced by discriminatory laws. Schmitt was one of Germany’s most preeminent legal scholars throughout the short life of the Weimar

³⁷⁴ Arendt, *Imperialism*, 148

³⁷⁵

³⁷⁶ Arendt, *Imperialism*, 149

Republic (1919-1933), and rose to even greater prominence during Nazi rule before finally finding himself the object of both Nazi and Ally hostility. Schmitt was a critic of the Weimar Republic from its inception, primarily because he believed that it tried to found a new democratic republic without ridding itself of the parliamentary system that had been with Germany since the time of the rise of the empire in the mid-nineteenth century. However, Schmitt was no ally of the Reich either. Although he found common ground with Nazi ideology on anti-Semitism and anti-liberalism, Schmitt's strong statist orientation positioned him against National Socialism, which was not statist, that is, concerned with the preservation of the state, but was a party that reflected a totalitarian movement. The National Socialist party served as a vehicle for introducing totalitarian movements to the organs of government. This was one of Schmitt's primary fears about liberalism. He was concerned that liberalism and the parliamentary system were unprepared for such movements. For Schmitt, liberal thinkers from Locke to Kant had forgotten Hobbes' age-old teaching about the state of nature being a war of all against all.

The State of Nature and the Body

Schmitt's understanding of the doctrine of the state of nature is stated in his *Political Theology* (1922), where he explicitly discusses the relationship of metaphysics and politics. "The metaphysical image that a definite epoch forges of the world," Schmitt says, "has the same structure as what the world immediately understands to be appropriate as a form of its political organization. Monarchy thus becomes as self-evident in the consciousness of that period as democracy does in a later epoch."³⁷⁷ Metaphysics provides the conditions of possibility for political organization; it sets the tone. "A continuous thread," Schmitt says, "runs through the

³⁷⁷ Carl Schmitt, *Political Theology*, trans. by George Schwab (Chicago: University of Chicago Press, 1922, 1985), 46

metaphysical, political and sociological conceptions that postulate the sovereign as a primeval creator.”³⁷⁸ Schmitt points to the writings of Rousseau as an example:

“Imitate the immutable decrees of the divinity.” This was the ideal of the legal life of the state that was immediately evident to the rationalism of the eighteenth century. This utterance is found in Rousseau’s essay *Political Economy*. The politicization of theological concepts, especially with respect to the concept of sovereignty, is so striking that it has not escaped any true expert on his writings. Said Emile Boutmy, “Rousseau applies to the sovereign the idea that the philosophes hold of God: He may do anything that he wills but he may not will evil.” In the theory of the state of the seventeenth century, the monarch is identified with God and has in the state a position exactly analogous to that attributed to God in the Cartesian system of the world.³⁷⁹

According to Schmitt, metaphysics provides the backdrop to politics, especially to questions of sovereignty and form of government. Thus, his own twentieth century political situation could not be understood apart from what he saw as the nineteenth century decline in metaphysical thought. The idea of an omnipotent, all powerful God “dressed” the monarchy with legitimacy and glory before the nineteenth century decline, especially in the seventeenth and eighteenth centuries. Schmitt uses the writings of Descartes as an example: “Descartes once wrote, ‘It is God who established these laws in nature just as a king establishes laws in his kingdom.’ The seventeenth and eighteenth centuries were dominated by this idea of the sole sovereign.”³⁸⁰ This once glorious epoch began to fade with the French Revolution. Since 1789 until his own time, Schmitt contends:

the consistency of exclusively scientific thinking has also permeated political ideas, repressing the essentially juristic-ethical thinking that had predominated in the age of the Enlightenment. The general validity of a legal prescription has become identified with the lawfulness of nature, which applies without exception. The sovereign, who in the deistic view of the world...had remained the engineer of the great machine, has been radically pushed aside.³⁸¹

³⁷⁸ Schmitt, *Political Theology*, 47

³⁷⁹ Schmitt, *Political Theology*, 46

³⁸⁰ Schmitt, *Political Theology*, 47

³⁸¹ Schmitt *Political Theology*, 48

For Schmitt, then, the state of nature doctrine cannot be understood apart from what he saw as the decline of metaphysics, i.e. the decline of theology in the eighteenth century and the rise of scientific liberalism in the nineteenth century as observed in thinking of Kant and Hegel in this dissertation. Schmitt engages liberalism substantively in his 1923 *The Crisis of Parliamentary Democracy*. There he describes liberalism's basic principles: that "the truth can be found through an unrestrained clash of opinion and that competition will produce harmony."³⁸² Schmitt was not convinced by liberalism's claim that discussion, the economy, industry, and technology will eventually enable 'humanity' to surpass politics, war and the state. The root problem of liberalism is its denial of "the political."

According to Schmitt scholar Heinrich Meier, "the political" signifies the state of affairs that obtain in exceptional cases, i.e. where the universal norms and ideals of liberalism give way to relations defined by a friend/enemy dualism, when "two come together and join forces against an enemy."³⁸³ In his *The Concept of the Political* (1932), Schmitt argues that the political is similar to other provinces (economics or ethics) in that all rest on key distinctions: the aesthetic rests on the distinction of the beautiful/ugly, the moral on good/evil, the economic on profitable/not, and the political on friend/enemy. Beyond these basic similarities, however, Schmitt argues that the political, when it emerges, is the most authoritative province. It signifies the most extreme antagonism. The friend/enemy distinction denotes "the utmost degree of intensity of a union or separation, of an association or dissociation."³⁸⁴ In the case of the political, as opposed to the moral or legal, there is no previously determined norm and here is where liberalism falls short. In case of the political, where enemies face one another, only the

³⁸² Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy, (Cambridge, MA: MIT Press: 1923, 1988), 35

³⁸³ Heinrich Meier, *The Lesson Of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*, expanded edition (Chicago: The University of Chicago Press, 1998, 2011), 34

³⁸⁴ Carl Schmitt, *The Concept of the Political*, (Chicago: University of Chicago Press, 1932, 1996), 26

actual participants can recognize and settle the conflict. Liberalism attempts to neutralize and depoliticize these antagonisms by transforming enemies into competitors (economics) or debate partners (ethics). However, as Bolshevism showed, an enemy is neither of these nor a private adversary, but exists only when one ‘fighting’ collectivity of people confronts another. (The enemy is solely a public enemy). Because the political justifies a different mode of behavior, because the enemy concept entails the ever-present possibility of combat and real physical killing, and because the political is always oriented toward the most extreme possibility, it defines *the* decisive human grouping. We may like to believe that social entities take priority over the political, but no one can stop the government from making the decision in the extreme case.

Although Schmitt’s exhaustive account of “the political” was offered in his *The Concept of the Political* (1932), it emerged as early as a decade before in *Political Theology* (1922). In *Political Theology*, Schmitt’s language about “the political” emerges from a discussion of his own Catholic anthropology. Schmitt begins the discussion by appealing to French counter-revolutionist thinkers Joseph de Maistre (1753-1821), Louise de Bonald (1754-1840) and Spanish Catholic Juan Donoso Cortes (1809-1853) as authorities in matters of anthropology.³⁸⁵ They, like Schmitt, were absolutely opposed to liberalism’s view of human nature.

Every political idea in one way or another takes a position on the “nature” of man and presupposes that he is either ‘by nature good’ or ‘by nature evil.’...For the rationalism of the Enlightenment, man was by nature ignorant and rough, but educable...To the committed atheistic anarchists, man is decisively good, and all evil is the result of theological thought and its derivatives, including all ideas concerning authority, state, and government...[T]he starting point for the Catholic Spaniard was the dogma of Original Sin. But Donoso Cortes, in contrast radicalized this polemically into a doctrine of the absolute sinfulness and depravity of human nature...When he spoke of the natural evil of man, he polemicized against atheist anarchism and its axiom of the good man...³⁸⁶

³⁸⁵ Schmitt, *Political Theology*, ch 4

³⁸⁶ Schmitt, *Political Theology*, 57

Schmitt not only used Cortes to oppose liberalism's view of human nature. He also turned to Cortes for a most vivid philosophy of history, one marked by images of tempestuous waters and war. Consider Schmitt:

The pictures in which [Cortes'] impressions of human history were objectified were full of dread and horror: Humanity reels blindly through a labyrinth that we call history, whose entrance, exit, and shape nobody knows; humanity is a boat aimlessly tossed about on the sea and manned by a mutinous, vulgar, forcibly recruited crew that howls and dances until God's rage pushes the rebellious rabble into the sea so that quiet can prevail once more. But the typical picture is a different one: the bloody decisive battle that has flared up today between Catholicism and atheist socialism. According to Donoso Cortes, it was characteristic of bourgeois liberalism not to decide in this battle but instead to begin a discussion.³⁸⁷

Schmitt, then, articulates a pessimistic view of human nature and a much darker philosophy of history than liberal thinkers. It is one where a "bloody, decisive battle" has become central, the determining force of events even. He follows this discussion with a sustained criticism of liberalism, and then with the following words, gestures toward "the political" on the penultimate page of the book:

Today nothing is more modern than the onslaught against the political. American financiers, industrial technicians, Marxist socialists, and anarchic syndicalist revolutionaries unite in demanding that that the biased rule of politics over unbiased economic management be done away with. There must no longer be political problems...Donoso Cortes was convinced that the moment of the last battle had arrived, and in the face of radical evil the only solution is dictatorship...³⁸⁸

For Schmitt, then, problems with the Weimar Republic in the early twenty first century could be traced to the shift in metaphysical thinking from early modern immaterial and theological metaphysics to liberalism's scientific metaphysical thinking. Liberalism's metaphysical thinking, which included an optimistic view of human nature, supported the modern state structure of the bourgeois Rechtsstaat.³⁸⁹ Schmitt locates the emergence of liberalism's political structure, the

³⁸⁷ Schmitt, *Political Theology*, 58-9, brackets mine.

³⁸⁸ Schmitt, *Political Theology*, 65-6

³⁸⁹ See Schmitt's *Constitutional Theory*, §12

bourgeois Rechtsstaat constitution, in Germany in 1815 with the birth of the German Confederation.³⁹⁰ Here, Germany's incorporation of a *rechtsstaat* (rights-state) component into its constitution produced a state that protected bourgeois freedom, i.e. "personal freedom, private property, contractual liberty, and freedom of commerce and profession."³⁹¹ The bourgeois Rechtsstaat's primary aim is to protect individual freedom. Its primary marks are thus a 'separation of powers,' the protection of basic rights, a formal concept of law (i.e. law derived from reason, not command, *veritas*, not *auctoritas*) and a parliamentary system of government (Schmitt's examples were constitutions of England in 1688, France in 1791, the U.S. in 1787, and Germany in 1815).

While Schmitt appreciated that the sovereignty of the constitution in the bourgeois Rechtsstaat provided helpful checks against absolutism and the "power state," he argued that a perennial problem with this type of constitution was the formation of political will. For all of its benefits, the bourgeois Rechtsstaat has trouble producing a truly unified and thus truly democratic, political action. Against those who would point to the parliament as evidence of unified action, Schmitt argued that parliament promotes discussion rather than unity, and that parliament loses its legitimacy once people believe – as they did in his day – that its real business happens in secret.³⁹² While it adequately accounted for governmental and legislative forms of power, it did not, and could not, account for constitution-making power, i.e. power of the act, which constitutes the form and type of the political unity, i.e. that power by which, through a bearer, "political unity reaches *for itself*, and provides *itself*."³⁹³ Schmitt also believed that parliament was too dominated by the particularities of party interests to foster unity. Parties had

³⁹⁰ See Schmitt's *Constitutional Theory*

³⁹¹ Schmitt, *Constitutional Theory*, 169

³⁹² See Schmitt's *Constitutional Theory*, 242

³⁹³ See Schmitt's *Constitutional Theory*, 75-6

“mechanized” the state, turning it from an institution of cohesion into an instrument for associational, or class interests.

Moreover, liberal metaphysics and the bourgeois *rechtstaat* also led to a conceptual conflation of state and law. Liberalism does not construe the state as a particular form of unity and representation but as a bearer of a system of norms or a legal order. In Schmitt’s day the neo-Kantian thinker Hans Kelsen (1871-1973) was a key representative figure, arguing that “pure” law was conceptually distinct from culture and morality. It was legitimated instead by a rational *grundnorm*.³⁹⁴ For Kelsen, the foundation of law is reason as opposed to command, *veritas* as opposed to *auctoritas*.³⁹⁵ It stands above the Machiavellian dimensions of life and provides the highest expression of political will. For Schmitt, “pure” law could never resolve problems of legitimacy or sovereignty but served only to justify the “rule of law.” In the rule of law, law itself becomes equivocated with statute (as it is now separated from command) and statutory law becomes divorced from legal application (since the executive and legislative authorities have been separated).

Deprived of personal aspects, statutory law becomes the primary means of displaying state authority, even as command was the prince’s. This conflation of law and state also raises questions of legitimacy. In Schmitt’s view of liberalism, the state “validates its power and legitimacy through reference to a pure realm of objective legal norms and the processes through which these norms are applied.”³⁹⁶ Both the conflation of state with law and the grounding of their legitimacy in an objective system of norms were inadequate for Schmitt.³⁹⁷ What he said of

³⁹⁴ See “Legal Separatism and the Concept of the Person” by Margaret Davies in *Judicial Power, Democracy and Legal Positivism* ed. by Tom Campbell (Brookfield: Ashgate, 2000)

³⁹⁵ Schmitt, *The Crisis of Parliamentary Democracy*, 42-50

³⁹⁶ Schmitt, *Constitutional Theory*, 6

³⁹⁷ To a large degree, Schmitt aligned himself with a legal positivist view: law originates from within the structures and relations of state and civil society, and in its application the force of law rests on legislative enactments, judicial decisions, and social customs rather than a universal principle of applicability. However, Schmitt departed from

law might also be applied to state: “The legal idea cannot translate itself independently...In every transformation there is present an *auctoritatis interpositio*.”³⁹⁸ As Hobbes rightly recognized, there can be no law without command, no legitimate grounds for state law other than personalistic sovereignty.³⁹⁹

According to Schmitt, then, the decline of theological metaphysics and the rise of liberalism provided the conditions for the possibility of the decline of the monarchy and rise of the bourgeois *rechtsstaat*. He argues that the turn to liberalism as a rationality of state was only possible in the wake of the seventeenth century turn away from Christendom’s view of history as ruled by God’s providence. Thinkers such as Hobbes, Locke and Rousseau turned to a deistic metaphysics where history is ruled by nature and human artifice. Liberalism, then, is quite literally a new *faith*; one that rejects the providence of the Christian transcendent God and expresses faith in technical progress.⁴⁰⁰ It holds that humanity may, bring about a utopia (e.g. universal cosmopolitanism, the kingdom of ends, a world state) by its own authority, reason, resources. Because liberalism assumes that technology will solve all problems, but is not concerned with political unity or formation of the will but with individual freedom and the legitimacy of the status quo. However, liberalism was only possible with “the elimination of all

most positivists with respect to juridical legitimacy and the capacity for sovereignty. These, he claimed, can only be located in a monarchial principle. Against other positivists, then, Schmitt argued for personalistic legal ‘autonomy.’ (see *Political Theology*, 29)

³⁹⁸ Schmitt, *Political Theology*, 31

³⁹⁹ Although Schmitt argues that the only valid foundation of law is personalistic, law itself, in a democratic state, is only legitimate if all citizens have an “equal chance” to win political power and participate in the formation of the political will. “Everything...hinges upon the principle of equal chance...If the principle is no longer defended, then one gives up on the parliamentary legislative state itself, its justice and legality.” (see Schmitt’s *Legality and Legitimacy* ed. by Jeffrey Seitzer (Durham: Duke University Press, 2004), 32-3) Schmitt concludes that legislative power’s primary concerns are not justice or democracy, but the monopoly of legislative power. Parliament is not neutral and open to discussion, but instrumentalized for private interest.

⁴⁰⁰ See Schmitt’s “The Age of Neutralizations and Depolitications” (1929) in *The Concept of the Political*

theistic and transcendental conceptions and the formation of a new concept of legitimacy...the *pouvoir constituant* of the people.”⁴⁰¹

For Schmitt, “the political” reminds liberals that bourgeois norms and justifications operate with a conceptual gap by ignoring the reality of conflicts between friends and enemies, conflicts that cannot be dissolved into aesthetic, moral, or economic disagreements. Liberal theory does not discuss the use of the *ius belli*, where the state must determine whether one is an enemy and if state powers should be used to fight, and it rarely deals with the ever-present possibility of combat and/or killing. Yet, these issues, as opposed to economics or aesthetics, most heavily determine a state’s preservation or demise, and ultimately give the law, the constitution and the republic its real content and legitimacy. In fact, to the extent that a situation is of the political, it imposes itself on other provinces and compromises their autonomy. The question of friends and enemies and that of legitimacy are necessarily *political* questions. They cannot be answered technically or administratively as liberalism would have it.

To the extent that a state cannot effectively address these political matters, it will fail to maintain its sovereignty. The reality of the political thus implies the necessity of sovereignty; i.e. the capacity to make definitive political decisions in life or death (i.e. political) situations. Schmitt surmizes, “Sovereign is he who decides on the exception,” he who, in deciding “what constitutes, the exception,” has authority to suspend the law.”⁴⁰² Having traded all decisive, personal, and political elements for the sake of neutrality and objectivity, the limits of liberalism and its bourgeois *rechtsstaat* are exposed in political situations. Liberalism cannot give an account of the personality of state. It compromises, destabilizes and delegitimizes the state’s will and in exceptional/i.e. political cases, the bourgeois *rechtsstaat* is either forced to abandon its

⁴⁰¹ Schmitt, *Political Theology*, 51

⁴⁰² For first quote see *Political Theology*, 5; for second see *The Crisis of Parliamentary Democracy*, 43.

liberal principles or to accept the fact that holding fast to liberal principles will leave one powerless against the enemy.

The concept of “the political” gave Schmitt the tools to articulate the meaning of his statement that the “age of discussion” had come to an end with the Bolshevik Revolution (1917).⁴⁰³ Three signs pointed to the collapse of the intellectual foundations of rationalism and parliamentary thought. First, in pursuit of their revolutionary aims, workers circumvented parliament, organized syndicates and deployed the technique of “direct action” (i.e. unlimited strikes, work stoppages). Schmitt saw this new “active” method of revolt as a sign that the Enlightenment projection of human moral and political advancement, through rational means, had been rejected by the working class.⁴⁰⁴ In Enlightenment thought (the French Revolutionaries, Kant, Hegel, and even Marx), progress was conceived as a gradual historical and/or educational process that would eventually transform human consciousness. With the rise of Russian syndicalism, Schmitt realized that the working class had ceased to wait on history and became an “active people.”

They had abandoned the assumptions of what Hannah Arendt would call the *vita contemplativa* and sought to actualize a more ideal society based on the principles of the *vita activa* and methods of direct action.⁴⁰⁵ The second sign of the demise of the age of discussion was the “metaphysical duality” with which the syndicalists operated. In previous epochs, all reforms, revolts, and reactions assumed a “metaphysical centrism,” i.e. assumed that social reality was an all-embracing system. Whether the world were fundamentally united by God, reason, democracy, or the state, all assume an ultimate unifying authoritative ideal, which allows for the ultimate possibility of the peaceful reconciliation of difference. By contrast, the

⁴⁰³ See *The Crisis of Parliamentary Democracy*

⁴⁰⁴ See *The Crisis of Parliamentary Democracy*, 65-76

⁴⁰⁵ See Arendt's *The Human Condition*

syndicalists operated with a metaphysical duality, and thus rejected all notions of an eventual metaphysical unity/reconciliation and insisted on an inevitable, decisive, destructive and bloody battle.

Along with these two signs that pointed to the end of the age of discussion, the third and most clear was the theory of myth that rested at the center of Russian syndicalist thought. As noted, syndicalists rejected German rationalist thought. In rejecting reason, they also rejected all rationally fabricated utopian goals such as Hegel's "absolute reconciliation" and Marx's future communist society. Syndicalists turned instead to a myth that emerged from the very life instinct and ethos of the workers themselves: "The General Strike." This myth, constructed on a metaphysical duality of class struggle, evoked from the proletariat heroic acts of world-historical significance, those which rationally-derived notions of "duty" could never compel. Myth was a more powerful motivator than reason. All three signs – the turn to the *vita activa*, metaphysical duality, and myth - combined to form what Schmitt called an "irrationalist theory of direct use of force."⁴⁰⁶ It stood in direct opposition to liberalism and was far more vital than rationalist approaches to social problems, including Marxist strands. Schmitt's message to the parliamentarians, then, was twofold. First, "science has ceased to be the obvious foundation of social practice for the current generation"⁴⁰⁷ and second, this was "a specifically new means of struggle, which make the simple repetition of old political and military tactics completely impossible."⁴⁰⁸ Schmitt's own response to the situation was to construct an anti-Jewish, anti-Semitic German nationalist myth in an effort to strengthen national unity. He is also infamous in recommending a sovereign (commissarial) dictatorship to "save" the exhausted German state.

⁴⁰⁶ See *The Crisis of Parliamentary Democracy*, ch 4

⁴⁰⁷ Schmitt, *The Crisis of Parliamentary Democracy*, 52

⁴⁰⁸ Schmitt, *The Crisis of Parliamentary Democracy*, 72

Schmitt locates the roots of the turn from Christendom to liberalism in the thought of Thomas Hobbes. To be sure, Hobbes has no faith in historical progress. Also, his anthropology remains “Christian,” according to Schmitt, in that it highlights humankind’s “dangerousness” or “riskiness,” not goodness. Hobbes thus successfully grafted a theory of the state into a Christian view of history and humanity.. However, Hobbes was the foremost theorist of the positive constitutional state, where the state is an artifice of freely-consenting individuals and neutral/agnostic with respect to the question of religious truth. Its basic features are liberty of conscience, freedom of thought, and inalienable rights.⁴⁰⁹ Hobbes was also the first to conceive of the state as a great machine (as clockwork, an automaton or apparatus). “The decisive metaphysical step,” Schmitt says, “in the construction of the theory of state occurred with the conception of the state as mechanism. All that followed...[the] steam engine, to the electric motor...resulted in the further development of technology and scientific thinking, which did not need any new metaphysical determination.”⁴¹⁰ Hobbes tried to prevent the mechanization of state by positioning two other gods alongside the state as a mechanism, namely the sovereign person (prince or parliament) and the Leviathan. Thus for Hobbes, the state is something more than a covenant concluded by individuals. However, the political symbol of the leviathan failed to attain mythic status and was unable to compel loyalties. “Hobbes’ theory of the state was thus perceived by his own people as an unnatural deviation and his image of Leviathan was regarded as the symbol of a monstrosity. What could have been a grand signal of restoration of the vital energy and political unity began to be perceived in a ghostly light and became a grotesque horror

⁴⁰⁹ See Schmitt’s *The Leviathan in the State Theory of Hobbes* trans. by George Schwab and Erna Hilfstein (Chicago: University of Chicago Press, 1938, 1996), ch. VI. This has been most recently articulated as “freedom of thought and liberty of conscience” by John Rawls; see *Theory of Justice: A Restatement*, 2001

⁴¹⁰ Schmitt, *The Leviathan in the State Theory of Hobbes*, 99, brackets mine

picture.”⁴¹¹ Rather than an institution of dignity, majesty, and honor, the state became mechanized, indeed, an instrument.

For Schmitt, then, Hobbes’ individualism, contractarianism and his picture of the state as a mechanism all stand under the mechanistic metaphysics of modern science. His turn to modern science and technology was not *metaphysically* neutral. Hobbes turned away from medieval notions of a community by divine institution, for Leviathan fights against all religiously determined thought of state, i.e. against political theology. Leviathan establishes a unity of religion and politics on the basis of its own absolute power. If Hobbes considered this a necessity given his context of religious warfare, this was also the undoing of leviathan’s power, since the sovereign representative and the law is now only the product of human artifice and intelligence. “The idea of the modern constitutional state, Schmitt says, “triumphed together with deism, a theology and metaphysics that banished the miracle from the world. This...rejected not only the transgression of the laws of nature through an exception brought about by direct intervention [i.e. miracle] but also the sovereign’s direct intervention in a valid legal order.”⁴¹² Schmitt argues that a continuous thread runs through metaphysical, political, and sociological conceptions that postulate the sovereign as a personal unit and primeval creator.⁴¹³ During the Enlightenment period and through the revolution the architect of the world and state was viewed as a legislator, in correspondence with the deistic worldview. In Schmitt’s day, deism has been traded for positivism, so that the will of the people was now intrinsically right.

⁴¹¹ Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, 81

⁴¹² Schmitt, *Political Theology*, 36-7, brackets mine

⁴¹³ Schmitt calls this method the “sociology of juristic concepts,” see *Political Theology*, 44

On “The Political” Body

The Hobbesean Leviathan failed as a political symbol to attain mythic status in the creation of political unity and thus establish the authority of the monarchial sovereign. Schmitt’s political theology aimed to re-establish political unity against the unpolitical worldview and ‘political’ practices of liberalism. “The accurate, central, and systematic concept for the politico-theological problem has to be oriented towards *political unity* and its presence or representation.”⁴¹⁴

Schmitt’s most lucid elaboration on the concept of political theology occurs in *Political Theology II* (2012).⁴¹⁵ His basic point is that with the institution of the bourgeois rechtsstaat, the domain of “society” (the social) now impacts both church and state and dissolves the distinction between theology and politics. Most theologians, Schmitt contends, continue to operate as if the “Augustinian” view of church/state relations still holds, where one posits an impregnable distinction between the city of God (*civitas dei*) and the Earthly city (*civitas terrena*).⁴¹⁶

However, as the early twentieth century crisis in German theology demonstrates, theology can no longer escape history through dogmatics. Theology must abandon its “Augustinian” perspective on this matter and take into account its potential links to current political realities. In this new context, *the state has lost its monopoly on the friend/enemy discourse i.e. on the political*, and the discourse may be taken up by theology. Here is Schmitt:

[T]heology is the continuation of the revealed *logos* in the form of concrete discussion. There is only theology in the time between Christ’s first and second coming...[theology] made [it]self secure [from politics] through a dogmatic theology. But, given the changing

⁴¹⁴ Carl Schmitt, *Political Theology II: The Myth of the Closure of any Political Theology* trans. by Michael Hoelzl and Graham Ward (Malden, MA: Polity Press, 2008), 72

⁴¹⁵ Schmitt also gives attention to the relation between theology and politics in *Political Theology* and section seven of *The Concept of the Political*.

⁴¹⁶ Augustine himself never claimed a clean distinction between civil theology and Christian truth. He was clear that the truth of Christian theology could not be identified with mythical, natural, or fabulous theology, and that it was thus folly to believe that the “gods of the nations...are to be worshipped...on account of that which is to be after death” (219, VI, 1) and “impudent to wish for eternal life” from civil gods. (225, VI, 4) However, he also recognized that the earthly city and the heavenly city are “in this present world comingled, and as it were entangled together.” (XI, 1, p416). See St. Augustine’s *City of God* trans. by Marcus Dods (New York: Barnes and Noble, 2006).

friend-enemy constellations throughout history, theology can become a political tool of the revolution as well as of the counter-revolution.⁴¹⁷

Schmitt warns that a theologian who still holds Augustine's antiquated "two-cities" view may unwittingly deploy a theology that "dresses up" (i.e. gives divine sanction to) a particular political form. One example of this is Schmitt's parallel between the monarch of a parliamentary regime and the idea of a passive being in a higher sphere. However, beyond this example, Schmitt attempted to articulate the nature of this correlation in a number of ways. "The juridical formulas of the omnipotence of state," he says, "are, in fact, only superficial secularizations of theological formulas of the omnipotence of God."⁴¹⁸ Again, "the metaphysical image that a definite epoch forges of the world has the same structure as what the world immediately understands to be appropriate as a form of its political organization."⁴¹⁹ Another concrete example of this is how Christian and Jewish propaganda has used the politico-theological concept of monarchy to justify the superiority of God's people coming together in the *ecclesia Christi* over polytheistic belief of pagans. Schmitt also notes how theologian Erik Peterson's (1890-1960) writings on monotheism, especially the formula "one God" as a public acclamation, can be an affirmation of a particular God or king.

While links between theology and politics (e.g. monotheism and monarchy) are not absolute, the two can not be categorically separated. It is possible that theology has little political significance, but it is likely that theology plays a role in politics such that *le roi regne, mais il ne gouverne pas* [the king reigns, but he does not govern]. Schmitt also justifies the blending of church/state into "the political" with a theological rationale. Theology must be related to political realities, since "the second person of the Godhead represents the perfect unity of the two natures,

⁴¹⁷ Schmitt, *Political Theology II*, 42, brackets mine

⁴¹⁸ Schmitt, *The Concept of the Political*, 42

⁴¹⁹ Schmitt, *Political Theology*, 46

the human and the divine.”⁴²⁰ From historical, political and theological perspectives then, the politics of theology and the theology of politics cannot be denied. In the modern state, there has been a transition from a church/state dichotomy to “the political”. Moreover, this category, i.e. friend/enemy constellations, may be taken up by either theological or political theoretical discourses.

In addition to legitimacy and political unity, Schmitt also looked to political theology for three other purposes. First, renowned German-American political philosopher Leo Strauss notes that Schmitt aimed to “strike at the root” of liberalism by replacing the liberal concept of (bourgeois) culture – individualism, contractarianism, the state as mechanism – with an insight “into what is specific to the political.”⁴²¹ For Schmitt, this insight was the “dangerousness” of people, which is the truth and reality of the state of nature. If for Hobbes the state of nature is the state of war, for Schmitt the state of nature as the state of war is “the genuinely political status...‘the natural’ character of the relationships of human groups.”⁴²² Schmitt notes the striking political significance that animal fables hold with respect to getting at the problem of the political; “almost all [animal fables] can be applied to a real political situation: the problem of aggression...the question of guilt...justice between states.”⁴²³

Schmitt also looked to political theology for a second purpose, namely to acknowledge and correctly conceptualize the enemy, an unpleasant task for bourgeois liberal sensibilities. This insight is nonetheless vital, as it shores up identity and makes political unity possible. According to Schmitt:

⁴²⁰ Schmitt, *Political Theology II*, 82-3

⁴²¹ Says Leo Strauss. See “Notes on Carl Schmitt, The Concept of the Political” in *Carl Schmitt and Leo Strauss: The Hidden Dialogue* by Heinrich Meier, trans by J Harvey Lomax (Chicago: University of Chicago Press, 1995), 96

⁴²² Strauss, “Notes on Carl Schmitt, The Concept of the Political”, 100-105

⁴²³ Schmitt, *The Concept of the Political*, 58, brackets mine

The key question [of] the political concerns the reality of an enemy whose concrete possibility I can still see in its entirely de-theologised counter-image. Its transposition from the old political theology [e.g. Cromwell's enmity for papist Spain grounded in the truth of revelation] into a pretentious and totally new, purely secular and humane humanity needs to be watched closely and critically, for it remains indeed the permanent function of any scientific struggle for knowledge.⁴²⁴

Schmitt understands the category of the enemy to be a vital clue to the political. To the extent that theology may assist in understanding the enemy, theology is called to this specific political-theological task. Further, political theology has a third task that is mindful of the conceptual relationship between theology and jurisprudence: "The scientific conceptual structure of both of these faculties has systematically produced areas in which concepts can be transposed, among which harmonious exchanges are permitted and meaningful. It is only a question of the right attunement of the instrument."⁴²⁵ Schmitt's thought points toward a new form of political-theological constitution and, at times, a (counter) Reformation.⁴²⁶

On Sovereignty

Given the loss of the political situation, as Schmitt sees it, his theory of sovereignty venerates sovereign dictatorship as the most appropriate form of government. As with monarchialism government, the dictator is "an agent of central [bureaucratic] power", one essentially "opposed to the provincial and local cooperatives" to the extent that these local provinces continue maintain "an autonomous judiciary, government and administration."⁴²⁷ Thus, dictatorship is an inherently unitary form of government and categorically opposed to more federative political formations. The theme of centralization, however, is the only thing that the dictator has in

⁴²⁴ Schmitt, *Political Theology II*, 127-8, brackets mine

⁴²⁵ Schmitt, *Political Theology II*, 109

⁴²⁶ Schmitt, *Political Theology II*, 51, 101, 115

⁴²⁷ Carl Schmitt, *Dictatorship* trans. by Michael Hoelzl and Graham Ward (Malden, MA: Polity Press, 2014), 81-2, brackets mine

common with the monarch. Beyond this, Schmitt notes other features that distinguish the dictator.

First, dictatorial bureaucratic centralization differs from monarchial centralization in that a dictatorship achieves unity by overwhelming and annulling rather than harmonizing other intermediary powers of the state. In a monarchial regime, intermediary powers such as the “aristocracy, the seigneurial and patrimonial sphere of jurisdiction, the clergy and the independent law courts which acted as...[storehouse of laws], and also the French parliaments...” buffer the impact of monarchial activity.⁴²⁸ In a monarchial regime these intermediary powers create conditions such that unity can only be achieved by consensus (between king and parliament, for example). However, with dictatorship, “the functions of all other magistrates were nullified...[the dictator] becomes an absolute power, overruling all existing authorities.”⁴²⁹ Schmitt characterizes it as the “direct exercise of stately power – that is, any exercise that is not mediated through autonomous intermediate institutions – and understand by it centralized government, in contrast to decentralized.”⁴³⁰

In addition to the nullification of intermediary powers, dictatorship implies the suspension of the legal order for the specific task of destroying an enemy. “Dictatorship is omnipotence without law [*Gesetz*]: it is lawless power.”⁴³¹ Drawing from Rousseau’s *The Social Contract*, Schmitt notes that “the dictator dominates the law without representing the legislature” so that “during dictatorship laws are ‘dormant’, the dictator can silence laws but cannot make them speak...”⁴³² Schmitt is clear that these structural dynamics occur specifically in response to a concrete enemy. “The success achieved by the actions of the dictator gains a clear content

⁴²⁸ Schmitt, *Dictatorship*, 83

⁴²⁹ Schmitt, *Dictatorship*, 96

⁴³⁰ Schmitt, *Dictatorship*, 116

⁴³¹ Schmitt, *Dictatorship*, 110

⁴³² Schmitt, *Dictatorship*, 105

through the fact that the enemy, who has to be eliminated, is immediately present.”⁴³³ Schmitt continues: “for the concept of dictatorship, too, one must retain the immediate actuality of a situation that needs to be resolved...Dictatorship is like the act of self-defense: never just action, but also reaction...[it] protects a specific constitution against an attack that threatens to abolish this constitution.”⁴³⁴ Because of this specific task of dictatorship, Schmitt notes that dictatorial regimes often makes use of certain phrases such as “in the interest of *surete* [security] and *ordre publique* [public order], extraordinary means are necessary in extraordinary circumstances; laws must not be *inflexibles* [unbending], such that their bureaucratic formalities may become detrimental when there is immediate danger; the lawmaker must foresee that he cannot foresee everything.”⁴³⁵ These expressions convey that the dictatorial task requires that one suspend the legal order and cancel any ‘separation of powers’ for the explicit purposes of destroying an enemy. In essence, modern dictatorial regimes exchange a bill of rights for a bill of attainder.⁴³⁶

Finally, Schmitt makes a distinction between two kinds of dictatorships, one commissary and the other sovereign. In the case of a commissary dictatorship, the dictator is “authorized by a constituted organ and has an identity in the existing constitution”⁴³⁷ “[T]he commissary dictatorship,” Schmitt says, “suspends the constitution in order to protect it.”⁴³⁸ This suspension, however, does not make the constitution invalid. The constitution itself remains valid, and the dictator thus functions as an arm of the law and ultimately remains bound by duty or charge. The “dictator dictates to the outside world, but insofar as he is a commissar he himself must (internally [*im Innenverhältnis*]) be dictated to.”⁴³⁹

⁴³³ Schmitt, *Dictatorship*, 117

⁴³⁴ Schmitt, *Dictatorship*, 118

⁴³⁵ Schmitt, *Dictatorship*, 105

⁴³⁶ Schmitt, *Dictatorship*, 88

⁴³⁷ Schmitt, *Dictatorship*, 127

⁴³⁸ Schmitt, *Dictatorship*, 118

⁴³⁹ Schmitt, *Dictatorship*, 109

With the *sovereign* dictator, which Schmitt endorses, “[d]ictatorship does not *suspend* an existing constitution through a law based on the constitution – a constitutional law; rather it seeks to create conditions in which a constitution – a constitution that it regards as the true one – is made possible. Therefore [sovereign] dictatorship does not appeal to an existing constitution, but to one that is still to come.”⁴⁴⁰ Sovereign dictatorship occurs when the dictator is given the power to create a constitution.⁴⁴¹ Schmitt thus highlights the fact that unlike the commissar, the sovereign dictator is marked by a necessarily arbitrary *pouvoir constituant* [constituent or constituting power].⁴⁴² With the sovereign dictator, a constitution may represent its constituting power, but may also inhibit it and thus a true “constituting act in all its sovereignty... must have the choice between an old and a new regime.”⁴⁴³ While a commissary dictatorship comes to an end when the concrete enemy is defeated, a sovereign dictator’s task is completed with the constitution of a new government.⁴⁴⁴ Schmitt sums up the key distinction between the two kinds of dictatorships as follows: “The commissary dictator is the unconditional commissar of action of a *pouvoir constitue* [constituted power], and sovereign dictatorship is the unconditional commission of action of a *pouvoir constituant* [constituting power].”⁴⁴⁵

Conclusion

Following Hobbes, Schmitt was an authoritarian statist. He was reluctant to undermine or divide in any capacity the classical authority of the state and for him sovereignty took the form of the decision rather than the rule of law. If for Hobbes this decision came from the monarch, for Schmitt it rests with the dictator, who decides both on and in the exceptional case. The

⁴⁴⁰ Schmitt, *Dictatorship*, 119

⁴⁴¹ Schmitt, *Dictatorship*, 110-11

⁴⁴² Schmitt, *Dictatorship*, 123

⁴⁴³ Schmitt, *Dictatorship*, 126

⁴⁴⁴ Schmitt, *Dictatorship*, 126

⁴⁴⁵ Schmitt, *Dictatorship*, 127

significance of this is even more appreciated when we learn that Schmitt's view of nature and history itself might be reduced to the exception. Not even a natural law, then, could limit the dictator. For Schmitt, political unity takes only this form. Citizens may support through nationalism and obedience to the dictator, but they are restricted from taking form as "the party", "the movement", "the people" or the legal constitution.⁴⁴⁶ Schmitt didn't see dictatorship as categorically opposed to democracy, only liberal democracy. In fact, he argued that since parliamentary regimes fragment the political will (i.e. democracy without the *demos*), modern states needed even stronger executives to secure democratic formations. Still, critical to Schmitt's political analysis, Hobbes's Leviathan failed to attain mythic status in the role of political theology when political myths were capturing the imaginations of "the masses."

Schmitt's age signaled the eclipse of the dominance of rationalist epistemology in Germany and context now ripe for political theological myths. He witnessed during his own lifetime the power of the socialist myth of the Strike and Mussolini's myth of the nation. Schmitt's statistism was much more in accord with Mussolini than with the internationally-oriented socialists. Yet, he also acknowledged the power of the socialist myth. Schmitt thus turned to political theology to offer a symbol powerful enough to achieve mythic status, thus countering all other politically efficacious myths circulating in his context. In spite of his authoritarianism, his totalizing conception of the political, and his anti-Semitism, Schmitt reminds us that the possession and/or loss of the constitutional legitimacy of the state is the most pressing concern for all sectors of society, and perhaps most important for those groups that deal with theology, politics, and their

⁴⁴⁶ In Schmitt's commissarial dictatorship the president may act for the security (not replacement) of the constitution and govern without the check of parliament. Because the president is democratically elected, the office holds democratic legitimacy. It is also important to note how Schmitt's commitment to this form of government separated him to some degree from the Nazi Party.

relation. Legitimacy is necessarily of a politico-mythical, rather than technical or administrative, nature. Law and discussion alone cannot effectively mediate political conflict.

Beyond his authoritarianism, both Schmitt's concept of "the political" and his anti-Semitism deserve attention.⁴⁴⁷ Schmitt's concept of the political replaces previous conceptions of social struggle in the discourse on sovereignty such as the Hegelian struggle for life and death or the Lockean emphasis on labor. The political is the moment of contest which brings to light the true nature one's existence. According to Meier, Schmitt's mistake was that he conceived of the political in a totalizing rather than authoritative manner. "The political," Meier explains, "can be conceived as what is authoritative...as it is able to lay claim to the individual on *behalf of the whole* or because...it is able to lay claim to him *wholly*."⁴⁴⁸ It may be the community, which has a claim on the individual because it makes possible "the entire reality of their actions," or it can be that which "grasps the whole man because this state faces him with the most important decision, confronts him with the greatest evil, and compels him to make the most extreme identification. Schmitt chooses the second path."⁴⁴⁹ In the context of Nazi Germany, this required that all citizens take oaths of allegiance to the commissarial dictator.

Alongside his conception of the political, Schmitt's racism is also problematic. Just as Meier highlighted Schmitt's disturbing conception of the political, so he also notes Schmitt's anti-Semitism. Five years into the total fuhrer-state, and even as Schmitt was rethinking his criticisms of liberalism, he held fast to anti-Semitism. This is especially evident in Schmitt's *Leviathan in the State Theory of Thomas Hobbes*, where he argues that Leviathan, to Jews,

represents 'the cattle upon a thousand hills'...namely, the heathens. World history appears as a battle among the heathens...But the Jews stand by and watch how the people of the world

⁴⁴⁷ Another problematic aspect of Schmitt's thought was his metaphysical dualism.

⁴⁴⁸ Meier, *The Lesson Of Carl Schmitt*, 32

⁴⁴⁹ Meier, *The Lesson of Carl Schmitt*, 32

kill one another. This mutual ‘ritual slaughter and massacre’ is for them lawful and ‘kosher,’ and they eat the flesh of the slaughtered peoples...”⁴⁵⁰

Schmitt’s ideology legitimated the detainment and possible deaths of millions of persons in early twentieth century Germany. He held that both his anti-Semitism and totalizing conception of the political were explainable by way of his particular brand of political theology. An African American political theology rejects such claims and takes a critical posture toward both totalizing conceptions of the political and racist ideology. Both function as idolatries that call into question the sovereignty and lordship of the Christian God.

Schmitt’s views rested fundamentally on the rejection of the liberal worldview and the turn to Catholic counter-revolutionary thought. His views on the state of nature and the body were largely pessimistic. He rejected progressive liberal optimism as well as its companions of metaphysical naturalism and the political principle of discussion. For Schmitt, the only answer to those with more “activist” metaphysics (i.e. Bolsheviks) was through sovereign dictatorship bolstered by a revived counter-revolutionary political theology. Because “the political” is a reality for Schmitt and not an artifice (as for Hobbes), Schmitt’s view of the political body internalizes the state of nature, as a perpetual state of warring interests. In the next chapter we take up German-Jewish political thinker Hannah Arendt discourse on sovereignty. Like Schmitt, Arendt also wrote in a post-imperialist European context, but she would envision the problems of sovereignty and the political from a more critical perspective.

⁴⁵⁰ Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, 8-9

Chapter 6

Hannah Arendt: The Separation of Powers, the Rule of Law and Revolutionary Politics

The chapter continues the discourse analysis on sovereignty in canonical Western political theory by taking up the thinking of German-Jewish political philosopher Hannah Arendt (1906-1965). Like Schmitt in the previous chapter, Arendt wrote in the wake of European imperialism and totalitarian societies. However, if Schmitt wrote in support of the Nazi state, Arendt was writing from the underside of Nazi policies in support of revolutionary movements against sovereignty. Arendt's discourse on sovereignty emerges from an actual context of statelessness, i.e. existence without political protection, representation or power. With Hitler's rise to power in 1933, Arendt was forced to flee her German homeland, first to Paris and then in 1941 to New York. Meanwhile back in Germany, the state had transitioned from a democratic republic to a fascist regime. Arendt identifies this new form of government as totalitarianism, which meant, for her, that the populations of these countries were governed by a sovereign (fascist or communist) ideology rather than by the appropriate political authority (e.g. the people). Against the rule of law in democratic regimes, these ideologies posit their own "laws of nature" as guides for government. Totalitarian government thus erodes the liberal state and extinguishes constitutional freedoms, throwing populations into literal situations of statelessness. Arendt's life was given to research into alternative forms of political authority, ones more conducive to revolutionary democratic politics than a totalized dictatorial regime.

Context

With the passing of the Nuremberg Laws in 1935, Jews were stripped of basic rights and Europe witnessed for the first time the emergence of what Arendt calls "stateless people," whose primary feature is that they have no government to represent them. As early as April 7, 1933, the first piece of anti-Semitic legislation had been passed in the "Law for the Restoration of the Civil

Service,” which banned Jews and other non-Aryans from participating in the German civil service.⁴⁵¹ Additional laws banned Jewish students from public schools and Jewish lawyers and medical professionals as well. By 1935, German officials had conditioned the atmosphere such that anti-Semitic laws were already part of the culture. The infamous Nuremberg Laws of 1935 consisted of essentially two laws. The first, the Reich Citizenship Law, endowed the Reich with exclusive prerogative in matters of citizenship. Citizens of the Reich had to be of German blood and only Reich citizens were granted full political rights.⁴⁵² The second law, the Law for the Protection of German Blood and Honor, forbid marriage and/or sex between Jews and those with “German-related blood.” This first law aimed to exclude Jews from political life, but the second marginalize Jews socially and existentially.

The modern conditions of imperialism and the Pan-Movements in the late nineteenth and early twentieth centuries had undermined the stability of Europe’s nation-state system from the outside, and now as the post WWI German state experienced internal disintegration, the rule of law began to fracture. Following this breakdown of the rule of law, the most pressing political issue became the permanent status of minority populations, and the state transformed from an instrument guided by law to one driven by the interests of the nation. Minority treatises throughout Europe “said in plain language what until then had been only implied...namely, that only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin.”⁴⁵³ Thus, Jews had to live either under the law of exception or in conditions of absolute lawlessness. Now the

⁴⁵¹ Jennifer L. Goss, “The Nuremberg Laws of 1935,” <http://history1900s.about.com/od/1930s/a/Nuremberg-Laws.htm> Accessed 8/22/15

⁴⁵² Goss, “The Nuremberg Laws,” <http://history1900s.about.com/od/1930s/a/Nuremberg-Laws.htm>

⁴⁵³ Arendt, *Imperialism*, 155

primary points of conflict were not between nationalities, but between nations and these new stateless people, and talk of “human rights” in this context was little more than groundless idealism. As Arendt notes, forced migration was not new in the history of peoples but the impossibility of finding a new land was (save for the African American experience, which Arendt fails to acknowledge). The stateless are not simply landless. They are also rightless. That is, they have lost both their homes and the ability to create a new one.

Stateless people have been deprived of the power of political representation and the possibility of asylum. This means that that they now had no right to freedom of thought and to politically significant opinion or action. Even savages were granted natural rights by the early modern political theorists, but the stateless, viewed as ‘innocent’ in the sense of a complete lack of responsibility, are disallowed all common human responsibility. At the moment when most needed, it the nation-state was incapable of providing a law for those who lost protection of government. The state placed the matter entirely in the hands of the police, which no longer enforced the law but functioned as a ruling authority independent of government and ministries. Germany had become a police state. This manifested itself in the form of the Nuremberg Laws, which distinguished between (full) Reich and (second-class) national citizens”: “A citizen of the Reich is that subject only who is of German or kindred blood and who, through his conduct, shows that he is both desirous and fit to serve the German people and Reich faithfully.” (Art 2, Sec. 1) Stateless people were now facing a police-organized foreign policy independent of law and government officials. Once equality before the law broke down, the rule of law was replaced by the “arbitrary” rule of the police. For Hitler, the solution to the Jewish problem was more authoritarian forms of government, and, as Arendt notes, internment camps are the only substitute for a non-existent homeland. Secret police, curfews, segregation, targeted

unemployment, forced dispossession and forced migration – either abroad or through the ghettos and work camps to concentrations camps – characterized the lives of the stateless. Such practices only escalated with the outbreak of WWII, and especially from 1941 and 1944 as Germany’s totalitarian government expanded. Nazi authorities deported millions to ghettos and to killing centers, so that Europe’s (or Germany’s) Jewish population exceeded nine million before the war, nearly 2/3rd of them had been murdered at the end of the Third Reich in 1945. Other victims included some 200,000 gypsies and at least 200,000 mentally or physically disabled persons. The latter, housed in state institutions, were murdered in the so-called Euthanasia Program.

The State of Nature and the Body

For Arendt, the emergence of stateless people in the European context was not a natural process, but the product of an entirely new form of government: totalitarianism. Arendt scholar Margaret Canovan notes the difficulty of defining totalitarianism. I quote her at length:

There are almost as many senses of “totalitarianism” as there are writers on the subject, but a few broad similarities have tended to hide a fundamental difference between Arendt and most other theorists...[T]hese apparent similarities conceal more than they reveal, and much confusion has arisen from failure to realize that there is not just one “totalitarian model”...The better-known model depicts a totally coherent socio-political system: a state built in the image of an ideology, presided over by a single party legitimized by the ideology, employing unlimited powers of coercion and indoctrination to prevent any deviation from orthodoxy...[H]ers is quite different from this dominant model...Metaphorically, one might say that if the dominant picture suggests the rigidity, uniformity, transparency, and immobility of a frozen lake, Arendt’s theory evokes a mountain torrent sweeping away everything in its path, of a hurricane leveling everything recognizably human...Arendt’s sense means a chaotic, nonutilitarian, manically dynamic movement of destruction that assails all the features of human nature and the human world that make politics possible.⁴⁵⁴

⁴⁵⁴ Margaret Canovan, “Arendt’s Theory of Totalitarianism” in *The Cambridge Companion to Hanna Arendt* ed. by Dana Villa (New York: Cambridge University Press, 2002), 25-26, brackets mine

Given Canovan's understanding of totalitarianism, Arendt describes certain features of totalitarian government rather than provide a simple definition. Although totalitarianism cannot be reduced to "a state in the image of an ideology", Arendt does acknowledge its ideological aspects. In "Ideology and Terror" (1953), she describes ideology as "*the logic of an idea*" applied to the "course of events," i.e. to history.⁴⁵⁵ With ideology, the logic of an idea explains past, present and attempts to calculate the unfolding course of historical events according to the motion inherent in a particular idea (e.g. race). "The movement of history and the logical process of this notion are supposed to correspond to each other, so that whatever happens, happens according to the logic of one 'idea.'"⁴⁵⁶ Once this idea is correlated with the course of historical events, it then becomes the authoritative principle for the operations of state. Arendt argued that totalitarian government erodes the republican body politic and produces one founded on the "natural laws" of a particular ideology. She draws on the thinking of Charles Darwin and Karl Marx as examples of ideology:

If one considers...the basic philosophies of both men, it turns out that ultimately the movement of history and the movement of nature are one and the same...[Darwin's] 'natural law' of the survival of the fittest is just as much a historical law...as Marx's law of the survival of the most progressive class. Marx's class struggle, on the other hand, as the driving force of history is only the outward expression of the development of productive forces [and] the 'labor-power' of men...In these ideologies, the term 'law' itself changed its meaning: from expressing the framework of stability within which human actions and motions can take place, it became the expression of the motion itself.⁴⁵⁷

For Arendt, each ideology posits that the course of natural or historical events is guided by an overarching, sovereign law: the natural law of the fittest race for Darwin and class for Marx.

While politically neutral, Darwinism especially "offered two important concepts: the struggle for existence with optimistic assertion of the necessary and automatic 'survival of the fittest,' and

⁴⁵⁵ Arendt, "Ideology and Terror", 341, Accessed 8/5/15.

http://mrkaminski.weebly.com/uploads/2/3/1/6/23161936/ideology_and_terror_1953--hannah_arendt.pdf

⁴⁵⁶ Arendt, "Ideology and Terror", 342

⁴⁵⁷ Arendt, *Totalitarianism*, 161-2

the indefinite possibilities which seemed to lie in the evolution of man out of animal life and which started the new ‘science’ of eugenics.”⁴⁵⁸

For Arendt, totalitarian rule occurs when the principle of action for government shifts from constitutional law to an ideology’s sovereign law. This sovereign law does not take form as statutes, but in a particular (biological) group that is said to be the physical incarnation of this law. As representatives of the sovereign laws of nature or history, this group holds claims to the rights of sovereignty, and in the name of ‘development’ toward an inevitable *telos*, they justify illegal acts and even terror. The job of a totalitarian regime is thus to ‘speed up’ these ‘natural’ laws. It seeks to play out their internal logic, translating the “law of movement” into reality as a principle of empirical history, politics, policy and individual existence. “Far from being ‘lawless,’” Arendt says, “[totalitarian rule] goes to the sources of authority from which positive laws receive their ultimate legitimation...superhuman forces...what it assumes to be the law of History or the law of Nature.”⁴⁵⁹ The implications of ideology in government are profound: “Totalitarian government...has exploded the very alternative on which all definitions of the essence of governments have been based in political philosophy...the alternative between lawful and lawless government, between arbitrary and legitimate power.”⁴⁶⁰

Arendt notes other unique features of totalitarian regimes. First, they are based on the human experience of loneliness, “on the experience of not belonging to the world at all.”⁴⁶¹ Totalitarian governments use various strategies to create experiences of loneliness (via isolation), fear (propaganda, terror), instability (forced movement), and purposelessness (concentration camps). These experiences render populations ready subjects for totalitarian ideology. A second feature is

⁴⁵⁸ Arendt, *Imperialism*, 58

⁴⁵⁹ Arendt, *Totalitarianism*, 159-60

⁴⁶⁰ Arendt, *Totalitarianism*, 159

⁴⁶¹ Arendt, *Totalitarianism*, 173

that totalitarian governments are marked by “the co-existence of an ostensible and a real government”.⁴⁶² “[A]ll serious students of the [totalitarian state] agree at least on the co-existence (or the conflict) of a dual authority, the party and the state.”⁴⁶³ “It has also been frequently observed,” Arendt says, “that the relationship between the two sources of authority, between state and party, is one of ostensible and real authority, so that the government machine is usually pictured as the powerless façade which hides and protects the real power of the party.”⁴⁶⁴ Arendt notes that both the Soviet and Nazi totalitarian regimes possessed this dual structure, and that the state was reduced to the machinations of party ideology. Arendt observes other features: “totalitarian government always transformed classes into masses, supplanted the party system, not by one-party dictatorships, but by a mass movement, shifted the center of power from the army to the police, and established a foreign policy openly directed toward world domination.”⁴⁶⁵

While Arendt criticized totalitarian formations of Marxian and Darwinian ideologies, she argues that the most vicious ideology is nationalism, birthed in the French Revolution.⁴⁶⁶ She defined nationalism as the idea that grants “full civil and political rights only to those who belonged to the national community by right of origin and fact of birth.”⁴⁶⁷ Nationalism is not only based on an outdated view of political reality, i.e. sovereign national states. Arendt also sees it as a pathology of citizenship. “The nation,” she says, “...conceived of its law as an outgrowth of a unique national substance which was not valid beyond its own people and the boundaries of its own territory.”⁴⁶⁸ It subordinates the state to the nation, takes on an expansionary notion of

⁴⁶² Arendt, *Totalitarianism*, 95

⁴⁶³ Arendt, *Totalitarianism*, 93

⁴⁶⁴ Arendt, *Totalitarianism*, 93

⁴⁶⁵ Arendt, *Totalitarianism*, 158

⁴⁶⁶ See *Imperialism*, 100-111.

⁴⁶⁷ Arendt, *Imperialism*, 110

⁴⁶⁸ Arendt, *Imperialism*, 6-7

nationhood beyond the boundaries of the state, interferes with law and ultimately subverts the nation-state itself. Arendt however pauses to laud some aspects of the fusion of nationality and the state during the French Revolution. To the extent that it was grounded in the experiences and products of a *firmly rooted* and *emancipated* peasant class, and was about the public good rather than one's private personality, French nationalism was nationalism *par excellence*.⁴⁶⁹ Even at its best, however, the nation-state idea is problematic and in the French Revolution the state was conquered by the nation, which meant that the state was no longer defined by the rule of law and the Rights of Man, but by national supremacy to the exclusion of non-nationals. In the end, the nation-state consisted of popular representation and national sovereignty.⁴⁷⁰

According to Arendt, it was ultimately the case that “the nation-state both contributed to, and was the helpless victim of, much more dangerous and predatory ideologies that simply trampled over the mere state.”⁴⁷¹ For her, the nation and the state are intrinsically opposed to one another, so that bringing them together destroys the state as a moral-judicial shelter for its citizens. As Ronald Beiner notes, even after a Jewish state was established in 1947, Arendt believed that Zionism (Jewish nationalism) was not the answer, as it too easily capitulated to imperialist politics and was ultimately “an elite contrivance that passed over ‘the genuine national revolutionary movement which sprang from the Jewish masses.’”⁴⁷² Instead, she advocated for a federated structure based on local Jewish-Arab relations, showing herself a strong advocate for (pro)-Jewish politics even as she criticized Jewish nationalism and the nation-state system of organization. Consider below:

⁴⁶⁹ See Ronald Beiner's “Arendt and nationalism”, in *The Cambridge Companion to Arendt*, 50 and *Imperialism*, 109

⁴⁷⁰ Arendt, *Imperialism*, 109

⁴⁷¹ Arendt, *Imperialism*, 49-50

⁴⁷² Beiner, “Arendt and nationalism”, 46, quoting Arendt from *The Jew as Pariah* (1978)

The alternative proposition of a federated state, also recently endorsed by Dr. Magnes, is much more realistic; despite the fact that it establishes a common government for two different peoples, it avoids the troublesome majority-minority constellation, which is insoluble by definition. A federated structure, moreover, would have to rest on Jewish-Arab community councils, which would mean that the Jewish-Arab conflict would be resolved on the lowest and most promising level of proximity and neighborliness. A federated state, finally, could be the natural stepping-stone for any later, federated structure in the Near East and the Mediterranean area.⁴⁷³

Arendt was moreover critical of the tribal nationalism that emerged in the mid-late nineteenth century in the wake of Pan-German and Pan-Slav movements. For her, “Nazism and Bolshevism owe more to Pan-Germanism and Pan-Slavism (respectively) than to any other ideology of political movement.”⁴⁷⁴ The Pan-movements had a contempt for the nation-state. While the movements were vague about their goals and changed political views on a day to day basis, they were successful to the extent that they “generated an all-embracing mood of total predominance, of touching and embracing all human issues, of ‘pan-humanism’...”⁴⁷⁵ and appealed to an “‘enlarged tribal consciousness’ which was supposed to unite all people of similar folk origin, independent of history and no matter where they happened to live.”⁴⁷⁶ Arendt distinguishes this tribal nationalism from “chauvinistic” nationalism when she explains that “the chief difference between even the most violent chauvinism and this tribal nationalism is that the one is extroverted, concerned with the visible spiritual and material achievements of the nation, whereas the other, even in its mildest forms...is introverted and concentrates on the individual’s own soul which is considered the embodiment of general national qualities.”⁴⁷⁷ Tribal nationalism also insists that one is constantly surrounded by one’s own enemies. For Arendt, tribal nationalism, wherein the nation exists within one’s soul, can only grow out of an

⁴⁷³ Arendt, *The Jew as Pariah*, 191, quoted by Richard J Bernstein in *Hannah Arendt and the Jewish Question* (Oxford, OX: Polity Press, 1996), 117

⁴⁷⁴ Arendt, *Imperialism*, 102

⁴⁷⁵ Arendt, *Imperialism*, 105

⁴⁷⁶ Arendt, *Imperialism*, 103-4

⁴⁷⁷ Arendt, *Imperialism*, 106-7

experience of rootlessness. Her primary concern was that this sort of nationalism provided a breeding ground for political movements whose aims run contrary to the aims of the state, which is to protect the “Rights of Man” established in the French Revolution.

In *The Human Condition* (1958), Arendt’s view of the body is articulated in her understanding of the *vita activa*. She explains, “With the term *vita activa*, I propose to designate three fundamental human activities: labor, work, and action. They are fundamental because each corresponds to one of the basic conditions under which life on earth has been given to man.”⁴⁷⁸ The notion of *vita activa* signifies the three types of human activity. Arendt distinguishes the nature of each activity: Labor refers to bodily experiences of toil and trouble done of necessity to keep the (human) organism alive; it corresponds to the biological processes of the body.⁴⁷⁹ If labor corresponds to the natural needs of the human being, work or fabrication “corresponds to the unnaturalness of human existence... Work provides an ‘artificial’ world of things, distinctly different from all natural surroundings... work is worldliness.”⁴⁸⁰ Action (which Arendt later combines with ‘speech’) is distinct from labor and work in that it is the “only activity that goes on directly between men without the intermediary of things or matter [and] corresponds to the human condition of plurality.”⁴⁸¹ Action by its very nature requires plurality, i.e. recognition “that men, not Man, live on the earth and inhabit the world.”⁴⁸² Through action human identity is disclosed, relationships are formed, the singular capacity to start something new is realized. It reminds us that although we must die, we are “not born in order to die but in order to begin something new.”⁴⁸³ Arendt explains that action is also “*the condition... of all political life.*”⁴⁸⁴

⁴⁷⁸ Hannah Arendt, *The Human Condition*, (Chicago: University of Chicago Press, 1958), 7

⁴⁷⁹ See *The Human Condition* 7

⁴⁸⁰ Arendt, *The Human Condition* 7

⁴⁸¹ Arendt, *The Human Condition*, 7, brackets mine

⁴⁸² Arendt, *Human Condition*, 7

⁴⁸³ Hannah Arendt, *The Portable Hannah Arendt* ed. by Peter Baehr (New York: Penguin Books, 2000), 181

⁴⁸⁴ Arendt, *The Human Condition*, 7

Only action can establish a political body, i.e. create “the condition for remembrance, that is, history.”⁴⁸⁵

Finally, totalitarian regimes also destroy the body politic. Terror, Arendt argues, does not only produce physical destruction, but as we have seen, also erodes human individuality as disclosed through spontaneous thought, speech and/or action. This in turn erodes a) the human capacity for collective remembrance and b) the body politic, which is for Arendt the only space where truly human freedom can be achieved. Ideology complements this terror by eliminating the capacity for individual thought and experience beyond its logic. Individual experience and action is insignificant in light of what *must* happen according to an ideology. With the political rule of ideology, the government may dispense with the concern for (democratic) human will to action, as all people can now only be either executioners or victims of the inherent law of history or nature. The most disturbing manifestation of this aspect of totalitarian regimes was the concentration camp. The camp creates a space of extreme isolation and purposelessness. The status of the inmates to those in the world of the living was such that it was “as though they had never been born.”⁴⁸⁶ From the point of view of normal society, they are superfluous, for extermination only happens to human beings already dead. Thus political theorist Margaret Canovan describes totalitarianism as a “monumental torrent sweeping away everything in its path, or a hurricane leveling everything recognizably human...[it is] a chaotic, nonutilitarian, manically dynamic movement of destruction that assails all the features of human nature and the human world that make politics possible.”⁴⁸⁷

⁴⁸⁵ Arendt, *The Human Condition*, 9

⁴⁸⁶ Arendt, *Totalitarianism*, 98

⁴⁸⁷ Margaret Canovan, “Arendt’s theory of Totalitarianism: A Reassessment” in *The Cambridge Companion to Hannah Arendt*, 26

In looking for commonalities between two early twentieth century totalitarian regimes (Nazi Germany, Soviet Russia), Arendt concludes that totalitarian regimes combine tactics of terror with an ideology that portrays such acts as a necessary part of history, even though these histories may be largely skewed and inaccurate and terrorist tactics destructive of large populations of human life. Arendt claimed that the masses were susceptible to such destructive political regimes because of their own feelings of superfluousness in the world – the masses were plagued with feelings of homelessness, ‘uprootedness’, and instability in the world. In this position, the masses were ready to believe the ideologies of the mob, which purported to give insight into the past, the present, and the future; indeed, into one own purpose and destiny.

Arendt considered the presence of totalitarianism an indication that the modern political order of nation-states and “the Rights of Man” had broken down. Totalitarianism signaled a loss of proper authority, an aberration of the State and the destruction of the political order intended to provide stable spaces of free action for people. For her, the conditions for totalitarianism are created by imperialism, i.e. eternal unlimited expansion. “For Arendt,” Canovan asserts, “both preconditions and precedents [of totalitarianism] were to be found in the economic, military, and political upheaval known as ‘imperialism’ which had in the late nineteenth century seen European conquest of great tracts of the world in the wake of capitalist expansion, and which had also disrupted European states, economies, and societies.”⁴⁸⁸ This disruption caused people to feel uprooted and anxious, and it was at this moment that fear and ideology, persuasively voiced by a political figure, began to pervade populations.

Arendt recounts this narrative in *Imperialism* (1968). Imperialism, the mindset of unlimited eternal expansion, grew out of European colonialism and that the nation-state system was

⁴⁸⁸ Canovan, “Arendt’ theory of Totalitarianism,” 31, brackets mine

incongruent with colonialism's economic and industrial developments.⁴⁸⁹ "Expansion as a permanent and supreme aim of politics is the central political idea of imperialism," she says. "Since it implies neither temporary looting nor the more lasting assimilation of conquest, it is an entirely new concept in the long history of political thought and action. The reason for this surprising originality...is simply that this concept is not really political at all, but has its origin in the realm of business speculation..."⁴⁹⁰ According to Arendt, imperialism was born when capitalists imposed the law of constant expansion on governments. The modern state is plagued with two demons, ideology (of nationalism) and imperialist expansionism. These two demons are not only deadly to the state, but also are fundamentally in conflict with one another. Arendt explains:

The inner contradiction", "between the nation's body politic and conquest as a political device has been obvious since the failure of the Napoleonic dream...The French, in contrast to the British and all other nations in Europe, actually tried in recent time to combine *ius* with *imperium* and to build an empire in the old Roman sense. They alone at least attempted to develop the body politic of the nation into an imperial political structure, believed that 'the French nation (was) marching...to spread the benefits of French civilization...The result of this daring enterprise was a particularly brutal exploitation of overseas possessions for the sake of the nation."⁴⁹¹

Arendt elaborates on imperialist tactics noting that "[t]wo new devices for [imperialist] political organization and rule over foreign peoples were discovered...One was race as the principle of the body politic, and the other bureaucracy as a principle of foreign domination."⁴⁹² For Arendt, race and bureaucracy are the primary strategies of imperialist politics. "The fact" she says "[is] that racism is the main ideological weapon of imperialistic politics..."⁴⁹³ Race unity often functions as a substitute for political emancipation. Alongside race is bureaucracy, which

⁴⁸⁹ Arendt, *Imperialism*, v

⁴⁹⁰ Arendt, *Imperialism*, 5

⁴⁹¹ Arendt, *Imperialism*, 8-9

⁴⁹² Arendt, *Imperialism*, 65, brackets mine

⁴⁹³ Arendt, *Imperialism*, 40

inherently replaces political participation with administration and replaces laws with temporary and changing decrees.⁴⁹⁴ Ultimately, Arendt saw that the state was losing the battle against imperialism and its attendant ideologies, and that totalitarian governments were now a perennial threat to the modern state and the Rights of Man. Thus Arendt's constructive thought aimed to produce a new political order.

On the Political Body

Arendt's search for the structures of a new political body was targeted at establishing a pluralistic participatory democratic culture. This new political body would thus institute the conditions of possibility human freedom. She began this project by identifying the root problem, namely, Hobbes's philosophy. According to Arendt, totalitarian movements came into power as a result of alliances between mobs and cultural elites who agreed on the (Hobbesian) principle of power politics. "Power, according to Hobbes is the accumulated control that permits the individual to fix prices and regulate supply and demand in such a way that they contribute to his own advantage."⁴⁹⁵ For Hobbes, "the Commonwealth is based on the delegation of power, and not of rights...Security is provided by the law, which is a direct emanation from the power monopoly of the state."⁴⁹⁶ The body politic is not only founded on power, but must also sustain itself by these means. "Only by acquiring more power, "says Arendt "can [the community] guarantee the status quo; only by constantly extending to authority and only through the process of power accumulation can it remain stable."⁴⁹⁷ Arendt argues that Hobbes philosophy of power gained traction as 'capitalists allied with the mob to embark on projects of eternal unlimited expansion (i.e. imperialism) for the sake of economic interests. The state thus became and

⁴⁹⁴ Arendt, *Imperialism*, 96

⁴⁹⁵ Arendt, *Imperialism*, 19

⁴⁹⁶ Arendt, *Imperialism*, 21

⁴⁹⁷ Arendt, *Imperialism*, 22

instrument for “never-ending accumulation of power necessary for the protection of a never-ending accumulation of capital”⁴⁹⁸

This view of politics, as fundamentally rooted in power rather than law or reason, finally settled into political culture with the political emancipation of the bourgeoisie. Such a view, according to Arendt, cannot help but decimate the political body. “The concept of unlimited expansion that alone can fulfill the hope for unlimited accumulation of capital, and brings about the aimless accumulation of power, makes the foundation of new political bodies—which up to the era of imperialism had been the upshot of conquest—well-nigh impossible. In fact, its logical consequence is the destruction of all living communities, those of the conquered peoples as well as of the people at home.”⁴⁹⁹

According to Arendt, Hobbes’s claim that power and self-interest lie at the foundation of a body politic also bequeathed to modern political thought the prerequisite for ideology. Arendt explains that Hobbes’s view of the body politic has implications for foreign politics:

The philosophy of Hobbes, it is true, contains nothing of modern race doctrines, which not only stir up the mob, but in their totalitarian form outline very clearly the forms of organization through which humanity could carry the endless process of capital and power accumulation through to its logical end in self-destruction. But Hobbes at least provided political thought with the prerequisite for all race doctrines, that is, the exclusion in principle of the idea of humanity which constitutes the sole regulating idea of international law. *With the assumption that foreign politics is necessarily outside the human contract, engaged in the perpetual war of all against all, which is the law of the “state of nature,”* Hobbes affords the best possible theoretical foundation for those naturalistic ideologies which hold nations to be tribes, separated from each other by nature, without any connection whatever, unconscious of the solidarity of mankind and having in common only the instinct for self-preservation which man shares with the animal world.⁵⁰⁰

And later:

If it should prove true that we are imprisoned within Hobbes’ endless process of power and accumulation, then the organization of the mob will inevitably take the form of the

⁴⁹⁸ Arendt, *Imperialism*, 23

⁴⁹⁹ Arendt, *Imperialism*, 17

⁵⁰⁰ Arendt *Imperialism*, 37

transformation of nations into races, for there is, under the conditions of an accumulating society, no other unifying bond available between individuals who in the very process of power accumulation and expansion are losing all natural connections with their fellow-men.⁵⁰¹

For Arendt, the endeavor to accumulate more and more wealth and power will necessarily bend societies toward racial ideologies, which in turn signifies the destruction of the traditional (i.e. pre-modern) Western political world. The idea of race signals closure on the idea of humanity. Arendt notes that race denies the equality and solidarity of all peoples guaranteed by humankind, even as it remains tied to various conceptions of national mission that seek to “uplift” “lower” races.⁵⁰² Because race-thinking gives the appearance of national respectability and seems to have the sanction of tradition, we miss its “utter incompatibility with all Western political and moral standards of the past.”⁵⁰³ Countering this destructive force requires that one imagine and act in ways that transcend Hobbes’ naturalistic ontology. The problems of race-thinking and power politics, then, drive Arendt’s constructive political thinking.

Arendt’s constructive political thinking may thus be interpreted as an attempt to actualize the ideal of humanity in politics once again after the *shoah*. Even as she acknowledged the realities of the *shoah*, anti-Semitism, imperialism, and other social evils, Arendt remained hopeful for a human community that transcended the particularities of tribal and national loyalties. For her, this community is grounded in the uniquely human capacity for novelty. Novelty implies that “human initiatives set off processes that are hard to stop and that may threaten or undermine the stable human world.”⁵⁰⁴ This means that “the future is open” for humanity, not only to negative possibilities, but to more hopeful ones as well. Novelty implies the possibility transcendence beyond racial doctrines toward a non-warring human community, one which recognizes the

⁵⁰¹ Arendt, *Imperialism*, 37

⁵⁰² Arendt, *Imperialism*, 62

⁵⁰³ Arendt, *Imperialism*, 64

⁵⁰⁴ Canovan, “Arendt’s theory of totalitarianism”, 34

purposiveness of peoples beyond one's particular political community. Humanity is thus Arendt's objective regulating ideal in international law and in states that protect rights. Humanity also grounds such freedoms as the freedom of thought, opinion, action, the right to representation, and property rights.⁵⁰⁵ It was thus humanity that could move German history beyond the "factual territory" of cross cultural hostility between Germans and Jews. Against those like Carl Schmitt who hold humanity to be an unrealistic liberal utopian hope that only lives by denying 'the political,' Arendt advocates for humanity. "Unless both peoples decide to leave this factual territory," she says "the individual Jew will no more be able to abandon his fanatical hatred than will the individual German be able to rid himself of the complicity imposed upon him by the Nazis."⁵⁰⁶

In constructing the political foundations for the possibility of humanity, Arendt looked to antique and modern politics (Rome, Athens, France, America) to reimagine political space. Arendt's political framework is constituted by two major themes: theatricality and an impartial narrative structure. These themes, which circulate throughout her writings, provide the conditions for both humanity and human freedom. In terms of theatricality, political theorist J. Peter Euben argues that Arendt turned to Greek culture for the ways in which politics was analogous to Hellenistic theatricality as opposed to Greece's actual political practices.⁵⁰⁷ He argues that we should read Arendt through the lens of tragedians, who thought of themselves as political educators of democratic citizens.⁵⁰⁸ "The Greeks" Euben says, "invented the Olympian gods, 'imposing a world of art between themselves and a world of suffering, casting a veil of

⁵⁰⁵ On property rights see Arendt's *On Revolution*, ch 5.

⁵⁰⁶ Mary G. Dietz, "Arendt and the Holocaust" in *The Cambridge Companion to Hannah Arendt*, 89, quoting Hannah Arendt from her "Dedication to Karl Jaspers" (1948) in *Essays in Understanding, 1930-54*, ed. Jerome Kohn (New York: Harcourt Brace & Company, 1994), 214

⁵⁰⁷ J. Peter Euben, "Arendt's Hellenism" in *The Cambridge Companion to Hannah Arendt*

⁵⁰⁸ Euben, "Arendt's Hellenism," 161

beauty over the abyss.’ The gods are a conscious self-deception...that allows the Greeks to look at and look away from the abyss.”⁵⁰⁹ Theater, with its gods of drama, has the ability to provide a space for human self-critical judgment. Euben explains that “the balance of proximity and distance from contemporary issues afforded by the theatrical experience provided a place and time for the Athenians to become spectators of themselves. Attaining a certain distance from the press of decisions and events provided an occasion for a reflectiveness impossible in other public settings.”⁵¹⁰ Euben reminds us that theatricality is important because the *polis* is less a physical entity or specific historical configuration than an ever-present possibility.⁵¹¹ For her part, Arendt writes the following on the *polis*: it is “not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together...It is, we might say, a myth, or an invention like the Olympian gods.”⁵¹²

Political theorist Jacques Taminiaux argues that Arendt turned to Greco-Roman sources for a particular kind of *narrative*, namely an “impartial narrative” that treats both victor and vanquished with equal sympathy.⁵¹³ This ‘impartial narrative’ is the second theme in Arendt’s thinking on the political body. Taminiaux points out that Greek history (i.e. Homer) was distinct in that it centered on “the judgment of those who *act*” whether victor or vanquished, as opposed to the modern “judgment of history,” which knows only victors.⁵¹⁴ “Thus Greek history treats with equal sympathy the victors and vanquished. There is an ‘impartiality’ in these narratives, and this erases the (necessary) annihilation of one party.”⁵¹⁵ Taminiaux notes how Arendt also looked to Rome. Although Greece practiced impartiality within the *polis*, they failed to do so

⁵⁰⁹ Euben, “Arendt’s Hellenism,” 153

⁵¹⁰ Euben, “Arendt’s Hellenism,” 161-2

⁵¹¹ Euben, “Arendt’s Hellenism,” 162

⁵¹² Euben, “Arendt’s Hellenism,” 162

⁵¹³ Jacques Taminiaux, “Athens and Rome” in *The Cambridge Companion to Hannah Arendt*

⁵¹⁴ Taminiaux, “Athens and Rome”, 174

⁵¹⁵ Taminiaux, “Athens and Rome”, 173-4

beyond its borders; here there was only “violence and the domination of the stronger [and] annihilation of the weaker.”⁵¹⁶ “The Greek city-state” says Taminioux, “acknowledged that there cannot be a common world without a plurality of perspectives. But the acknowledgement was not broad enough to include the perspective of enemies or...foreigners.”⁵¹⁷ On the other hand, Arendt found that Romans “consciously ascribe their political existence to a defeat followed by a new foundation on a foreign ground. At the outset they thus were able to recognize the cause of the vanquished.”⁵¹⁸

Arendt thus looked to Greco-Roman sources for insights into theatricality and for certain narrative structures to help restore the European political communities. For Arendt, these two themes provide the political space for the possibility of actualizing the ideal of humanity. From the perspective of an African American Political Theology, Arendt’s theme of theatricality can be useful, first as a reminder that the political is an ever present imaginative possibility rather than a physical location, second because it allows one to take up questions about the meaning of suffering, and third, theatricality opens up a space for people to engage in self-critical judgment. However, Arendt’s “impartial narrative” is partially problematic from the perspective of an African American political theology. One positive aspect of such a narrative is that it provides a sense of peoplehood rooted in alliances rather than a history of war. In this way, political antagonisms resolved at a deeper level without reducing such antagonisms to simplistic disagreements. However, the extent that the narrative is impartial, it fails to acknowledge the particularity of African American experience. As womanist theologian M. Shawn Copeland notes, “suffering is universal, an inescapable fact of the human condition...”, and again, “there

⁵¹⁶ Taminioux, “Athens and Rome” 174

⁵¹⁷ Taminioux, “Athens and Rome”, 175

⁵¹⁸ Taminioux, “Athens and Rome”, 175

can be no ranking of oppression or suffering...”⁵¹⁹ Nevertheless, we must acknowledge the “‘the maldistribution, negative quality, enormity, and transgenerational character’ of the suffering of black women” and black men. This is done not to romanticize African American culture, but with the hope that this particularizing of the African American narrative will enable us “to respond to the human condition in new and graced ways.”⁵²⁰ After beginning with this particularity, which may be discovered in the various slave narratives of black Americans, an African American political theology must find meaningful connections with the narratives of other oppressed and poor peoples.⁵²¹

On Sovereignty

In Arendt’s view, sovereignty is to be resisted not only by the separation of powers and the rule of law, but also by citizens’ continued democratic participation in local townships and movements even after the state has been established. Arendt looked to America for a (distinct) source of authority for both government and law. The French Revolution was admirable for its revolutionary spirit, its strong ties to Roman and Machievellian absolutism gave Arendt reason to pause. Arendt wanted to rid political thinking of the notion that “the founding of republics must be done by one man”.⁵²² According to her, the fault of the French revolution was that the authority for both government and law came from the same source (i.e. the people). Thus, the expression of the general will became law and revolution itself became the higher law. However, Arendt was convinced that violence was not necessary for political foundations. For her, the American Revolution (1765-1783) proved that the act of beginning carries within itself its own

⁵¹⁹ M. Shawn Copeland, “Wading Through Many Sorrows: Toward a Theology of Suffering in Womanist Perspective” in *Cut Loose Your Stammering Tongue: Black Theology in the Slave Narrative*, 2nd ed. (Louisville: Westminster John Know Press, 2003), 158.

⁵²⁰ M. Shawn Copeland, “Wading Through Many Sorrows”, 158

⁵²¹ For example, see Clifton H. Johnson’s *God Struck Me Dead: Voices of Ex-Slaves* (Eugene, Oregon: Wipf & Stock, 1969).

⁵²² Arendt, *On Revolution* (New York: Penguin Books, 1965), 194

principle and saves it from its inherent arbitrariness.⁵²³ Here, revolution did not break out via necessity, but by voluntary human action and was carried out in common deliberation and on the strength of mutual pledges. It is also the case that while Rome was founded on a treaty between two different and naturally hostile people, not even Rome was an absolutely new beginning, since it was founded on alliances and was a restoration and re-establishment.⁵²⁴

America's foundation was a "*novus ordo saeculorum*," an absolutely new beginning, since its foundation did not have links back to occidental politics, but emerged out of the act of foundation itself. According to Arendt, the authority of the act of foundation, preserved in the US Constitution, assures the stability of the American republic. The American foundation "arose not from a common ideology but from mutual promises and as such became the basis for 'associations' - the gathering together of people for a specified political purpose."⁵²⁵ Arendt explains that the *remembrance* of this foundational event endows the American Republic with authority. "[O]ne is tempted to conclude," says Arendt,

that the remembrance of the event itself – a people deliberately founding a new body politic – has continued to shroud the actual outcome of this act, the document itself, in an atmosphere of reverent awe which has shielded both event and document against the onslaught of time and changed circumstances. And one may be tempted even to predict that the authority of the republic will be safe and intact as long as the act itself, the beginning as such, is remembered whenever constitutional questions in the narrower sense of the word come into play.

The very fact that the men of the American Revolution thought of themselves as 'founders' indicates the extent to which they must have known that it would be the act of foundation itself, rather than an Immortal Legislator or self-evident truth or any other transcendent, transmundane source, which eventually would become the fountain of authority in the new body politic.⁵²⁶

⁵²³ Arendt, *On Revolution*, 187-8

⁵²⁴ Arendt, *On Revolution*, 187

⁵²⁵ Arendt, *On Revolution*, 174

⁵²⁶ Arendt, *On Revolution*, 196

For Arendt, then, the act of foundation brings with it the legitimating authority of the body politic. However, it is the remembrance of this foundational act that bestows a “halo” on the constitution and this maintains the authority of the republic over time. We might thus conclude that Arendt would argue that the efficacy of the Nazi Regime was due, in part to its capacity to have the people “forget” the Weimar Republic and “remember” their Aryan roots. Arendt might also argue that propaganda played a key role in the dissemination of this ideology. This aspect of Arendt’s thinking on the political body stands in sharp relief to Schmitt’s sovereign dictator, who, possess the absolute power not only suspend the current constitution, but to create a new order altogether, apart from any mutual promises to others.

Arendt was also careful to distinguish the source of positive law from the sources of the body politic. Here again, she looked to America, where Lockean natural law philosophy stands as the authority for law. Locke’s thinking is reflected in the Declaration of Independence, which acknowledges the self-evident truths that all persons are created equal and that they are endowed by their Creator with certain unalienable rights. Arendt considers the source of American law in her *On Revolution*:

for the Constitution itself, in its preamble as well as in its amendments which form the Bill of Rights, is singularly silent on this question of ultimate authority. The authority of self-evident truth may be less powerful than the authority of an ‘avenging God’, but it certainly still bears clear signs of divine origin; such truths are, as Jefferson wrote in his original draft of the Declaration of independence, ‘sacred and undeniable’. It was not just reason which Jefferson promoted to the rank of the higher law which would bestow validity on both the new law of the land and the old laws of morality; it was a divinely informed reason, the ‘light of reason’ as the age liked to call it, and its truths also enlightened the conscience of men so that they would be receptive to an inner voice which still was the voice of God, and would reply, I will, whenever the voice of conscience told them, Thou shalt, and more important, Thou shalt not.⁵²⁷

While Arendt looked to Greco-Roman culture, then to constitute the political body, her search for an appropriate answer to the question of sovereignty led her to America. The United States

⁵²⁷ Arendt, *On Revolution*, 186

avoided the critical error of the French Revolution, namely, a single source of authority for both law and the body politic. For its political authority, it looked to the founders' act of mutual promise while its legal sanction stems from the self-evident truths established by the Lockean view of nature and nature's God.

If Arendt was concerned to designate the appropriate democratic intellectual and political structures, she also recognized the need for sustained political action, or what she called "authentic politics." According to political philosopher George Kateb, Arendt's notion of authentic politics conceives of politics as fundamentally "theatrical", i.e. about deliberation, dispute, speech, and action specifically directed at the preservation of the political body.⁵²⁸ Arendt restricted the scope of authentic political speech and action to that concerned specifically with "the form of government that institutionalizes the spontaneous deliberation and discussion, i.e. constitutional questions, questions concerning the spirit of the laws or the interpretation of the laws or changes in the political ground rules."⁵²⁹ Kateb notes that authentic politics thus excludes deliberation about social and economic issues. Authentic politics restores dignity and value not only to politics but also to life, since politics for its own sake resists the powerful force of instrumental rationality predicated on self-interest, redirecting focus to the common concern for the preservation of the political body. It also engenders from its very nature a moral view and thus curbs the will to power. Authentic politics requires commitment and discipline. It requires the virtues of courage (readiness to risk one's life) and forgiveness as well as keeping promises.⁵³⁰ Finally, leaders of such politics must be inwardly transformed, deprivatized and

⁵²⁸ George Kateb, "Political Action: its nature and advantages" *The Cambridge Companion to Hannah Arendt*, 138

⁵²⁹ Kateb, "Political Action: its nature and advantages", 134

⁵³⁰ Kateb, "Political Action: its nature and advantages", 136

deindividualized.⁵³¹ For Arendt, the shared space of public disclosure that is authentic politics creates the conditions of possibility for freedom. If totalitarianism is a picture of the world without politics and meaning, authentic politics pictures a world in which the political is addressed in spaces of public speech, reflection and action rather than violence. While politics is all the more authentic when eruptive were the French and American revolutions, the *polis* regularizes political action.⁵³²

Arendt looked to several historical cases to theorize authentic politics, with townships or “little republics” standing as the singular institution to preserve the revolutionary spirit. Kateb notes that Arendt was inspired not only by the French and American revolutions, but also the European working class rebellions of 1848, and the American movements of civil disobedience in the 1960s.⁵³³ In all of these cases, the revolutionary “pathos of an entirely new beginning” mobilized people for liberty.⁵³⁴ Arendt points out that while revolutions may produce much-needed constitutional rights or guarantees, these political rights should not be mistaken for the political freedom exercised before such revolutions. While a two party system may guarantee constitutional rights, it does not make the citizen a political participant, i.e. does not mean that one will necessarily exercise their political freedom. Here, Arendt criticizes the American republic, where authority was established appropriately where no space was established for exercising the very political freedom that brought the Republic into being. According to Arendt, the founders failed to account for the *preservation* of this revolutionary spirit after this spirit established the body politic:

⁵³¹ Kateb, “Political Action: its nature and advantages”, 137-47

⁵³² Kateb, “Political Action: its nature and advantages”, 133

⁵³³ Kateb, “Political Action: its nature and advantages”, 132

⁵³⁴ Arendt, *On Revolution*, 27

Since, moreover, the people remained in undisturbed possession of those institutions which have been the breeding grounds of revolution, they could hardly become aware of the fateful failure of the Constitution to incorporate and duly constitute, found anew, the original sources of their power and public happiness. It was precisely because of the enormous weight of the constitution and of the experiences of founding a new body politic that the failure to incorporate the townships and town hall meetings, the original springs of all political activity in the country, amounted to a death sentence for them.⁵³⁵

For Arendt, democratic republics only live if the revolutionary spirit is sustained after the political body and law is established. In turn, the preservation of the revolutionary spirit requires consistent political activity, and for Arendt party politics is *not* democratic political activity.⁵³⁶

Citizens should consistently participate in local townships and town hall meetings. These serve as power generators for the democratically oriented political body. “The public realm has vanished;” she says, “there is no space either for seeing and being seen in action...or for discussion and decision...[today] political matters are those dictated by necessity to be decided by experts, but not open to opinions and genuine choice.”⁵³⁷ For her, participation in townships and town hall meetings give birth to democratic energy because they employ the council system, where local leaders come together to consult, deliberate or make decisions on public matters.⁵³⁸

According to political theorist Albrecht Wellmer, Arendt’s veneration of the council system was based on the fact that it was discovered spontaneously by the people rising up in the French and American revolutions.⁵³⁹ These, rather than liberal (parliamentary) or Marxist (complete change from a liberal constitution to a socialist one) politics, would maintain a truly participatory democratic body. They would make the political body such that it was neither “neutralized” as Schmitt argued nor so revolutionary that they would move past the age of discussion, debate and toward a society grounded completely in the human capacity for work.

⁵³⁵ Arendt, *On Revolution*, 231

⁵³⁶ Arendt, *On Revolution*, 239

⁵³⁷ Arendt, *On Revolution*, 229, brackets mine

⁵³⁸ Arendt, *On Revolution*, 239-41

⁵³⁹ Wellmer, “Arendt on Revolution”, *The Cambridge Companion to Hannah Arendt*, 221

Arendt's thinking on sovereignty, like her thinking on the political body, is ambiguous from the perspective of an African American political theology. On the one hand, Arendt's conception of political authority circumscribes sovereignty and rejects conceptions of supreme political power as arbitrary will, violence, or sheer force. Likewise, her theory of law emerges from a combination of tradition and transcendent moral standards rather than pure power. Also venerable is Arendt's conception of participatory democratic politics, which allows citizens to acknowledge the authority of the political in a way that it lays claim to them "on *behalf of the whole*" rather than laying "claim to him *wholly*."⁵⁴⁰ On the other hand, to the extent that Arendt assumes that law is grounded in Lockean natural law thinking, her approach remains problematic for reasons articulated in chapter 2. Also, it seems that Arendt betrays an ideological commitment of her own when she argues that historical revolutionary movements excluded speech and action on social and economic issues. Thus Arendt's concern to rescue the political and to preserve the dignity of politics sometimes blinds her to the ways in which revolutionary spirits and movements were also connected to other aspects of human life together. Furthermore, Arendt fails to note the ways in which American religious culture played an integral part in the cultivation and preservation of the revolutionary spirit during the course of the eighteenth century. An African American political theology will give more attention to the relationship between the revolutionary spirit and religious commitment.

In the end, perhaps Arendt scholar Jerome Kohn's phrase is most accurate when he says that Arendt turned to history "to awaken the dead...by revealing *action*" that would generate a new body politic.⁵⁴¹ For Arendt, politics as action and speech in public about public affairs is a collective, nonviolent activity. She hoped that in revealing historical action, she would motivate

⁵⁴⁰ Meier, *The Lesson Of Carl Schmitt*, 1998 32

⁵⁴¹ Jerome Kohn, "Freedom and the Priority of the Political" in *The Cambridge Companion to Hannah Arendt*, 115

people to craft novel public spaces in contemporary times, spaces which allow for the possibility of free action and the self-disclosure.⁵⁴² Arendt's historical work also sought to disclose the reality of the surrounding world; a world of common being held together by common sense.

“Human reality” says Kohn,

is appearance, then, in the twofold, complementary sense of the appearances that form the common world of (free) action *and* of the presence to each other of the persons to whom that world is visible and audible, and who can judge it. Actions are the appearances that are most shining forth, and they are the original source of that reality.⁵⁴³

The Greek *polis*, the Roman republic and the French and American revolutions all preserved the memory of political action. Arendt hoped that just as such action imbued politics and life with meaning then, it would also provide the conditions of the possibility for new beginnings in contemporary times. While Arendt did not believe that all people were born free, she did hold that all were born *for* freedom, and that such freedom could only be realized in through political action in the *polis*. Political philosopher Maurizio Passerin D'Entreves explains that totalitarianism had destroyed this space; “destroyed our accepted standards of judgment and our conventional categories of interpretation and assessment, be they moral or political. And in this situation the only recourse is to appeal to the imagination, which allows us to view things in proper perspective and to judge them without benefit of a pre-given rule or universal.”⁵⁴⁴

Arendt's conceptions of the political body and political action seek to restore the dignity of politics, preserve the revolutionary spirit, and renew the possibility of freedom for humanity.

Conclusion

As with Carl Schmitt, Hannah Arendt also wrote in the context of the collapse of the European comity of nations, where there was first a loss and then (a la Schmitt) a recovery and

⁵⁴² Kohn, “Freedom and the Priority of the Political”, 125

⁵⁴³ Kohn, “Freedom and the Priority of the Political”, 125

⁵⁴⁴ Maurizio Passerin d'Entreves, “Arendt's theory of judgment” in *The Cambridge Companion*, 247

an intensification of a totalizing conception of “the political.” Like Schmitt, Arendt was also concerned with the restoration of the political body, but was much more concerned to protect the cultural variation present in the German regime. Arendt felt that reconceiving the political was one key aspect of her goal. Again, political thinker Heinrich Meier argues that there are two ways to conceptualize the political. It “can be conceived as what is authoritative...as it is able to lay claim to the individual on *behalf of the whole* or because...it is able to lay claim to him *wholly*.”⁵⁴⁵ The political community claims its members either because it makes possible “the entire reality of their actions,” or because it “grasps the whole man because this state faces him with the most important decision, confronts him with the greatest evil, and compels him to make the most extreme identification.”⁵⁴⁶ While Schmitt chose the second, more destructive path, Arendt chose the first. For her, a pluralistic political body preserved through authentic politics has the capacity to mitigate the destructive aspects of the political, thus preventing its ascent to absolute sovereignty. In Arendt’s theory, authentic politics occurs when the people discuss, debate, and give opinions on matters concerning the constitution and other dimensions of political freedom, ideally on a consistent basis in town hall meetings. For Schmitt, the political cannot be mitigated but must become the definitive mark of the political body; thus he saw the friend/enemy distinction along racial lines as the most important aspect of his relationships with other people. Another effect of the failure of political will is that a dictator must step in, with full direct bureaucratic powers. The dictator symbolizes the suspension of the rule of law and the beginning of sovereignty, whose key power is deciding on and in legally exceptional cases. No doubt, these decisions are made according to the friend/enemy distinction.

⁵⁴⁵ Meier, *The Lesson of Carl Schmitt*, 32

⁵⁴⁶ Meier, *The Lesson of Carl Schmitt*, 32

Neither Arendt nor Schmitt's conceptions of the political body can be separated from their interpretations of Hobbes's doctrine of the state of nature. For Schmitt, Hobbes was correct to acknowledge the state of nature as a state of war, but failed to internalize this logic into the state as essential to the art of government. Schmitt argues that the state of war, i.e. for him the political, is *the* fundamental collective relation that organizes all other forms of interaction, e.g. economic, social, moral, etc. For Arendt, Hobbes's state of nature myth reflects the dominance of a particular cultural ethos, namely one dominated by power and self-interest. Successful refutation of the myth-become-reality requires a different myth, a theater in which political action takes place, i.e. a new political body, and pluralistic democratic politics.

With respect to theology, Schmitt easily offers the more exhaustive account of relationship of theology to politics. For him, theology may play a distinctive role in determining the nature and content of the political as well as the formations of state. Arendt, on the other hand, understands modern society as thoroughly secularized and gives little attention to theology. Yet she offers several key points to which an African American theology must attend. These include a theory of freedom as situated within a discourse of revolution as opposed to war, an "allied", multicultural rather than monolithic and uniform vision of the political body, a nuanced theory of law, a conception of participatory politics, and an account of the revolutionary spirit. Each of these features of Arendt's theory is critical when practicing democratic politics. As we turn to the concluding chapter, we find that Schmitt and Arendt's political concerns have not left us, but are very much alive in the early twenty-first century. Indeed, today we are confronted with political dynamics similar to those in the early twentieth century German context. Italian political theorist Giorgio Agamben (1942) refers to these dynamics and this particular formation of state as the "state of exception."

Chapter 7

Giorgio Agamben: The State of Exception, the Paradigm of Sovereignty, and the Search for a New Paradigm

This chapter takes up discourse on sovereignty in the thought of late twentieth and early twenty-first century Italian political theorist Giorgio Agamben (1942-). After an account of his context, I take up the three themes that are by now familiar: the state of nature and the body, the political body and sovereignty. Unlike previous thinkers in this dissertation, Agamben does not inquire into sovereignty as a form of government, but as what he calls the “paradigm of sovereignty”, i.e. as a technique of governance. Thus, he observes how a particular constellation within the themes of the state of nature and the body operates to the effect that law and violence are blurred to the point of indistinction in political practice. Paradigms play a constitutive role with respect to populations even before the constitution of the political body. For Agamben, then, the problem of sovereignty is displaced, or made secondary, to the problem of paradigms, and more specifically, the paradigm of sovereignty. These paradigms are instrumental in the tendency of the liberal state to take exception to its established laws. In the “state of exception,” the state exercises the sovereign power of life and death on (bare) lives that have been abandoned by the law and which can now be killed with impunity. The “state of exception”, frequently called the ‘state of emergency,’ is Agamben’s way of highlighting that a state suspends its constitution and takes exceptions to its laws to ban and detain certain groups when it is faced with an “emergency.” Agamben stands in the laudable tradition of sovereignty’s critics, including Locke, Kant and Arendt. Yet his notion of ‘paradigms of sovereignty’ turns a critical eye even on sovereignty’s critics. It shows how liberal states, even democratic ones, continue to exercise sovereign power on populations in the era of “universal” human rights. Agamben further explains that when the state of exception has become the norm, “the camp” emerges in its

various iterations (e.g. concentration camps, labor camps). Near the end of the chapter I take up the U.S. War on Drugs, neoliberal ideology and mass incarceration as a case study.

Again, Agamben's criticism is directed not so much at sovereignty (e.g. monarch, nation, or dictator) as what he calls "paradigms of sovereignty". His use of the term 'paradigm' implies a certain way of understanding state of nature doctrines. In his view, most (Western) philosophers have incorrectly read state of nature doctrines as ontological schemes whose basic task is to logically reconcile the oppositional structures of "the universal and particular" or "identity and difference." Agamben uses the terms "common and proper" to mark all such ontological games, and his strategy is to become indifferent to the common/proper dialectic altogether. Instead, he reads the doctrines of nature as paradigms, that is, as guides on matters of controlling, organizing, and exercising power. Paradigms of sovereignty, readily represented in Thomas Hobbes's state of nature doctrine, but long before him, in the writings of the Greek Sophists, have two marks: a) an opposition between law and nature and b) the anteriority of nature with respect to law.⁵⁴⁷ In political practice, paradigms of sovereignty unite law with violence to such an extent that the distinction between the two becomes blurred. In our post-WWII context, such paradigms have attained hegemonic status, and this is important because they orient state actions in the state of exception. They are the state's frame of reference and its final measure of right action. Effective criticism of the state and its legalized means of violence may come through dismantling the paradigm of sovereignty. Such a criticism requires a new paradigm, one that understands state of nature doctrines as communicating the universal originarity of the human soul, one not completely determined by nature, as well as the 'natural' (i.e. pre-civil), nonviolent character of law. We begin with Agamben's context.

⁵⁴⁷ Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998), 34

Context

Giorgio Agamben writes out of the context of late twentieth and early twenty-first century Italy. After the fall of Italian fascism (1944) and a brief period of government by multi-party coalitions, a republican constitution was established at the end of 1947.⁵⁴⁸ Historian Nick Carter notes that this epochal shift was due in part to the role played by the PCI – the Italian communist party active until 1989 – in both resisting Mussolini and establishing the republic. Since its inception in 1948, the politics of the First Republic has been defined largely by the contest between the PCI – the second largest party, and the DC – the Christian Democrats – who have always been in government. “Every prime minister until 1981 was a Christian Democrat.”⁵⁴⁹ In 1989, the post-war political system collapsed, as the end of the Cold War diminished Italian communist resistance, and this in turn left a vacuum in Italian politics. In the early 1990s the flailing republic experienced financial crisis which resulted in “[r]ecession, rising unemployment, and Italy’s forced withdrawal from the European Exchange Rate Mechanism (ERM, September 1992)...membership of which was itself a condition of Economic and Monetary Union (EMU)...”⁵⁵⁰ Historian Francesco Bonini documents how Italy was simultaneously rocked by the Tangentopoli affair, a nationwide system of corruption that involved roughly half of the Italian parliament and two-thirds of the public debt.⁵⁵¹ In such a context, a cultural wave of neofascism is reconstructing the historical account of the republic.⁵⁵² “In place of the anti-Fascist Resistance myth,” says Carter, “a neopatriotic *vulgata* appears to be under construction, where the Resistance is the original sin rather than the original virtue of the

⁵⁴⁸ Nick Carter, *Modern Italy in Historical Perspective* (Bloomsbury Academic: New York, 2010), 170

⁵⁴⁹ Nick Carter, *Modern Italy in Historical Perspective*, 168

⁵⁵⁰ Carter, *Modern Italy*, 174

⁵⁵¹ Francesco Bonini, “The Republic of the Parties” in *Italian History and Culture*, Vol. 11 (LCD srl, Florence, Italy, 2005), 141

⁵⁵² Carter, *Modern Italy*, 186

Republic and PCI [Italian communist party] its black heart, behind virtually all of Italy's post-war ills."⁵⁵³ In the early twenty first century, Italian fascism is threatening rebirth.

In terms of the current U.S. context, few scholars' comments have been as memorable as those voiced by professor Cornel West. Renowned scholar in African American studies and American politics at Princeton University, West claims that "the ugly terrorist attacks on innocent civilians on 9/11 plunged the whole country into the blues. Never before have Americans of all classes, colors, regions, religions, genders, and sexual orientations felt unsafe, unprotected, subject to random violence, and hated."⁵⁵⁴ West dubs this phenomenon "niggerization" to highlight the parallels between the current state of America at large and the historical state of African Americans under a violent white supremacist regime. African Americans' first encounter with the New World was marked by fear; now all Americans are fearful in the new post-9/11 world of terror. Many African Americans are angry about the absurdity of their historical cultural experience. Today, it has spread to a diversity of Americans, angry about the unfair and arbitrary terrorist attacks. American lives have been tainted by fear and anger.

At the political level, nihilism takes the form of power politics which assume that the best remedies for social problems are necessarily punitive and violent. As a result, government has been reduced to little more than a mechanism that perpetually accumulates power to extend its regime. Human rights, civil liberties, and concern for the wholistic well-being of citizens are now back seat concerns to self-interest. West argues that American politics is currently dominated by three "antidemocratic dogmas."⁵⁵⁵ The first - free-market fundamentalism – posits the accumulation of individual wealth as fundamentally more important than public interest,

⁵⁵³ Carter, *Modern Italy*, 183

⁵⁵⁴ Cornel West, *Democracy Matters*, (Penguin Books: NY, 2004), 20.

⁵⁵⁵ DM, 3.

democratic principles, or religious convictions. The second dogma – aggressive militarism – posits that ‘might makes right’ and that military capacity, rather than giving any consideration to questions of the right to war (*jus ad bellum*) or the laws of war (*jus in bello*). The final dogma – escalating authoritarianism – displays America’s resonance with the Hobbesian solution to difference and conflict. American policy now overemphasizes security while ignoring concerns about liberty. These three inter-related dogmas circulate throughout the American body politic in such a way that intimidates and alienates an already nihilistic American citizenship.

The State of Nature and the Body

Agamben’s view on the state of nature is taken up under the philosophy of *signatures*. Drawing from Renaissance astrologers Paracelsus (1493-1541) and Jakob Bohme (1575-1624), Agamben explains that the philosophy of signatures implies a basic epistemic claim, namely that “all things bear a sign that manifests and reveals their invisible qualities. ‘Nothing is without a sign,” he says, quoting Paracelsus, “...since nature does not release anything in which it has not marked what is to be found within that thing.”⁵⁵⁶ Signatures mark things; they operate as “natural hieroglyphics” which make a sign intelligible or radically modify how one looks at a thing in question.⁵⁵⁷ Signatures situate a thing in a “complex network of relations of ‘authority,’” thus giving it a ‘place’ among other things in time and space.⁵⁵⁸ They disclose the character of things. For example, in astrology, signatures express “a relation of efficacious likeness between the constellation and those who are born under its sign, or more generally, between the macrocosm and the microcosm.”⁵⁵⁹ They mark and characterize signs so that a sign’s interpretation is predetermined. Another example emerges from certain European spaces, namely “the ‘small

⁵⁵⁶ Giorgio Agamben, *The Signature of All Things: On Method* trans. by Luca D’Isanto with Kevin Atell (Zone Books: New York, 2009) *Signature*, 33

⁵⁵⁷ Agamben, *Signature of All Things*, 36

⁵⁵⁸ Agamben, *Signature of All Things*, 40

⁵⁵⁹ Agamben, *Signature of All Things*, 55-6

yellow patch' that the Jews wear on their jackets or coats: 'What is this but a sign by which anybody who meets him may understand that he is a Jew?' A similar sign," he continues "...makes a private soldier or a bailiff (*Scherg oder Buttel*) recognizable. Just as couriers wear insignia on their garments that identify them as messengers – and also where they come from, who sent them, and how they should be treated – so does the soldier on the battlefield wear colored signs or bands making him recognizable by friends and enemies..."⁵⁶⁰ These and other signatures express "how one must comport oneself before Jews bailiffs, or couriers (as well as the behavior that is expected from them)."⁵⁶¹

Philosopher William Watkin explains that Agamben's wants to avoid the key pitfall of the great majority of Western philosophers, which is to take up the philosophy of signatures within the ontological scheme of "*the common*" and "*the proper*".⁵⁶² "The common" and "the proper" refer to the logical set foundational to Western ontological thinking. The first term, "the common," signifies a range of concepts including 'identity,' 'the one,' or 'the universal.' The second term, "the proper," is constituted by its own range of concepts including 'difference,' 'the many,' and 'the particular'. In Western ontology, the game has been to attempt to reconcile these logically opposed elements. Plato's "*doctrine of the Form/Idea*" may serve as an example. Plato's "common" aspect consists of the Forms such as "*The One*" and "*The Good*," i.e. those objective, universal realities beyond the world of sense perception. Plato's "proper" aspect is constituted by the many particular things of the sensory world, itself constituted by a multiplicity of (misleading) appearances.⁵⁶³ Another example is Aristotle's ontological scheme of "*substance*" (the common) and "particulars" (the proper): philosopher Jonathan Barnes explains

⁵⁶⁰ Agamben, *Signature of All Things*, 38

⁵⁶¹ Agamben, *Signature of All Things*, 41

⁵⁶² William Watkin, *Agamben and Indifference: A Critical Overview* (New York: Rowman and Littlefield, 2014), 18

⁵⁶³ See "Plato's metaphysical epistemology" by Nicholas P. White in *The Cambridge Companion to Plato* (New York: Cambridge University Press) 1992

that for Aristotle, ‘substance’ is “what is, [or] the cause of being...whatever is an ultimate subject, which is no longer said of anything else”, while particulars refers to the particular things of the world, whose most significant operation is to disclose the substances.⁵⁶⁴ Again, Aristotle theorizes the scheme of ‘*genus*’ (the common) and ‘*species*’ (the proper). These various modes of the common and the proper situate things according to identity and differentiating structures.⁵⁶⁵ According to Watkin, the consistent movement between common and proper is the “economy (*oikonomia*) of every conceptual-discursive formation in the West.”⁵⁶⁶

Signatures have thus played a key role in common/proper dialectic, marking, ordering and making things intelligible. Agamben calls them “*identity-difference-signatures*”. He notes some signatures that have played a decisive role in the history of Western thought: “language, power, poetry, the sacred, the secular, glory and life.”⁵⁶⁷ When these are deployed in statements with respect to the ontological status of things, they participate in “*signatory art*” which endows things with “true names,” thus “speech acts of facticity” become such that “each name gives the true nature of being of [a thing].”⁵⁶⁸ Watkin points to Agamben’s book *Homo Sacer* (1998) as example. The text explores two signatures noted in the subtitle: power as sovereign power (the common) and life as bare life (the proper). (We will see the implications of this below) These and other signatures situate things according to identity and differentiating structures within the general logic of the common and the proper, thus ordering them in relationship to one another

⁵⁶⁴ Aristotle, Book Delta 8, 1017b23-25, as quoted by Jonathan Barnes in “Metaphysics” in *The Cambridge Companion to Aristotle*, 1995), 91

⁵⁶⁵ Watkin, *Agamben and Indifference*, xiv-xv

⁵⁶⁶ Watkin, *Agamben and Indifference*, 6

⁵⁶⁷ Watkin, *Agamben and Indifference*, xv

⁵⁶⁸ Watkin, *Agamben and Indifference*, 18

within a general metaphysical picture. In this way, the “pure” existence of a thing is identified such that a thing becomes predisposed the interpretation of specific knowledges.⁵⁶⁹

Watkin explains that for Agamben, the key problem of Western signatory thought, discourse and speech has been its entrapment within the common/proper dialectic and its unsolvable logical game. With respect to this dissertation’s question on the state of nature and the body, Agamben would criticize these themes as taken up under any of the various forms of the common/proper dialectic. To the extent that (Western) discourse on the state of nature and the body reflects this dialectic, it remains trapped within the back and forth endgame of identity/difference, general/particular, one/many and is thus doomed to situating things within inherently irreconcilable structures. Agamben overcomes the common/proper dialectic through *indifference*, which suspends (or becomes indifferent to) the dialectic and instead promotes *singularity*, or a thing’s relational state of belonging.⁵⁷⁰ In fine, Watkin argues that Agamben wants to emphasize a particular kind of singularity, namely *inessential commonality* over *haecceity-singularity*. While haecceity-singularity “names the particularity of the thing or what it shares with nothing else,” inessential commonality stresses what qualities a thing shares with other things.⁵⁷¹ With respect to the philosophy of signatures, this means that things would be situated within structures that emphasize a thing’s singularity, or relational state of belonging instead of a thing’s identity or difference, generality or particularity, genus or species, unity or divergence, potentiality or act. Thus, as we will see, Agamben’s *Homo Sacer* will trace the relation between sovereign power and bare life.

Agamben argues that the *paradigm* overcomes the pitfalls of the common/proper dialectic, which allows for the possibility of signatures which emphasize a thing’s singularity.

⁵⁶⁹ Watkin, 21 quoting Agamben, *Signature*, 66

⁵⁷⁰ Watkin, *Agamben and Indifference*, 66-8

⁵⁷¹ Watkin, *Agamben and Indifference*, 71

Drawing from philosophers Michel Foucault (1926-1984) and Thomas Kuhn (1922-1996), Agamben defines the paradigm as "...an example, a single case that by its repeatability acquires the capacity to model tacitly the behavior and research practices of scientists."⁵⁷² A paradigm is a term taken as "a singular case that in being isolated from its context [and] taken as exemplary...constitutes this isolation making intelligible a new set that it constitutes by revealing its own singularity."⁵⁷³ In highlighting singularity, a paradigm thus "implies the total abandonment of the particular-general couple as the model of logical inference. The rule" Watkin explains, "is not a generality pre-existing singular cases and applicable to them, nor is it something resulting from the exhaustive enumeration of specific cases. Instead, it is the exhibition alone of the paradigmatic cases that constitute a rule."⁵⁷⁴

Watkin echoes Agamben when he says that analogical paradigms are processes "by which the standing for all cases (identity) and being one case amongst many (difference) is suspended in a state of indistinction, indiscernibility or indifference."⁵⁷⁵ The paradigm thus rejects the Aristotelian genus/species division, and all other common/proper binaries for *reticulation*, a concept that Agamben borrows from philosopher Jean-Luc Nancy (1940-) to depict a situation "where a point stands in relation to all other points in every direction," or where things stand in analogical relation to one another.⁵⁷⁶ The paradigm, then, allows for a re-reading of signatures within an ontological scheme that is analogical rather than logical and which stresses singularity and resemblances rather than identities or differences. Finally, paradigms, or examples, are important because of their capacity to track power. They trace how power "organizes and controls, to the point that we can say that power is nothing other than this

⁵⁷² Watkin, *Agamben and Indifference*, 7, see also *Signature*, ch. 1

⁵⁷³ Watkin, *Agamben and Indifference*, 9

⁵⁷⁴ Watkin, *Agamben*, 9, see also *Signature*, 22

⁵⁷⁵ Watkin, *Agamben and Indifference*, 10

⁵⁷⁶ Watkin, *Agamben and Indifference*, 38

mode of organizing control, or rather, that sovereign power is determined by, in a complex way, the modalities of government that it is presumed to found.”⁵⁷⁷

With this understanding of paradigms, Agamben turns to writings on the state of nature to describe the features of certain paradigms, most notably the paradigm of sovereignty. (At the end of the chapter I give attention to an alternative paradigm). Agamben argues that “the hidden paradigm guiding every...definition of sovereignty...[is] the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence.”⁵⁷⁸ *Sovereignty* is “the principle that, joining law and violence, threatens them with indistinction.”⁵⁷⁹ The paradigm of sovereignty is represented by the ancient Greek philosophers known as the Sophists, including the Greek poets Hesiod (c. 750-650 BC) and Pindar (c. 522 – c. 443 BC) and the Greek statesman Solon (c. 638-c. 558).⁵⁸⁰ The Sophists operate with two principles in their state of nature doctrines, both of which are key for the legitimation of paradigms of sovereignty. The first is an opposition between nature (*physis*) and order (*nomos*). The natural world and the (civil) order are set in oppositional terms, and thus the fact that society is ordered implies that nature is inherently chaotic and disordered. The second principle is the “anteriority of nature with respect to law.”⁵⁸¹ This second principle is an outgrowth of the first. For Agamben, the opposition between nature and order, as well as the anteriority of nature to law, justifies the “coincidence of violence and law as constitutive of sovereignty.”⁵⁸² Indeed, sovereignty is essentially the confusion of violence (*Bia*) and justice (*Dike*), the tying together of the two into a knot, so as to resolve the contradictions inherent in Sophist understandings of

⁵⁷⁷ Watkin, *Agamben and Indifference*, 8

⁵⁷⁸ Agamben, *Homo Sacer*, 32

⁵⁷⁹ Agamben, *Homo Sacer*, 31

⁵⁸⁰ Agamben, *Homo Sacer*, Part 1, ch. 2

⁵⁸¹ Agamben, *Homo Sacer*, 34

⁵⁸² Agamben, *Homo Sacer*, 31

nature and order. “[T]his,” says Agamben, is the knot that [Pindar] bequeaths to Western political thought and that makes him, in a certain sense, the first great thinker of sovereignty.”⁵⁸³

According to Agamben, the paradigm of sovereignty, seen in the example of the Sophists’ reading of the state of nature, has become hegemonic in the modern world. This has become so especially because of figures like Thomas Hobbes. “The Sophistic polemic,” he says, “against *nomos* in favor of nature...can be considered the necessary premise of the opposition between the state of nature and the ‘commonwealth’, which Hobbes posits as the ground of his conception of sovereignty.”⁵⁸⁴ This paradigm is also in Carl Schmitt’s thought, thus “it will not seem surprising that Schmitt grounds his theory of the originary character of the ‘*nomos* of the earth’ precisely on Pindar’s fragment...”⁵⁸⁵ As with previous theorists of sovereignty, moderns such as Hobbes and Schmitt understand the state of nature, the space prior to and thus authoritative over the state, the law, and (civic) justice, as fundamentally characterized by violence and disorder. For them, the *nomos basileus* is the “zone that is excluded from law and that takes the shape of a ‘free and juridically empty space,’ circumscribing territorial orders within the framework of natural violence.”⁵⁸⁶

The State of Exception and the Biopolitical Body

More specifically, the paradigm of sovereignty has become hegemonic in the operations of state and is the internal principle of modern statecraft in our own post-WWII context. As such, it is central to the formation of the biopolitical body through the management of populations. Paradigms represent, among other things, the exteriority of a state, and Agamben explains that “exteriority...is truly the innermost center of the political system, and the political system lives

⁵⁸³ Agamben, *Homo Sacer*, 31

⁵⁸⁴ Agamben, *Homo Sacer*, 35

⁵⁸⁵ Agamben, *Homo Sacer*, 36

⁵⁸⁶ Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 36

off of it in the same way that the rule, according to Schmitt, lives off the exception.”⁵⁸⁷ In modern politics, conceptions of (geopolitical) exteriorities have become dominated by paradigms of sovereignty. As with previous thinkers of sovereignty, Agamben does not conceive of the state of nature as a primordial reality. It is an imaginary symbol, which represents the world beyond the borders of a particular political community. This representation serves a unique function with respect to state politics. The state of nature, and thus the paradigm, is the state’s fundamental internal principle, the one that predominates when the city’s preservation is at stake or its birth is at hand. Agamben explains:

Hobbes, after all was perfectly aware, as Strauss has underscored, that the state of nature did not necessarily have to be conceived as a real epoch, but rather could be understood as principle internal to the State revealed in the moment in which the State is considered ‘as if it were dissolved’ (*ut tanquam dissolute consideretur*).⁵⁸⁸

For Agamben, the doctrine of the state of nature is a political community’s representation of its self-understanding as well as its exterior surroundings. He sees it as fundamental to the constitution of the state and critical to its preservation. This doctrine indicates the true character of the state’s governmental logic and displaces the primacy of the social contract. As such, the state of nature is the “being-in-potentiality [*l’essere-in-potenza*] of the law” and the state. It is the law’s self-presupposition as “natural law” or natural condition.⁵⁸⁹ In modern politics, paradigms of sovereignty have overtaken discourse on the state of nature and the state’s exteriority, such that “the law of nature and the principle of the preservation of one’s of life – is truly the innermost center of the political system.”⁵⁹⁰ For Agamben, the Hobbesian principle has a powerful impact on the operations of state. “Far from being a prejudicial condition that is

⁵⁸⁷ Agambne, *Homo Sacer*, 36

⁵⁸⁸ Giorgio Agamben, *Homo Sacer*, 36

⁵⁸⁹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 35-6

⁵⁹⁰ Giorgio Agamben, *Homo Sacer*, 36

indifferent to the law of the city,” he says, “the Hobbesian state of nature is the exception and the threshold that constitutes and dwells within it.”⁵⁹¹

On Agamben’s account, the doctrine of the state of nature provides theoretical support for the sovereign’s decision or declaration on the “state of exception,” a political arrangement which is technically only the precondition for the formation of a cohesive (bio)political body. The task of statecraft begins neither with rational agents in the natural condition, nor does it culminate in the formation of a constitutional regime. Just the opposite, statecraft begins with the institution of a juridical structure called the “state of exception” predicated on the Hobbesian myth of the state of nature. A “*state of exception*” (*Ausnahmezustand*) signifies a paradigm of government whose distinctive mark is the suspension of the law and the production of a “sovereign sphere” where state power is exercised beyond the bounds of both human and religious laws as if in a state of nature.⁵⁹² Agamben explains, “The state of nature and the state of exception are nothing but two sides of a single topological process in which what was presupposed as external (the state of nature) now reappears...in the inside (as state of exception).”⁵⁹³ In the state of exception, nature and law, inside and outside, pass through one another. Philosopher Richard Ek notes the distinctiveness of Agamben’s thinking on the exception in relation to Carl Schmitt: “Schmitt’s understanding of the exception is related to a state of emergency in society that endangers the state...However, in Agamben’s exegesis, the notion of the exception moves away to a more original function...”⁵⁹⁴

⁵⁹¹ Agamben, *Homo Sacer*, 106

⁵⁹² See Agamben’s *Homo Sacer*, 75-86

⁵⁹³ Agamben, *Homo Sacer*, 37

⁵⁹⁴ Richard Ek, “Giorgio Agamben and the Spatialities of the Camp: An Introduction” in *Geografiska Annaler, Series B, Human Geography*, Vol. 88, No. 4 (2006), pp. 363-386. URL <http://www.jstor.org/stable/4621535>
Accessed 22-10-2015

For Agamben, the essential feature of the state of exception is the nullification of justice and various forms of a higher moral code. Thus in the state of exception, theories of justice take a second tier status as the state seeks to re-establish the conditions for the possibility of justice, i.e. as it fights for its preservation. Agamben uses the ancient Roman legal concept of *iustitium*, or “standstill” to get at this essential feature:

Upon learning of a situation that endangered the Republic, the Senate would issue a *senatus consultum ultimum* [final decree of the senate] by which it called upon the consuls...and in some cases the praetor and the tribunes of the people, and even, in extreme cases, all citizens, to take whatever measures they considered necessary for the salvation of the state...At the base of this *senatus consultum* was a decree declaring a *tumultus* (that is, an emergency situation in Rome resulting from a foreign war, insurrection, or civil war), which usually led to the proclamation of *iustitium*.⁵⁹⁵

In the state of exception, the state understands the current state of affairs such that its own preservation is at stake. It thus transitions from operating within constitutional and/or legal frameworks, i.e. according to the rule of law, to operating as if in a state of nature. The state of exception “is not a dictatorship...but a space devoid of law, a zone of anomie in which all legal determinations- and thus above all the very distinction between public and private-are deactivated.”⁵⁹⁶ In the state of exception, the administering of justice is placed on standstill while the state takes actions, which it deems necessary to save and reconstitute itself. State powers take exception to established laws and produce a “juridical void.” “[E]ven though [the state of exception] is not a state of nature,” Agamben says, “[it] presents itself as the anomie that results from the suspension of law.”⁵⁹⁷ No longer restricted by law, the sovereign powers of the state pour out onto sovereign spheres in an effort to (re)establish the political community.

⁵⁹⁵ Agamben, *State of Exception*, 41

⁵⁹⁶ Agamben, *State of Exception*, 50

⁵⁹⁷ Agamben, *State of Exception*, 51, brackets mine

The state of exception, then, is a dispensation in which the constitution is suspended, “an emptiness and standstill of law,” and yet one where the force of law remains intact.⁵⁹⁸ While exceptions occur during the normal rule of law, the state of exception is distinguished in that there is a movement from “a particular case...released from obligation to serve the law”⁵⁹⁹ to the exception constituting “the ultimate ground and very source of law.”⁶⁰⁰ Thus the normal becomes indistinguishable from the exception, and the entire political situation becomes a “zone of indistinction” between nature and law, and given the paradigm of sovereignty, between violence and justice. For example, even as the law is suspended, the military’s wartime powers extend into the civil sphere, calling “into question the very consistency of the public space; yet, conversely, the consistency of the private space is also immediately neutralized to the same degree.”⁶⁰¹ Also caught within this zone are human actions themselves. Within this dispensation, human action escapes legal comprehension. This is why events such as the *shoah*, although condemned, were legally unclassifiable and unpunishable. Those who act in this space neither execute, transgress, or create law, since the law itself has been neutralized. Through the state of exception, the sovereign “creates and guarantees the situation that the law needs for its own validity.”⁶⁰² The state of exception enables Agamben to reconceive totalitarianism, diverging from Arendt’s understanding of totalitarianism as a state in the image of an ideology to define it as “the establishment, by means of a state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system.”⁶⁰³

⁵⁹⁸ Agamben, *State of Exception*, 48

⁵⁹⁹ Agamben, *State of Exception*, 25

⁶⁰⁰ Agamben, *State of Exception*, 26

⁶⁰¹ Agamben, *State of Exception*, 49

⁶⁰² Agamben, *Homo Sacer*, 17

⁶⁰³ Agamben, *State of Exception*, 2

Having established the state of exception, sovereignty now comes forth in the form of *the ban*, which institutes a zone of indistinction between citizens of the political community and foreigners, between the people of the city and wolf-men that lurk at its borders. The ban is carried out through various forms of biopolitics, a term Agamben derives from French philosopher Michel Foucault (below). Indeed, Agamben argues that “*the production of a biopolitical body is the original activity of sovereign power*. In this sense, biopolitics is at least as old as the sovereign exception.”⁶⁰⁴ As conceived by Agamben, “[t]he ban is essentially the power of delivering something over to itself, which is to say, the power of maintaining itself in relation to something presupposed as nonrelational. What has been banned has been delivered over to its own separateness and, at the same time consigned to the mercy of the one [i.e. the state] who abandons it...”⁶⁰⁵ In other words, the ban nullifies a thing’s singularity and places it within identity and differentiating structures, which provide the conditions for the possibility of conceiving of a thing in a nonrelational sense.

Agamben highlights the significance of the ban and its nonrelational ontology with respect to the law: “The relation of the exception is a relation of ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold...”⁶⁰⁶ The ban, coincident with the state of exception, is made possible by letting the law withdraw from the exception and abandon it. Thus with the ban, which corresponds to the structure of the exception and reflects the logic of sovereignty, it becomes difficult if not impossible to “say whether the one who has been banned is outside or

⁶⁰⁴ Agamben, *Homo Sacer*, 6

⁶⁰⁵ Agamben, *Homo Sacer*, 110, bracekts mine

⁶⁰⁶ Agamben, *Homo Sacer*, 28

inside the juridical order.”⁶⁰⁷ In this way, the ban also allows for the possibility to write the state of nature onto geographical and institutional spaces. Sovereignty, or the sovereign ban, “thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically *sovereign violence*.”⁶⁰⁸

Sovereign Power as Biopolitics, Ideology and the Camp

Once a state of exception has been instituted and the ban has been established, various forms of the sovereign decision (re)constitute the political community. The state of exception is thus not born of necessity but produced. The sovereign decides what forms of life are worthy of living as well as those that do not deserve to live. Thus, the sovereign decision on life produces what Agamben interchangeably calls “*bare life*”, “naked life”, or “sacred life” (*homo sacer*). These phrases indicate speech about life which carries signatures that mark it as “life unworthy of being lived” or life that “*may be killed and yet not sacrificed*.”⁶⁰⁹ Life that is caught in the paradigm of sovereignty and banned in a state of exception is life that falls outside of the protection of the politico-theological establishment of a society. “Sovereign violence,” says Agamben, “is in truth founded not on a pact but on the exclusive inclusion of bare life in the state.”⁶¹⁰ Although this decision, although operative in modern politics, is as old as Western politics, reaching back to Aristotle (384-322 BC). It is reflected in dichotomies such as the divide between life (*zen*) and good life (*eu zen*), between the simple fact of living (*zoe*) and the form or way of living proper to an individual or group (*bios*), or between voice and language. “[W]estern politics,” says Agamben, “first constitutes itself through an exclusion (which is

⁶⁰⁷ Agamben, *Homo Sacer*, 28

⁶⁰⁸ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 35

⁶⁰⁹ Agamben, *Homo Sacer*, 8

⁶¹⁰ Agamben, *Homo Sacer*, 107

simultaneously an inclusion) of bare life...life presents itself as what is included by means of an exclusion[.]”⁶¹¹ These decisive acts of inclusive exclusion function as constitutive acts of the state, where the sovereign seeks to (re)establish the body politic.

Agamben’s account of the operations of sovereign power in accord with the ban is informed by French philosopher Michel Foucault’s (1926-1984) notion of ‘biopolitics.’ *Biopolitics* is the organization and discipline of individual identities and populations at large according to medical, psychological, economic, or other human scientific norms in an effort to rank, purify, strengthen, and maximize social forces. In *The Birth of Biopolitics* (2008), Foucault illustrates how, since the French Revolution (1789), there has been a shift not only in the locus of sovereignty from the monarch to the people, but also a shift in the nature of sovereign power, from ‘the power to take life’ to biopolitics. Foucault thus defines biopolitics as “the attempt, starting from the eighteenth century, to rationalize the problems posed to governmental practice by phenomena characteristic of a set of living beings forming a population: health, hygiene, birthrate, life expectancy, race...”⁶¹² Foucault offers a description of this process in *The History of Sexuality* (1990). Here, Foucault argues that power, since the eighteenth century, has become organized less around the law and more over the anatomical (the human body) and biological (the species or population) aspects of life.⁶¹³ This new formation of power, which he calls ‘*bio-power*,’ is concerned to discipline and regulate human life as such, and does so by disciplining individuals and populations in line with human scientific norms such as criminality, (ab)normality, race, sexuality, sex, delinquency, and other pathologies. Foucault uses the norm of “sex” as an example to explain the significance of all human scientific norms. Sex is not an “autonomous

⁶¹¹ Agamben, *Homo Sacer*, 7

⁶¹² Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France, 1978-1979* ed. by Michel Senellart (New York: Palgrave MacMillan, 2004), 317

⁶¹³ See Michel Foucault’s *The History of Sexuality: An Introduction Vol. 1* (New York: Vintage Books, 1990), 139

agency which secondarily produces manifold effects...over the entire length of its surface of contact with power. On the contrary, sex is the most speculative, most ideal, and most internal element in a deployment of sexuality organized by power in its grip on bodies and their materiality, their forces, energies, sensations, and pleasures.”⁶¹⁴ Such is the process of biopolitics.

For Foucault, biopolitics is problematic in so far as it compromises individuality. Biopolitical norms are not merely interpretations of the body, but also descriptions and prescriptions for the soul. As such, these norms make persons intelligible to themselves and to others and give people a fundamental sense of identity as a particular sexuality, race, class, etc. For Foucault, such norms implant in individuals and populations the “mirage” of a true identity, the illusion of an essential self. They justify force-fitting human beings into human scientific artificial molds. Again, Foucault uses the example of sex to illustrate his point about the disciplinary erosion of individuality according to biopolitical norms. “The Faustian pact,” he says, “whose temptation has been instilled in us by the deployment of sexuality, is now as follows: to exchange life in its entirety for sex itself, for the truth and the sovereignty of sex. Sex is worth dying for.”⁶¹⁵ To the extent that we embrace and internalize biopolitical norms such as sexuality, we are “fastened to the deployment of sexuality that has lifted up from deep within us a sort of mirage in which we think we see ourselves reflected – the dark shimmer of sex.”⁶¹⁶ In truth, these norms, which proclaim to reveal the underlying secret of all that we are, actually have no intrinsic laws or properties of their own. They are inventions of the human sciences, political technologies designed to subjugate and normalize individuals.

⁶¹⁴ Foucault, *The History of Sexuality*, 155

⁶¹⁵ Foucault, *The History of Sexuality*, 156

⁶¹⁶ Foucault, *The History of Sexuality*, 157

In addition to compromising individuality, biopolitics also has more direct political implications: it compromises the rule of law as well as the integrity of the modern “private” realm and also legitimates state-sponsored colonization. After biopolitical norms have been “scientifically” legitimated by experts, they are then distributed among populations via various social institutions such as families, schools, hospitals, religious institutions, the police or the army. Indeed, Foucault notes that “all the sciences, analyses, or practices employing the root ‘psycho-’ have their origin in this historical reversal of the procedures of individualization.”⁶¹⁷ Biopolitical norms are “means of access both to the life of the body and the life of a species.”⁶¹⁸ They ascribe value and utility to individuals and populations and act as factors of segregation and social hierarchization.⁶¹⁹ These norms compromise the rule of law, the integrity of the private realm, and support colonization to the extent that they are superimposed on the law. This superimposition provides justification for social authorities (doctors, for example) to quarantine, control, survey, and even experiment on people, distorting their constitutional and human rights in the process.⁶²⁰

Biopolitical norms create the social conditions for various campaigns to manage life toward securing the health of society. These include campaigns for social/public health, for “progeny, race, the future of the species and the vitality of the social body,” to protect society against “dangerous” elements.⁶²¹ When applied, these norms distort the rule of law, transforming the law from an ‘unbiased’ authority to one which discriminates according to the criteria set forth by these norms, since law is organized and instituted within a biopolitical regime. These biopolitical techniques never ‘cure’ persons, but “merely refer individuals from one disciplinary authority

⁶¹⁷ Foucault, *Discipline and Punish*, 193

⁶¹⁸ Foucault, *The History of Sexuality*, 146

⁶¹⁹ Foucault, *The History of Sexuality*, 141

⁶²⁰ See Foucault’s *Discipline and Punish*, 170-194

⁶²¹ Foucault, *The History of Sexuality*, 147

[prisons, hospitals, etc] to another...”⁶²² Foucault argues that the true purpose of such norms have a economic in nature. “The adjustment of the accumulation of men [sic] to that of capital,” says Foucault, “the joining of the growth of human groups to the expansion of productive forces and the differential allocation of profit, were made possible in part by the exercise of bio-power in its many forms and modes of application. The investment of the body, its valorization, and the distributive management of its forces were at the time indispensable.”⁶²³ Foucault, then, offers an account of a new social phenomenon called biopolitics, or the organization and discipline of populations according to norms generated in the human sciences. The underside of these norms is that they allow social authorities to act in ways that compromise individuality and violate the rule of law and the right to privacy.

While Agamben does not disagree with Foucault’s conception of biopolitics, his own study indicates the need to revive and reconstitute the problem of sovereignty in ways that Foucault did not. Agamben’s research focuses on what Foucault’s did not, namely “the exemplary places of modern biopolitics: the concentration camp and the structure of the great totalitarian states of the twentieth century.”⁶²⁴ One of the many effects of this is that Agamben sees the need to take seriously the idea of *sovereignty*, a concept Foucault, along with much of late twentieth century (economic) discourse, was at ease to set aside. As we have seen, Agamben links sovereignty to biopolitics. When biopolitics operate according to identity and differentiating structures, they are oriented toward the logic of sovereignty; a logic that begins to play out when the identity and differentiating structures enter into zones of indistinction. From the point of view of the sovereign, bare life is all that exists initially. Bodies (human?) have no

⁶²² Foucault, *Discipline and Punish*, 226

⁶²³ Foucault, *The History of Sexuality*, 141

⁶²⁴ Agambne, *Homo Sacer*, 4

rights, free will, or social contract. Through *biopolitics*, which Agamben defines as “the work of the science of the police,” the political body is formed.⁶²⁵ He elaborates on this definition in *Homo Sacer*, where he *links biopolitics to national socialist ideology*. “National Socialist biopolitics,” he says, “and along with it, a good part of modern politics even outside the Third Reich – cannot be grasped if it is not understood as necessarily implying the disappearance of the difference between the two terms: the *police* now becomes *politics*, and the care of life coincides with the fight against the enemy...It thus aims to fortify the health of the people as a whole and to eliminate influences that harm the biological growth of the nation.”⁶²⁶ Indeed, biopolitics is “the link that secretly governs the modern ideologies seemingly most distant from one another.”⁶²⁷

The sovereign ban is executed by way of a wide range of biopolitical strategies that all reduce populations to biopolitical classifications. In concrete cases, biopolitics takes root in legislation and policy in the form of “general and indeterminate clauses,”⁶²⁸ which seem to be either moralistic or fear-based: “good morals...proper initiative, important motive, public security, state of danger, case of necessity.” Agamben notes the significance of these clauses: they do not refer to a rule (i.e. the rule of law), but to a situation, which “rendered obsolete the illusion of a law which would *a priori* be able to regulate all cases and all situations...The judge, the civil servant, or whoever else has to reckon with such a notion no longer orients himself according to a rule of situation of fact.”⁶²⁹ Agamben notes that there is a shift in the meanings and uses of law: the law is no longer applied (e.g. decrease in trial by jury), but the biopolitical law of nature is now fully realized. Upon the execution of a biopolitical strategy within a state of

⁶²⁵ Agamben, *Homo Sacer*, 145

⁶²⁶ Agamben, *Homo Sacer*, 147

⁶²⁷ Agamben, *Homo Sacer*, 4

⁶²⁸ Agamben, *Homo Sacer*, 111

⁶²⁹ Agamben, *Homo Sacer*, 111

exception, social authorities ignore the rule of law and bind themselves “solely with [their] own community of race...”⁶³⁰ In Schmittian fashion, sovereignty emerges in the state of exception as the decision on the exception, that is, on when the law does and does not apply. Yet, different from Schmitt, the sovereign decision in our contemporary context rests not with the dictator, but with a wide range of actors across a number of institutions including police, education, medicine and religion. These actors, in accord with human scientific ideology, make decisions as to whether a life is worthy of living. For Agamben, the state of exception minimizes questions about the social contract and constitutional rights. Before the political body is formed, the state of exception shapes what he calls the “biopolitical body,” that is, it confines bare life away from ‘good’ life.

The overall effect of these biopolitically based decisions is that a “twofold” biopolitical body is produced (German/Jewish, White/Black). Individuals and entire populations run the risk of having their entire legal status erased, as in the case of those who, without rights, are now simply called “detainees.” As for citizenship, it “now does not simply identify a generic subjugation to royal authority or a determinate system of laws, nor does it simply embody...the new egalitarian principle; citizenship names the new status of life as origin and ground of sovereignty and, therefore, literally identifies...’the members of the sovereign.”⁶³¹ Those who are not citizens are subjected to a wide range of marginalizing geopolitical strategies, including gentrification, ghettoization, confinement, imprisonment, and finally, and most importantly for Agamben, the camp. While Foucault accented the prison and panopticon, Agamben argues sees “the camp” as the dominant paradigm for biopolitical governance in the modern world. The camp, rather than the city, is the new biopolitical paradigm of ‘the Modern.’ *The camp* is “the hidden matrix and

⁶³⁰ Agamben, *Homo Sacer*, 111, brackets mine

⁶³¹ Agamben, *Homo Sacer*, 129

nomos of the political space in which we are still living.”⁶³² It is “*the space that is opened when the state of exception begins to become the rule.*”⁶³³ Before Agamben, Foucault gave some attention to the camp, especially noting its supervisory and experimental advantages.⁶³⁴ His insights are of note in thinking about the camp:

The camp is the diagram of power that acts by means of general visibility. For a long time this model of the camp or at least its underlying principle was found in urban development, in the construction of working-class housing estates, hospitals, asylums, prisons, schools: the spatial ‘nesting’ of hierarchized surveillance. The principle was one of ‘embedding’ (*encastrement*). The camp was to the rather shameful art of surveillance what the dark room was to the great science of optics.⁶³⁵

Ek notes that “the camp has a colonial origin (created by the Spanish in Cuba and the English in South Africa at the end of the nineteenth century and the beginning of the twentieth century respectively...colonial war extended the State of Emergency to an entire civil population...”⁶³⁶

Ek highlights the significance of the camp as the culmination of the life-denying forces unleashed during the state of exception, noting the “connection between racism, colonialism, biopolitics and the camp. Modernity is a colonial modernity, and its histories and geographies have been made in the shadow of colonialism.”⁶³⁷ Among other things, this implies colonial models of governance, or those where “the camp was entrusted [to authorities] outside the rules of penal and prison law”⁶³⁸

Philosopher Anthony Downey also gives attention to the camp. Downey is particularly concerned about processes that the oppressed undergo “often in advance of their internment,

⁶³² Agamben, *Homo Sacer*, 166

⁶³³ Agamben, *Homo Sacer*, 169

⁶³⁴ Foucault, *Discipline and Punish*, 203

⁶³⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1995), 171-2

⁶³⁶ Ek, “Spatialities of the Camp”, 369

⁶³⁷ Ek, Spatialities of the Camp, 369, citing D. Gregory’s *The Colonial Present. Afghanistan, Palestine, Iraq* (Oxford: Blackwell, 2004)

⁶³⁸ See Giorgio Agamben’s “The Camp as Nomos” in *Violence, Identity and Self-Determination*, ed. by Hent de Vries and Samuel Weber (Stanford: Stanford University Press, 1997), 108.

forms of legal and political delegitimization and the suspension (if not denial) of their right to representation, be it legal, political, or otherwise.”⁶³⁹ Downey concludes that the camp in all its incarnations is the most insidious symbol of modernity, concomitant with the incremental repeal of an individual’s rights. “Placed beyond political and legal representation, [Agamben] argues that the subject of modernity increasingly inhabits a zone of indistinction within which their claims to justice and equality can be effectively suspended. And these spaces of modernity are identified in the proliferation of camps – in all their transient forms of permanence – across the modern world.”⁶⁴⁰ In the camps, one is “consigned to *condition inhumana* while awaiting the only possible outcome under such conditions: death.”⁶⁴¹ The camp, for Downey, is the most distinctive feature of modernity, and it is the “law of a new sovereign power – an unaccountable form of rule – re-emerging in modernity and made manifest in the architecture of genocide.”⁶⁴²

In sum, Agamben’s theory of the state of exception is one in which the doctrine of the state of nature, the state’s internal principle, comes to predominance as law recedes into the background. The constitution is suspended, the normal order placed on standstill, and a dispensation is commenced wherein it becomes difficult if not impossible to distinguish between the norm and the exception. On the one hand, the state of exception signals the ban, where certain individuals of populations are abandoned by the law to occupy the thresholds of the social order, spaces of indeterminacy and zones of indistinction. On the other, biopolitical process is initiated whereby individuals are disciplined, punished, confined, and may even be killed, according to any of a variety of human scientific norms. The purpose of biopolitics is to rank, purify, strengthen, and maximize social forces. The Third Reich is Agamben’s central case.

⁶³⁹ “Exemplary Subjects: Camps and the Politics of Representation” by Anthony Downey in *Giorgio Agamben: Legal political and philosophical perspectives* ed by Tom Frost (New York: Routledge, 2013), 120

⁶⁴⁰ Downey, “Exemplary Subjects,” 121, brackets mine

⁶⁴¹ Downey, “Exemplary Subjects,” 122

⁶⁴² Downey, “Exemplary Subjects,” 122

He argues that the state of exception, i.e. the “voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones.”⁶⁴³ As I will argued in the conclusion of this dissertation, it appears that the state of exception is dominant paradigm of government in contemporary politics, moving from a provisional measure to a more regular technique of government. In the U.S., this means the decline of the legal authority and role of judicial discretion and the rise of rigid, all-encompassing policies and practices.

Case Study: The U.S. State of Exception, the War on Drugs and Neoliberal Ideology

Agamben’s analysis is important for an African American political theology because it illuminates how the juridical system continues to partition off, manage, subjugate, constrain, regulate, frustrate and also produce the black body and black agency. These forces, which Agamben highlights, are the correlative social disciplines to West’s three anti-democratic dogmas - escalating authoritarianism, aggressive militarism, and free-market fundamentalism. Moreover, to the extent that these forms of sovereign power circulate in a global context, Agamben’s theory of the state of exception is also helpful for cases like Abu Ghraib, Guantanamo Bay, and Haiti, all of which I initially planned to include in my dissertation research.

A prime example of a contemporary state of exception is America’s ‘*War on Drugs*’. The four-decades long (1970s-present) biopolitical campaign against criminality has produced disastrous results for democracy and the rule of law. Policies such as “truth-in-sentencing” as well as prosecutorial pressure for guilty pleas place the established institutions of justice on standstill, and the military’s wartime powers have been extended predominantly into the poor

⁶⁴³ Agamben, *State of Exception*, 2

black and Latino civic life. On the ground, this means the creation of agencies like the *U.S. Border Patrol*, the *El Paso Intelligence Center*, or from another angle, the issuing of house arrest ankle monitors for “delinquents.” Today, sovereignty resides with the police, who carry out the biopolitical vocation with religious-like devotion. In the wake of police tactics, we have witnessed many deaths: Eric Garner, Sandra Bland, Tamir Rice, Freddie Gray and other of a variety of colors and character types. In 2014, the Obama administration unveiled a new, apparently more humane drug policy, one whose task was is not to punish criminals, but to “break the cycle of addiction, arrest and incarceration.”⁶⁴⁴ However, a biopolitical analysis of this new approach finds that bare life has simply been taken up anew under a campaign of social medicine and thus exhibits features similar to the War on Drugs: the rule of law is compromised by the intervention of psychiatric and medical professionals “at every level of the justice system” as they attempt to “link the criminal justice system with the substance abuse system.”⁶⁴⁵ The new policy claims to be staunchly against incarceration, but it remains the case that the biopolitical production, management and control of bare life still occurs.

The war on Drugs, along with various techniques of authoritarian governance over black bodies, is legitimated by the current mode of liberal economic discourse. Known by a variety of names (*neoliberalism*, libertarianism, New Wilsonianism, liberal internationalism and neo-classical economics), neoliberal ideology dominates the North American cultural landscape. The structure of this ideology has been shaped significantly by thinkers such as Milton Friedman (1912-2006), Paul A. Samuelson (1915-2009) and AW Phillips (1914-1975). However, philosopher Friedrich August von Hayek (1899-1992) has made perhaps the most distinctive

⁶⁴⁴ “A Drug Policy for the 21st Century,” URL <https://www.whitehouse.gov/ondcp/drugpolicyreform> Accessed 22-9-15.

⁶⁴⁵ See the video “Advocates for Action: Pam Rodriguez and Melody Heaps” on “A Drug Policy for the 21st Century”

impact in terms of signatures on human beings, when he argues that entrepreneurial individualism is an evolved way of life of any form of collective or “social” morality. We find this in his *The Fatal Conceit: The Errors of Socialism* (1988). Here, he explains that the current spontaneous market-generated order of things reflects a (Western) culture at the forefront of (cultural, not biological) evolution. In this context, the mark of an evolved human being is ownership of private property, the capacity to trade freely, and the possession of morals that reflect such an evolved state, i.e. entrepreneurial individualism. For Hayek, private property and entrepreneurial individualism function as a signature, placing human beings in ‘identity and differentiating’ structures of classification:

...[O]nly abstract rules of property – i.e. rules of law – guarantee freedom. When Adam Ferguson summed up such teaching by defining the savage as man who did not yet know property, and when Adam Smith remarked that ‘nobody ever saw one animal by its gestures or natural cries signify to another, this is mine, that is yours’, they expressed what, in spite of recurrent revolts by rapacious or hungry bands, had for practically two millennia been the view of the educated. As Ferguson put it, ‘It must appear very evident, that property is a matter of progress.’⁶⁴⁶

In Hayek’s narrative, cultural evolution moves away from collective and cooperative ways of life to an order marked by differentiation, individualization, increased wealth and great expansion. Again, this culturally evolved context requires human conduct to evolve into what has come to be called “entrepreneurial individualism”⁶⁴⁷: the evolved exhibit “disciplined work, responsibility, risk-taking, saving, honesty, the honouring of promises, as well as the difficulties of curbing by general rules one’s natural reactions of hostility to strangers and solidarity with those who are like oneself...”⁶⁴⁸ Unfortunately, there are those who are less evolved, primitive even, and thus cannot transcend their animal status. They remain bound to autocratic and slavish

⁶⁴⁶ F.A. Hayek, *The Fatal Conceit*, 35

⁶⁴⁷ See “Producing Neoliberal Subjects: The Case of Koc University” by Gokce Gunel in *Berkely Journal Of Sociology* Vol. 53. changing urban spaces (2009), pp4-25. Stable URL: <http://www.jstor.org/stable/41035639>
Accessed: 28-01-2016 11:38

⁶⁴⁸ F.A. Hayek, *The Fatal Conceit*, 64-5

collectivities, groups of thieving bands and nostalgic cooperatives. However, this “socialist” morality “serves to steer the cooperation of the members of the troop, a cooperation that was, necessarily, a narrowly circumscribed interaction of fellows known to and trusted by one another.”⁶⁴⁹ Hayek admonishes socialist moralists otherwise: “continued obedience to the command to treat all men as neighbors would have prevented the growth to an extended order. For those now living within the extended order gain *not* from treating one another as neighbors, and by applying, in their interactions, rules of the extended order – such as those of several property and contract – instead of the rules of solidarity and altruism.”⁶⁵⁰

Neoliberal anthropology sits within a larger metaphysical scheme, namely the all-encompassing market, whose sovereign laws of supply and demand determine the stage and character of things, including (among other things) firms, products, wage rates and inflation rates. Neoclassical thinkers interpret economics as an objective science framed within positivist rules of discursive formation. Milton Freidman provides this positivist metaphysical support for neoliberal economics, most decidedly his 1966 article: “The Methodology of Positive Economics”, where he argues that:

Positive economics is in principle independent of any particular ethical position or normative judgments. As Keynes says, it deals with "what is," not with "what ought to be." Its task is to provide a system of generalizations that can be used to make correct predictions about the consequences of any change in circumstances. Its performance is to be judged by the precision, scope, and conformity with experience of the predictions it yields. In short, positive economics is, or can be, an “objective” science, in precisely the same sense as any of the physical sciences.⁶⁵¹

For Freidman, the objectivity of positivist economic science finds support in an analysis of supply and demand as the two most significant elements affecting the relative price of products

⁶⁴⁹ F.A. Hayek, *The Fatal Conceit: The Errors of Socialism* (Chicago: University of Chicago Press, 1988), 11

⁶⁵⁰ F.A. Hayek, *The Fatal Conceit*, 13

⁶⁵¹ Freidman, “The Methodology of Positive Economics” in *Essays In Positive Economics* (Chicago: Univ. of Chicago Press, 1966), pp. 3-16, 30-43, 4, <http://www.sfu.ca/~dandolfa/friedman-1966.pdf>, Accessed 1/27/16.

and/or factors of production. He uses business firms as an example, explaining that if one analyzes the movements of supply and demand, and the conditions which underlie them, one may attain a high level of predictive success concerning the health and/or growth potential of a firm. Just as Hayek theorized two types of morals framed within identity and differentiating structures, so Friedman argues that the market's objective laws of supply and demand give rise to two "ideal types" of firms. They are "atomistically competitive firms, grouped into industries, and monopolistic firms."⁶⁵² As Friedman explains each type, we see that these ideal types function as what Agamben called "identity-difference signatures:"

A firm is competitive if the demand curve for its output is infinitely elastic with respect to its own price for some price and all outputs, given the prices charged by all other firms; it belongs to an "industry" defined as a group of firms producing a single "product." A "product" is defined as a collection of units that are perfect substitutes to purchasers. So the elasticity of demand for the output of one firm with respect to the price of another firm in the same industry is infinite for some price and some outputs. A firm is monopolistic if the demand curve for its output is not infinitely elastic at some price for all outputs. If it is a monopolist, the firm is the industry.⁶⁵³

Here, Friedman provides the criteria by which business firms might be ordered according to a "natural" hierarchy. Those firms that compete with other firms to produce the same product are competitive, but only imperfectly so, while firms that have overtaken and become the industry are monopolistic, i.e. perfectly competitive. Such a model cannot but encourage the proliferation of monopolistically-oriented firms, managers and workers. The thinking of Hayek and Friedman are examples of the ways in which positive economists conceive of the natural order of things within the common/proper dialectic, that is, in way that place them within identity and differentiating structures.

⁶⁵² Friedman, "Methodology", 35

⁶⁵³ Friedman, "Methodology", 36

In the context of the contemporary North American state of exception, i.e. the War on Drugs, neoliberal ideology operates to justify the operation of biopolitics and thanatopolitics on black flesh. Although black and brown bodies are pushed into ghettos and poor schools, policed, unlawfully arrested and indefinitely detained, North American culture ignores or accepts it because blacks fall within the signature of Hayek's mythical primitives. According to Hayek's analysis, black cries of protest amount to primitive tribal cries whose meaning is fragmented in the market, calls to unifying love reflect the hollow hopes of a bygone era, and social organizing and social movements pose a direct threat to individual freedom. Agamben (following Arendt and Schmitt) argues that Hobbes's state of nature doctrine has become determinate in the contemporary state of exception. However, it is possible that Hayek's doctrine of nature circulates alongside Hobbes's without much friction because they both operate with paradigms of sovereignty. Like Hobbes, Hayek theorizes an opposition between law and nature and also holds the thesis of the anteriority of nature with respect to law. In Hayek's account, the spontaneous market order existed before the law, and too much law can only impede the market's evolutionary patterns. Hayek is a critic of sovereignty. Yet the paradigm of sovereignty still circulates within his theory such that in exceptional cases it legitimates the exercise of sovereign power against "socialists" and other less evolved groups in an effort to preserve the order of things. As Hayek says, "[g]overnments strong enough to protect individuals against the violence of their fellows make possible the evolution of an increasingly complex order of spontaneous and voluntary cooperation."⁶⁵⁴ In the state of exception, sovereign power comes forth in all its vengeance.

⁶⁵⁴ Hayek, *The Fatal Conceit*, 32, brackets mine

A New Paradigm

We have seen how the paradigm of sovereignty - *physis* opposed to *nomos* and the anteriority of nature with respect to law – links justice with violence and blurs them to the point of indistinction. Agamben constitutes a new paradigm as an alternative to the paradigms of sovereignty by turning to Plato’s *Gorgias* (~380) and *The Laws*. These demonstrate how Plato “dismantle[s] the Sophistic construction of this opposition [between nature and order] as well as the thesis of the anteriority of nature with respect to law.” For Agamben, Plato offers an alternative paradigm to Pindar and the Sophists’ paradigm of sovereignty, first, by affirming the idea of a human soul in the state of nature. In his words, Plato dismantles the paradigm of sovereignty “both by affirming the originarity of the soul and of ‘all that belongs to what is a soul’ (intellect, *techne*, and *nomos*) with respect to bodies and the elements ‘that we erroneously say are in accordance with nature.’”⁶⁵⁵ For Plato, the originarity of the soul implies that even in the state of nature, before the rise of civilization, the possibility exists of a ‘law’ in harmony with nature rather than opposed to it, a ‘natural law’ of sorts. Plato’s paradigm also neutralizes the paradigm of sovereignty with the notion of the nonviolent character of law, a feature derived from the first. Agamben explains that Plato’s paradigm emphasizes “not law’s sovereignty over nature but, on the contrary, its ‘natural,’ which is to say nonviolent, character...in Plato, the ‘law of nature’ is thus born to undermine the Sophistic opposition of *physis* and *nomos* and to exclude the sovereign confusion of violence and law...”⁶⁵⁶ These two features – an original human soul not completely determined by nature and the nonviolent character of the ‘natural law’ – constitute paradigms that effectively dismantle the paradigm of sovereignty.

⁶⁵⁵ Agamben, *Homo Sacer*, 34

⁶⁵⁶ Agamben, *Homo Sacer*, 35

With respect to the Western canonical discourse on sovereignty, Agamben's criticism of the paradigm of sovereignty means that although certain theorists may have been critics of sovereignty, they may still be implicated as subscribing to a paradigm of sovereignty. More clearly, figures such as Hobbes and Rousseau stand in this tradition. For all of the differences in their doctrines of nature, both imagine the "natural", pre-political human as without a soul and without a link to any kind of transcendent moral order. Thus each of these thinkers eventually blurs justice with violence to the point of indistinction. Thinkers such as John Locke and Immanuel Kant present the analyst with a more significant challenge because it is possible that they might be critics of sovereignty, yet still perpetuate the paradigm. This is certainly the case with John Locke, a thinker who, though kind enough to grant souls and thus political freedom to the industrious, denied such capacities to slaves. In this light, Locke constructs a paradigm of sovereignty that reflects a categorical distinction between slaves and citizens of the political community. Our vision of Locke the revolutionary, then, is turned on its head, for in exceptional cases, perhaps against unruly slaves, Locke would permit the state to mix justice with violence, even to the point of that their distinction is blurred. Similarly, Kant is a strong critic of sovereignty, but his discourse fails to call into question the paradigm of sovereignty. Kant barely acknowledges the existence of the state of nature because it is a space devoid of reason. Only reason can deliver humans from their confused moral sentiment, and Kant justifies more coercive measures for peace if reason cannot accomplish this task. His recommendation of a standing army conceals his doctrine of the exception to far less a degree than Locke. While these latter theorists acknowledge an original human soul not completely determined by nature and the nonviolent character of the 'natural law', they don't attribute such feature to all human beings.

This means that paradigms which seek to criticize sovereignty must wrestle with the question of universalism and/or universal egalitarianism.

Philosopher Richard Ek discusses the relationship of Agamben's theory of paradigms to (post-colonial) geopolitics.⁶⁵⁷ Ek follows critical geopolitical theorists O' Tuathail (1962-) and John A. Agnew (1949) in his understanding of geopolitics as "a discursive practice by which intellectuals of statecraft 'spatialize' international politics in such a way as to represent it as 'world' characterized by particular types of places, peoples and dramas."⁶⁵⁸ Like Agamben's study of notions such as exteriority and the state of nature, Ek understands critical geopolitics as the study "of the spatialization of international politics by core powers and hegemonic states." It engages the historical and contemporary politics of writing global space. For Ek, then, critical geopolitics is concerned with the discursive formations which conceptualize spaces (such as the state of nature). "[T]he discursive writing of global political space," says Ek, "the production of geopolitical imaginations, the interpretation of geopolitical events and the implemented geopolitics based on these writings/imaginings/interpretations ...are finally conducted and initiated by political agents, as 'practical statecraft.'"⁶⁵⁹ Ek concludes that such practices are thus open to critical interrogation and transformation. Critical paradigms, then, not only have philosophical and theoretical implications, but also implications for both geopolitical discursive formations and for concrete geopolitics. An African American political theology must take seriously the geopolitical implications of paradigmatic discourse, for such discourse frames the conditions for state action in both international relations and the state of exception.

⁶⁵⁷ Richard Ek, "Giorgio Agamben and the Spatialities of the Camp: An Introduction" in *Geografiska Annaler, Series B, Human Geography*, Vol. 88, No. 4 (2006), pp. 363-386. URL <http://www.jstor.org/stable/4621535>
Accessed 22-10-2015

⁶⁵⁸ Ek, "Spatialities of the Camp," 373

⁶⁵⁹ Ek, "Spatialities of the Camp," 374

Conclusion

For Agamben, the problem of sovereignty has been displaced in our post-WWII context. In its place, the state of exception, and more specifically the paradigm of sovereignty, has become the central problem for the state. Unbeknownst to its own theorizations, the liberal state frequently takes exception to its established laws to exercise the sovereign power of life and death over those it deems bare life, i.e. life not worthy to live. In this chapter, we observed how Agamben's concept of the state of exception explained much about the U.S. War on Drugs and the problem of mass incarceration. We saw how the paradigms of sovereignty, at work in both Thomas Hobbes's and Friedrich Hayek's doctrines of nature and the body, operated to justify the exercise of sovereign power underneath our contemporary neo-liberal culture. Indeed, the paradigm of sovereignty operates in a number of liberal thinkers, even critics of sovereignty such as John Locke and Immanuel Kant. Agamben's strategy is to constitute new paradigms, ones that dismantle the paradigm of sovereignty. They do so by acknowledging an original human soul not completely determined by nature as well as harmony between law and nature such that the nonviolent character of law is communicated. We also saw how even Agamben's prime example of an alternative paradigm – from the writings of Plato – was also insufficient for an African American political theology to the extent that Plato did not attribute souls in egalitarian fashion. We also saw how Agamben's theory of paradigms has implications for geopolitics, or the conceptualization of spaces. It means, at the very least, that we must reconsider our geopolitical discursive formations as well as our concrete geopolitics in light of our paradigmatic analysis.

Conclusion

This dissertation is a critical discourse analysis of sovereignty (i.e. supremacy) in canonical Western political theory. It became my topic of study after its theorization in the work of Giorgio Agamben. His analyses of the logic of sovereignty at work in Western biopolitics, most recently as the state of exception, made sovereignty a priority for me because it showed that sovereignty was a controlling concept in state acts that had disastrous implications for the world's poor.⁶⁶⁰ This dissertation is a clarifying dissertation. I bracketed my own claims to get clear on the contours of the discourse. While theories and practices of sovereignty in its various iterations are likely as old as human interaction, sovereignty rose to prominence as a political symbol in the West in early modern figures like Jean Bodin. He looked on the history of the world's cultures and derived five features of sovereignty - creating the most important magistrates and defining the office of each one, proclaiming and annulling laws, declaring war and peace, receiving final appeal from all magistrates, and the power of life and death when the law itself leaves no room for extenuation or grace.⁶⁶¹ Bodin placed sovereignty in the monarch, but sovereignty has since traveled to other political actors. After a moment with Hobbes's monarch, it traveled to Rousseau's nation and then to Hegel's rational spirit. In Schmitt, sovereignty was wrested back into the possession the dictator, i.e. of a single physical body reminiscent of the absolute monarch. Today, sovereignty has freed itself yet again and takes ideological form. Yet sovereignty's reign of terror has not been without resistance. In Locke's people, Kant's reason, Arendt's authentic politics, and Agamben's paradigms, sovereignty finds its limits, and even a counterbalancing force of freedom.

⁶⁶⁰ See *Homo Sacer* (1998) and *State of Exception* (2005)

⁶⁶¹ Bodin, *Method for the Easy Comprehension of History* trans. by Beatrice Reynolds (New York: Columbia University Press, 1945), 172-3

The discourse on sovereignty not only exhibits variation with respect to the locus of sovereignty, but also with respect to its legitimacy. Not all of theorists of sovereignty are friends of sovereignty. A distinction can be made in the discourse between its champions and critics. In the wake of the failings of the liberal state, sovereignty's champions argue for the supremacy of a unitary political actor in relation to individual and associational rights. The authority and interests of the sovereign trump all other claims. Thus Jean Bodin theorized an absolute monarch against a defiant Huguenot faction, Thomas Hobbes a sovereign against those (Anglicans) wanting too much authority and those (Puritans) wanting too little. Other champions of sovereignty include Jean-Jacques Rousseau, whose general will trumps individual right, G.W.F. Hegel, whose subject may never attain a right that transcends the state's right, and Carl Schmitt, whose sovereign dictator decides when the law does and does not apply, and whose sovereign ideology determines when one is a friend and when one is an enemy of the state. If there are sovereignty's champions, there are its critics. Sovereignty's critics write in support of a decentralized or "separated" political actor and the rule of law. Sovereignty's critics include John Locke, Hannah Arendt, and Giorgio Agamben, all of whom locate the heart of politics in popular politics, and Immanuel Kant, who, because he distrusted all humans, split sovereignty between the people, the monarch and reason's rule over history. Beyond this general distinction, others may be made. For example, Bodin and Hobbes are both absolute monarchialists, but diverge on the terms of its legitimacy. Again, much of Agamben's thinking derives in part from Hannah Arendt, yet he displays significantly less faith in human rights and the rule of law than she. These and other distinctions are helpful, and do not contradict the general distinction between champions and critics, but only give it further support.

Although sovereignty is most readily taken up as a political scientific term in our current context, this study finds that the doctrine of sovereignty cannot be confined to discourse about the state's most appropriate form of government. The roots of sovereignty reach beyond government to include discourse on the political body and its exemplar, the state of nature and the body. These three doctrines give support to and justify sovereignty. The state of nature is a figure of speech, a primordial myth that has been taken literally, and the political body is nature's mimetically derived political symbol. Thinking on the state of nature thus conditions thinking on the political body, which makes the state of nature *the* central theme among the three for how we think about sovereignty. John Locke imagined the state of nature not as a Hobbesian war of all against all, but an established society simply seeking more security. Thus the authority of the political body faded under the strength of inalienable rights. Although Rousseau's narrative gives a twist to this relation, the general pattern remains the same.

In his account, the state of nature devolves into corruption-prone civil society. He thus endows the political body with sovereignty to free civil society from its own evils. Kant also appears an enigma to the pattern, for his pessimistic view of nature doesn't produce a strong political body. However, the enigma is solved when we understand that Kant's pessimistic view of nature is offset by his optimism that reason itself would push history beyond its human limits. Hegel also dreads nature, but it is also always already caught up in the dialectical unfolding of the spirit. Thus Hegel imagines a sovereign nation guided by a monarchical head, one able to oversee the consistent cultivation of a people and to direct their energies towards war efforts. For Schmitt, the bloody, decisive battle that is history requires a sovereign dictator.

Discourse analysis on sovereignty reveals a story. It is the story of sovereignty and the loss of "the political", or civil society, in modern political thought, culminating in the perpetual

state of exception. Although Carl Schmitt made the most definitive contribution to the concept of the political in this dissertation, I find theologian Mark Lewis Taylor's conception helpful. Taylor explains that the political is "a certain mode of organizing the human practices that structure social interaction and...collective action in history."⁶⁶² It refers not to government practices or solely to politics, but "a mode of being affected by our socially and historically mediated ontological constitution." Its primary mark is agonistic tension. The political, then, refers to any social or cultural practices that give rise to such tension. It "is inherent to every human society and...determines our very ontological condition."⁶⁶³

This dissertation described the dynamics inherent in modernist theories of sovereignty, which over time and through a series of rational moves, have progressively eroded the centrality of the political. In early modern theories of sovereignty (Bodin, Hobbes, Locke, Rousseau), the political was embedded logically in the body politic. With Kant's rational empiricism (itself informed by Hume's radical empiricism) and the abandonment of traditional metaphysics for transcendental thinking, theories of sovereignty traveled from their metaphysical basis in early modern thinkers to the reason of state. Thus, in comparison with early modern thinkers, Kant and Hegel give little attention to a philosophy of nature and do not envision a political body based on an imaginary social contract. With Hegel, the reason of state becomes totalized. With this epistemological shift, the political force of early modern theory, along with its notion of the political body, recedes into background as bureaucracy, management, and statecraft become the primary locus of the political.

⁶⁶² Mark Lewis Taylor, *The Theological and the Political: On the Weight of the World*, 5

⁶⁶³ Taylor, *The Theological and the Political*, 5-6

In the wake of early 20th century crises across the span of Western culture, the reason of state abandoned itself to the state of exception, marked by the voluntary creation of a permanent state of emergency and the suspension of *habeas corpus* for certain populations. This transition, from constitutional regimes to the state of exception, can be partly traced to the thinking of German jurist Carl Schmitt. Although Schmitt correctly attempted to recover the concept the political, his strategy proved to be an overcorrection as his particular conception was totalizing, laying claim to each individual wholly. As a result, the political was not only recovered, but also (re)construed such that all mediatory strategies were rendered ineffective. Now the decisive force of a dictatorial will and more centrally, the state of exception, become “necessary” strategies.

On the heels of Schmitt, but far more concerned to protect certain features of liberalism, Hannah Arendt also attempted to recover the political. In contrast to Schmitt, her conception was authoritative, but not totalizing. It thus lays claim to individuals on behalf of the whole. For Arendt, the political marks a moment not of extreme cosmological conflict, but of a situation where the context which makes possible the entire reality of the individual’s actions becomes defined more by agonism than accord. Arendt was careful to emphasize that the political was not absolutely determinate, and that our (impartial) collective narratives enable us to transcend the boundaries of our various sects, associations and tribes. She also argued that the human condition itself required authentic participatory democratic politics. Looking forward, an African American political theology must come to terms with the concept of the political. Arendt is clue here, as her conception – authoritative yet not totalizing, and oriented toward democratic politics rather than absolutism – seeks to balance the reality of political conflict with the conviction that such conflict does not capture the entirety of human existence or potential.

This dissertation used the method of critical discourse analysis. This allowed me to observe not only how sovereignty itself has been theorized, but also how the discourse on sovereignty operates as a socio-cultural practice and constitutive feature of a now-globalized Western culture. Discourse on sovereignty is a way of speaking that doesn't simply reflect or represent things 'out there', but assists in their construction. Discourse is cognitively processed by people. Its thematic structures communicate a distinctive message. It participates in relations of domination and oppression or in surrounding dynamics of power, knowledge and ideology. In other words, the discourse on sovereignty is not simply abstract academic theory. It also shapes the institutions and practices of the state, as well as certain cultural spaces and attitudes. The discourse on sovereignty thus matters for our life together. This dissertation finds that Hobbes's state of nature doctrine has become hegemonic in the discourse on sovereignty and that his doctrines of the state of nature and the body politic have problematic enduring cultural-historical effects, especially for African Americans and the world's poor. While to Hobbes's credit he theorized the natural condition as an egalitarian condition, he still argued that human interaction would decline into a condition of war without the strong hand of an absolutist ruler. For Arendt, Hobbes's state of nature doctrine is the source of power politics, i.e. of the endless accumulation of capital and power. In turn, power politics becomes the root of racism, nationalism and a whole host of venomous ideologies. By contrast, Hobbes was a resource for Schmitt, who admired his vision of a natural war of all against all so much that, beyond Hobbes, Schmitt makes war internal to the body politic.

Critical discourse analysis does not just show that Hobbes's state of nature doctrine has become hegemonic in the discourse on sovereignty, but also that it stands as a key paradigm of sovereignty. According to Agamben, the institution of the state of exception in a number of

Western states in the early twentieth century including Britain, France, Italy, and the U.S. has displaced the question of sovereignty as the central question of statecraft. In its place, the question of the paradigm of government has taken center stage, and in the late twentieth and early twentieth century, the paradigm of sovereignty has become dominant. When Agamben says that Hobbes's state of nature doctrine is a paradigm, this means that he rejects all discourse on nature and the body trapped within the "common/proper dialectic." Philosopher Benson Saler notes that the problem with this kind of discourse is that its tools for generalizing, comparing and ordering things – for example, "identity and difference," "universal and particular," "organic and inorganic," "genus and species" – is so determined to find the universal in particular things that it translates similarities between things into identities and so eclipses differences.⁶⁶⁴

Thus paradigmatic readings of nature and the body are indifferent to the common/proper dialectic and instead ask how these doctrines function as guides on matters of controlling, organizing, and exercising power. Paradigms of sovereignty, readily represented in Hobbes's state of nature doctrine, but which frame every definition of sovereignty, have two marks: a) an opposition between law and nature and b) the anteriority of nature with respect to law.⁶⁶⁵

Paradigms of sovereignty unite law with violence to such an extent that the distinction between the two becomes blurred. Today, such paradigms are hegemonic and this is important because they orient (state) actions in the state of exception and its final measure of right action.

To conclude, we sit, then, in dark times. Liberalism - the ethos of discussion, debate, compromise and exchange – wanes even as the political rises. In the U.S., enemies of various sets face off, sometimes in the most extreme forms of conflict. "Black lives matters" stands off

⁶⁶⁴ Benson Saler, "Comparison, Suggestions for Improving the Inevitable", *Numen*, Vol. 48, No. 3 (2001), pp. 267-275, URL: <http://www.jstor.org/stable/3270607> Accessed: 26-12-2015 14:23, brackets mine

⁶⁶⁵ Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998), 34

against “Blue lives matters.” Sexually normalized people balk at those who resist the norm. Open carry advocates unsettle the deep sensibilities of pacifists and nonviolent activists. An insecure patriarchal culture wages war on women. Yet, it remains to be seen whether the political will be simply authoritative or totalizing. Again, an African American political theology takes the former position as clue. Even as the political re-emerges, the state of exception has become the rule. The constitution has been suspended for groups such as African Americans, Hispanics, Sikhs and Muslims. These groups are treated so poorly by the state that it is hard to determine whether they sit within or outside the political community. Meanwhile, “the camp” has emerged in various forms: mass incarceration, Abu Ghraib and Guantanamo Bay to name a few. All of this is justified by a neoliberal ideology, which construes freedom not as a natural attribute of all human beings, but as the result of a selective process of cultural evolution. This same ideology erroneously opposes “freedom and property” to neighborly love and collective cooperation. Finally, even as the political threatens to become totalizing and the camp emerges, the paradigm of sovereignty has become hegemonic. Now, in the state of exception, justice and law have become fused with violence to the point of indistinction. Thus black and brown bodies are pushed into ghettos and broken schools, policed, unlawfully arrested and indefinitely detained, all in the name of the preservation of justice.

In such times, it is helpful to remember that political theologians bear a great responsibility for the history of effects and consequences of sovereignty as the ideology of totality and power in the twenty-first century. Sovereignty endures even today in the state of exception, which frames our current global political context. If political theologians provide theological interpretations of the source, meaning and purposes of political society, then the challenge this dissertation presents for future constructive work is to construe the political when

the state of exception seems perpetual in the 21st century. In this sense, the dissertation is a prolegomena to an African American political theology in the state of exception, where the henotheism of market forces reigns supreme: free-market fundamentalism, escalating authoritarianism, and aggressive militarism. How might one think about African American Political Theology where we seem caught between the rock of Carl Schmitt's henotheistic faith in the national community as sovereign and the hard place of Hannah Arendt's polytheistic faith in plurality and difference? This means that we need a new paradigm. An African American political theology seeks doctrines of nature and the body that are indifferent to the common/proper dialectic. These doctrines must also promote the originarity of the human soul, one not completely determined by nature, as well as the nonviolent character of the 'natural', that is, pre-civil, law. These features displace the paradigm of sovereignty. Moreover, we also need the appropriate form of faith-filled democratic politics. These politics would be popular, participatory, oriented toward consistent discussion with those who have views unlike our own, and prone to social movements and other forms of collective democratic action, even with and on behalf of those with pervasive dissimilarities.

Finally, an African American political theology must revisit perhaps the most pressing, haunting and vexing question of all, that of the sovereignty of God. In light of the history of effects of the concept of sovereignty, this question has become more central for one rooted in the black church and mainline Christian traditions. This dissertation finds claims regarding the sovereignty of God to be questionable in light of the fact that the history of sovereignty's effects on the world's poor appears to be categorically at odds with biblically based Christian claims about God's "preferential option for the poor." Indeed, the same sovereignty under which Christ was crucified was posited by Bodin as the supreme power of the modern world, and just as the

sovereignty of old unleashed unflinching brutality on the forsaken Christ, so the modern sovereigns pour out violence on the flesh of the disinherited and “wretched of the earth.” Indeed, in the concept of sovereignty, the cross and the lynching tree converge. This raises the question as to whether the phrase “sovereignty of God” commits a categorical error. That is, it raises the question as to whether the terms fit together or are inherently opposed, that is, sovereignty and God. This means that an African American political theology must give attention to questions about God’s transcendence, immanence, about divine providence and divine impassibility, about immutability and a host of other concerns surrounding the nature and attributes of God. At the very least, this dissertation finds that sovereignty is at root a grotesque symbol, one filled with tension and ambiguity. It can mean power or the lack thereof, freedom or enslavement, life or death. For now, it is sufficient to say that sovereignty’s career as a political symbol is evidence enough of its unsuitability for politics even as those theologians who first brought me to this project insisted, theologians such as John Milbank and Jean Bethke Elstain and the religious critic, Cornel West whom together held the political career of sovereignty violently suspect in the production and reproduction of its power of life and death over the wretched of the earth.

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