

Critique of Sovereignty

Book I: Contemporary Theories of Sovereignty



Marc Lombardo

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Cover Image: detail from the frontispiece for the 1682 Amsterdam edition of Jakob Böhme's *Alle Theosophische Schriften*.

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Fig. 1. Hieronymus Bosch, *Ship of Fools* (1490-1500)

I read in Gouy's *Histoire de France*: "The slightest insult to the King meant immediate death." In the American Constitution: "The people are sovereign." In Pouget's *Père Peinard*: "Kings get fat off their sovereignty, while we are starving on ours." Courbon's *Secret du Peuple* tells me: "The people today means the mass of men to whom all respect is denied." Here we have, in a few lines, the misadventures of the principle of sovereignty.

Kings designated as 'subjects' the objects of their arbitrary will. No doubt this was an attempt to wrap the radical inhumanity of its domination in a humanity of idyllic bonds. The respect due to the king's person cannot in itself be criticized. It is odious only because it is based on the right to humiliate by subordination. Contempt rotted the thrones of kings. But what about the citizen's sovereignty: the rights multiplied by bourgeois vanity and jealousy, sovereignty distributed like a dividend to each individual? What about the divine right of kings democratically shared out?

Today, France contains twenty-four million mini-kings, of which the greatest—the bosses—are great only in their ridiculousness. The sense of respect has become degraded to the point where humiliation is all that it demands. Democratized into public functions and roles, the monarchic principle floats with its belly up, like a dead fish: only its most repulsive aspect is visible. Its will to be absolutely and unreservedly superior has disappeared. Instead of basing our lives on our sovereignty, we try to base our sovereignty on other people's lives. The manners of slaves.

Raoul Vaneigem, *The Revolution of Everyday Life*

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INTRODUCTION TO *CRITIQUE OF SOVEREIGNTY*



The present study is part of a wave of scholarship over the last two decades—across various disciplines in the humanities and social sciences (political theory, literature, anthropology, history, philosophy, law, etc.)—that has come to reinvestigate the concept of sovereignty. While many of the most influential sources for the current academic fascination with the subject were produced in drastically different eras and amidst drastically different political realities, nevertheless, the concept of sovereignty has proved an irresistible framework for interpreting the present world-historical moment. A host of the most important political events in the early 21st Century have proved surprisingly yet starkly reminiscent of the concept of sovereignty, particularly in the absolutist interpretations it was given by authors like Bodin, Hobbes, and most especially Carl Schmitt. In a sense, the twenty-first century began politically with the decision of *Bush v. Gore* in which the Supreme Court reminded us—which is also to say, performatively reinscribed as fact—that there is no constitutionally-protected right to vote in the United States. As we know only too well, this event set the stage for a series of political actions occurring over the past several years, too numerous to mention, that have appeared as directly conforming to the absolutist logic of sovereignty. To list only the most obvious examples of this trend consider: the

Bush Administration's dismissal of the constitutional balance of powers in favor of the "theory of the unitary executive," the indefinite detention of "enemy combatants" at Guantanamo Bay in direct contravention to the centrality of due process throughout the history of the common law, and the seemingly illimitable powers of government surveillance over US citizens ushered in by the Patriot Act. While these events undoubtedly comprise the immediate political and historical context for the present study, we have no intention to offer an explicit interpretation of their significance.

Rather than tarrying directly with events themselves, instead we seek to offer a more fundamental investigation of the philosophical (i.e., metaphysical) framework implicated by those events. This is to say that the present study is neither explicitly empirical nor explicitly concerned with political reform. This is not to say that if the following ruminations should inspire empirical investigations or acts of political agitation in the future that we would be unhappy. To the contrary! Nevertheless, if the recent wave of scholarship concerning sovereignty has taught us anything, it is that our orientation toward events is itself often driven and motivated by an implicit understanding (in the sense of Heidegger's *Verstehen*¹) of a particular metaphysical horizon. This realization—that our relationship to events is itself of a decidedly metaphysical character—has been relentlessly demonstrated with respect to the sphere of politics by the thinker most responsible for the recent return to sovereignty in scholarship: Giorgio Agamben. It follows as a consequence of this realization (spurred by the work of Prof. Agamben) that an explicit interpretation of the metaphysical presuppositions which stand implicitly behind events will have all sorts of practical political implications of a nature which cannot be adequately anticipated in advance.

¹ For Heidegger's famous reconsideration of *Verstehen* and hermeneutics generally, see the discussion of these issues in sections 31 and 32 of Martin Heidegger, *Being and Time*, trans. Joan Stambaugh (Albany: State University of New York Press, 1996).

The present study seeks to contribute to this potentially political project by offering an account of the concept of sovereignty in the form in which it initially appears as being at its greatest distance from politics: reason's negation of experience. The most immediate goal in this task is to provide a *genealogy*—i.e., rather than what is conventionally known as a *history*—of the perennially evolving relationship of sovereignty and thought. This is to say that our analysis will proceed achronologically, that it has no pretense of treating its subject exhaustively and, more fundamentally, that it consciously embraces the fact that the narrative that it projects upon the past is a shadow thrown by the present. As Nietzsche taught us, the analytic practice of genealogy has two fundamentally inseparable poles: the *critical/deconstructive*, which demonstrates the tendency to suppress the role played by the act of positing an “origin” as original, and the *affirmative/reconstructive*, which actively posits an origin as its own act of positing. In our critical reading of various conceptualizations of sovereignty given throughout various eras and epochs, the present study tends more toward the first pole. Nevertheless, there can be no denying (and indeed we do not wish to deny) that the manner in which we level our critique of past theoretical edifices will (and indeed *should*) attest to an edifice of its own.

According to these fundamental assumptions of our inquiry, we shall begin by sketching a number of the comparatively recent theoretical treatments of sovereignty which have had the most influence upon our own conception of the issue. Our most fundamental concern is not that of doing justice to the complexity of the authors' views (though this is not to say that we intend to be unjust!) but rather to disclose the relationship between those views and the concept of sovereignty as we see it. Following this discussion and the more explicit characterization of sovereignty as a mode of thought which it should allow, we shall proceed to offer an outline of the role played by this mode of thought at particular points in the history of philosophy/metaphysics. This outline—painted in only the broadest of strokes—will tend toward the *geistgeschichtlich* approach utilized by John Dewey in his seminal works *Reconstruction in*

Philosophy and The Quest for Certainty. This narrative of the role of sovereignty in Western metaphysics outlined in Books I and II will enable us to interrogate two fundamental works of political philosophy (Aristotle's *Politics* and Rousseau's *Social Contract*) over the course of Books III and IV in order to show both their place within that narrative and the possibilities that they introduce for breaking with that narrative. Book IV concludes with a discussion of some of the existential implications suggested by this conceptualization of the philosophical nature of the problem.

OVERVIEW OF BOOK I



The first volume of the *Critique* begins with a preliminary investigation of the metaphysics underlying the concept of sovereignty throughout many of its usages in the history of modern thought. There is a curious similarity between the concept of sovereignty as defined by 20th-century political scientists and the definition of sovereignty offered by Jean Bodin already in the 16th century. It is as if, despite 400 years of history, little has changed with respect to sovereignty's conceptualization. Throughout its modern history, the concept of sovereignty is closely associated with vagueness. It follows: the more thorough the description of any given empirical case, the more sovereignty falls away.

After this preliminary treatment of the concept of sovereignty, the discussion proceeds to examine the varied interpretations of sovereignty given by seven of the most influential Continental political philosophers of the 20th and early 21st centuries: Maritain, Foucault, Derrida, Schmitt, Agamben, Hardt, and Negri.

Maritain argues that there is no such thing as sovereignty here on Earth. However, reasserting the sovereignty of God is the condition that allows Maritain to make this claim. Thus, in attempting to negate sovereignty Maritain actually brings the

concept of sovereignty back to its modern origins as found in Bodin.

Derrida and Foucault, as different as their scholarly temperaments, methods, and results may be concerning other subjects, both associated sovereignty with circularity (e.g., in logic, with respect to power returning to its source, etc.). The scholarship of Derrida and Foucault makes it possible to see the intimate connections between the circularity of sovereignty as conceived in modern political and legal traditions and the circularity already evident in Aristotle's conception of *logos*. In its inherent circularity and vagueness, sovereignty, just like the number 0, knows no negation.

This observation leads to a discussion of sovereignty in the work of Carl Schmitt, who utilized the concept as a blunt instrument in his attempt to annihilate both the tradition of political philosophy and the practice of democratic politics. "*Rather than grounding the concept of sovereignty in the exercise of politics instead Schmitt sought to ground the concept of the political in the exercise of sovereignty.*" In his attempt to purify the sovereign decision of all traces of deliberation, Schmitt unwittingly paved the way for a philosophy of peace that follows from absolute deliberative doubt (this observation is developed further in the discussion of the epistemological subject found in Book II of the present work).

Next, the argument turns to examine the limits pertaining to the juridical entity that Giorgio Agamben has defined as sovereignty's negation: *homo sacer*. Just as in the case of sovereignty, the closer we look, the more we see that the condition of *homo sacer* (i.e., he who anyone can kill but no one can sacrifice) fits the description of no actual empirical case whatsoever. The question then raised is: where does the concept of *homo sacer* stand vis-à-vis the scientific method? In the process of this discussion, the meaning of the null-hypothesis is elaborated and refined.

The final chapter of Book I takes up the political philosophy of Michael Hardt and Toni Negri. The work of Hardt and Negri makes it all too clear that the association of sovereignty with a given territory of land is an anachronism. This discus-

sion in turn provides the basis for sketching a rough outline of a process of deliberative global governance in which any and all bodies claiming to represent the interests of peoples (e.g., NGOs, labor unions, nation-states, etc.) must continually demonstrate their legitimacy in serving the interests in question. This framework would work only insofar as the question of legitimacy was perpetually contested, perpetually in doubt. Finally, this perpetual process of doubt is given the name *Critique*.

0: A PRELIMINARY DEMARCATION OF THE CONCEPT OF SOVEREIGNTY



Sovereignty is an exceptional concept whose tentacles spread far beyond the doctrines of constitutional and international law to which it most commonly refers. Given the perpetual failure to resolve the fundamental deadlocks of national and international law (e.g., the rights of a territory’s authoritative regime vs. the “human rights” of that territory’s population, the authority rendered to a population’s chosen representatives vs. the authority of the population itself, etc.), a skepticism regarding these frameworks seems appropriate. In our efforts to repair the world—especially in the face of the increasing occurrence of “natural” ecological disasters suffered primarily by the least of these amongst us—we cannot reasonably expect to find new answers by asking the same questions in the same way. For its centrality to persistently problematic politico-juridical questions, sovereignty and the metaphysical presuppositions that it entails need to be critically reexamined.

While our concern with sovereignty most certainly stems from the political consequences manifested by that concept, it is not clear that in its most basic sense sovereignty has anything whatsoever to do with politics. Even if we find it to be the case that sovereignty is political all the way down, nevertheless,

its political nature may appear to us in an entirely different manner when viewed in relationship to its metaphysics. And so it is that without in some way elaborating the metaphysical presuppositions attendant upon the concept, we will continue to be utterly lost in our attempts to understand the legal, political, and ethical deployments of sovereignty. In other words, it is precisely because our initial concern is with the possibilities and impossibilities of the contemporary political horizon that our analysis must in some sense turn a-way from politics.

That the dominant notion of sovereignty as it stands in today's juridical and political discussions is inherently metaphysical in nature may be gleaned by the surprisingly close resemblance between contemporary iterations of that concept and its historical deployment within the edifice of political philosophy. Most contemporary treatments of sovereignty have not changed significantly from the essential characterization of the concept articulated by the first modern political philosopher to deal with it explicitly, Jean Bodin. Sovereignty is today conventionally rendered most simply as "the supreme authority within a territory."¹ Already in 1576, Bodin offered the following

¹ This definition was offered in Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), 16. Most other contemporary definitions of sovereignty differ with Philpott's more in terms of verbosity than effect. For example: "A sovereign state is a territorial jurisdiction: i.e., the territorial limits within which state authority may be exercised on an exclusive basis. Sovereignty, strictly speaking, is a legal institution that authenticates a political order based on independent states whose governments are the principal authorities both domestically and internationally." Robert Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape," in *Sovereignty at the Millennium*, ed. Robert Jackson (New York: Blackwell, 2000), 10 [9–34]. I do not mean to suggest that such usages exhaust the contemporary debate concerning the meaning of sovereignty, but only that the traditional definition is alive and well within that debate. For a somewhat alternate view, see for instance that of Wallerstein, who writes: "Sovereignty is more than anything else a matter of legitimacy. And in the modern world-system, the legitimacy of sovereignty requires reciprocal recognition. Sovereignty is a hypothetical trade, in

surprisingly similar definition: “Sovereignty is the absolute and perpetual power of a commonwealth, which the Latins call *maiestas*; the Greeks *akra exousia*, *kurion arche*, and *kurion politeuma*; and the Italians *segnioria*, a word they use for private persons as well as for those who have full control of the state, while the Hebrews call it *tomech shévet*—that is, the highest power of command.”² In its substitution of the word “territory” for “commonwealth,” the contemporary definition can perhaps be regarded as being more general in scope concerning the nature of the sovereign body but the difference that this would have with respect to the description of actual regimes is unclear. Bodin was already using the word “commonwealth” (in the original, *république*) in a highly generic sense to refer to regimes of all different sorts.³ The only other possible discrep-

which two potentially (or really) conflicting sides, respecting de facto realities of power, exchange such recognitions as their least costly strategy.” Immanuel Maurice Wallerstein, *World-Systems Analysis: An Introduction* (Durham: Duke University Press, 2004).

² Interestingly, in revising the text for the Latin edition which was published 12 years after the original, Bodin substantially altered the first sentence of this passage to read: “sovereignty is supreme and absolute power over citizens and subjects [*Maiestas est summa in cives ac subditas legibusque solute potestas*].” Jean Bodin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, ed. Julian H. Franklin, trans. Julian H. Franklin, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1992), 1.

³ In fact, the normative tendency of Bodin’s notion of a *république* was diametrically opposed to the classical deployment of that concept (which referred to a regime of popular sovereignty) in that the sovereign power in a commonwealth was for Bodin most appropriately held only by a single individual. Though this is not the way that the narrative of modern political philosophy is customarily treated, in fact, Bodin’s move towards an understanding of sovereignty as consolidated in the person of the King can be regarded as the first strike of modernity *against* the classical tradition of political thought. Though often times we think of the supremacy of the King’s power as characteristic of the politics of the Middle Ages, this was certainly not how political power was regarded during those times. “So universally prevalent was the idea of original popular sovereignty that ‘from the end of the 13th century it was an axiom of political theory that the

ancy between the contemporary notion of sovereignty (as given voice by Philpott) and Bodin's treatment of the concept is that the former speaks of a "supreme authority" whereas the latter speaks of an "absolute power." These phrases certainly do have different connotations and therefore different practical implications as well. Nevertheless, what the phrases share is likely of greater importance: namely, whether one speaks of a "supreme authority" or an "absolute power," in either case, the concept is of a nature decidedly more metaphysical than real as neither can possibly be taken as a valid description of *any actual entity whatsoever*.

The inherent referential nullity of the concept of sovereignty in its full and proper sense was recognized already by Bodin, though somewhat reluctantly. In his treatment of the matter, sovereignty is sketched as the negation of a series of nine conditions of subjectivation, each more difficult to transcend than the last. Cumulatively, this has the effect of making it appear that the conditions necessary for sovereignty are never quite satisfied; that somehow more work always need be done. As opposed to all subjects and even all citizens—*nota bene*: unlike Aristotle, Bodin does not extend the right of political participation to the latter—the sovereign Prince is said to be "held accountable to God alone"⁴ and need only "pledge allegiance to God alone."⁵ As we can see, after having gone to such great lengths to insist that sovereignty refers only to a truly absolute power that knows no limits, Bodin immediately steps back from this position. The exception presented in the claim that

justification of all government lay in the voluntary submission of the community ruled.⁷ Government based on the consent of the governed was the ruling theory in the Middle Ages": C.E. Merriam Jr., *History of the Theory of Sovereignty since Rousseau* (New York: Columbia University Press, 1900), 12. Merriam is citing the original German edition of Otto Friedrich von Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, trans. Ernest Barker (Boston: Beacon Press, 1960).

⁴ Jean Bodin, *Les Six Livres De La République* (Paris: I. du Puys, 1583), 125. All citations from this edition are my translation.

⁵ *Ibid.*, 143.

the sovereign Prince need obey no authority save that of God was offered quite literally and positively by Bodin: i.e., the earthly Prince unquestionably *must* obey God. “If we were to say that those who possess absolute power are subject to no law, then nowhere may a Prince be found in the sovereign world, seeing that all the Princes of the Earth are subject to the laws of God and of nature and to the numerous humane laws common to all peoples.”⁶ To this the further clarification is added: “And by the absolute power of sovereign Princes and magistrates, in no way does this intend [to include] the laws of God and nature.”⁷

Thus, when we say that sovereignty is rendered referentially null by being defined as an “absolute power” or a “supreme authority,” we mean to suggest precisely the contradictory movement implicated by Bodin here. On the one hand, the most essential purpose of sovereignty as a concept is its use in distinguishing a given entity (more conjectural than real) from all other entities which are subject to specific limitations concerning their functional abilities. On the other hand, however, the concept of sovereignty can only be used to describe entities observable in the real, physical world by including descriptions of the specific limitations concerning the functional abilities of such entities. The most generally apt definition of sovereignty is that it is a function of the essential antagonism between these two loci: *the greater detail with which a “sovereign” entity is described, the less sovereign it becomes.* Correspondingly, *the degree to which a given entity appears sovereign is the degree to which it is vague.* It follows from this definition that only that which can *never* be clearly described is truly sovereign. God perhaps.

While this interpretation of sovereignty as a function of the concrete limitations of observation may seem somewhat novel, it shares much with Bodin’s interpretation of the concept and many of those which have come later. As was illustrated above, despite his own attempts to delimit the concept such that it

⁶ Ibid., 131.

⁷ Ibid., 133.

could be used to refer to the appearance of a worldly Prince, the force of Bodin's own analysis simultaneously discloses sovereignty as (at least for mortals) a fundamentally unreachable point—a limit. Perhaps more than anything else, it was Bodin's prescient application of the calculus to the sphere of politics that most definitively marked the enduring significance of his notion of sovereignty for the modern epoch. In fact, the limit concept is utilized in one manner or another by *all* of the influential contemporary interpretations of sovereignty that we will discuss below, those of: Maritain, Schmitt, Agamben, Hardt and Negri, and Foucault and Derrida. If only for his role in disclosing this analytic framework for characterizing sovereignty, Bodin continues to be of enduring significance.

Another lesson that we can still learn from Bodin is that the simple recognition of sovereignty's dependence upon the limit concept does not by itself do away with its being pursued as a principle of political practice. Bodin knew very well that to call a given Prince sovereign was always a statement of approximation. Nevertheless, he argued quite confidently that politics should be both understood and practiced exclusively by the means of such approximations. In fact, in a perverse way, regarding sovereignty as a point that may never actually be reached actually encourages its being pursued with the greatest of vigor.⁸ Thus, merely pointing out that it will never be reached by itself does little or nothing to de-animate the drive towards sovereignty. A much more fundamental critique would instead demonstrate that there's no there there—that when properly understood, sovereignty can legitimately offer neither a trajectory of political pursuit nor a point of orientation for the understanding. When we claim that sovereignty is referentially null, we mean this to indicate not simply that it may be approached but never reached but more fundamentally that no such trajectories whatsoever obtain for experience.

⁸ Telling the obsessive that he will never attain the object of his obsession is the most inadequate of balms. The obsessive knows very well that he's never going to get the object—why else would he be pursuing it?

However, it has to be pointed out that saying that sovereignty refers to nothing is not strictly the same thing as saying that it is meaningless.⁹ In fact, it is to say that statements made about sovereign entities *cannot be empirically verified*—anymore than an empirical investigation can correct the notion that unicorns have three legs.¹⁰ As this example points out, referentially null concepts may still be useful (particularly as possible limit cases) even if they cannot be observed. Nevertheless, the usefulness of referentially null statements depends first upon accurately and adequately recognizing their limitations. In other words, by properly understanding the meaning of sovereignty we know that it will never be found among the things of the Earth. Similarly, we also know that if and when we do encounter a case that appears to satisfy the conditions for sovereignty, such a finding means simply that we haven't been looking closely enough and that the case requires greater

⁹ In Fregean terms, we may very simply say that sovereignty has “sense” (*Sinn*) but not “reference” (*Bedeutung*). See Gottlob Frege, “On *Sinn* and *Bedeutung*,” in *The Frege Reader*, ed. Michael Beaney (Oxford: Blackwell Publishers, 1997), 151–171.

¹⁰ This is an inexact metaphor as even though both sovereign entities and unicorns are existentially null sets, nevertheless, there is a profound difference between their respective concepts. A unicorn is a clear concept—at least to the extent that any concept may be clear—in that it can be described with reference to elements of other entities which may be directly observed. This relative clarity is apparent in the fact that even though a unicorn has never been found, if an entity that otherwise resembled a horse which also possessed a horn was discovered (or engineered) there would be universal agreement that such an entity was indeed a unicorn. By contrast, as a concept, sovereignty is vague and necessarily so in the sense that the quality of “supreme authority” or “absolute power” may not be directly observed with reference to any other existing entities. Perhaps a more rigorous investigation would disclose this distinction as being one of degree rather than kind. In that case, the distinction would rest in the fact that the number of distinct existing entities whose properties must be cobbled together in order to clarify “sovereignty” is indefinitely large, whereas unicorn can be clarified by borrowing properties from two such entities (e.g., a horse and a rhinoceros).

investigation. In its inherent impossibility and unrealizability, sovereignty is a useful concept for the description of political reality insofar as it is taken as an index of how little we understand of the phenomenon in question. Properly considered, to say that something is sovereign is not to say that it is subject to no conditions other than its own will; rather, it is to say that we know far too little concerning the actual conditions that made the will possible and the actual limitations upon its exercise. *Sovereign is that which escapes observation.*

1: JACQUES MARITAIN THERE IS NO SOVEREIGNTY



The first view that we would like to introduce among the theories of sovereignty of contemporary relevance is that of Jacques Maritain. Like other thinkers of influence upon our thinking about sovereignty today, Maritain himself was something of a relic from a bygone era. Despite or precisely because of his being out of step with his own time, Maritain's perspective upon the question of sovereignty continues to be of enduring significance.

Whether we like it or not, the word "sovereignty" remains animated by meanings which are in no facile way reducible to its most common political definition as the supreme authority within a territory. For this reason, many political scientists of the post-war era have questioned the concept's utility.¹ Jacques

¹ The inherent ambiguity of sovereignty present in even technical discussions was drawn attention to by Stanley Benn in the 1950s. See S.I. Benn, "The Uses of Sovereignty," *Political Studies* 3.2 (1955): 109–122. Over the course of the 20th century, these concerns regarding sovereignty's ambiguity became coupled with the perception of its increasing irrelevance in the face of challenges posed to the nation-state by international political institutions and the globalizing trends of capital. A host of writers of this persuasion came to speak of sovereignty's "end," "erosion," or "extinction." See Joseph A. Camilleri and

Maritain argued that the word should not be used at all in political contexts precisely because of the fact that it likely means something other than what those who use it think that it means.

As a good Thomist, Maritain repudiated sovereignty unconditionally for its inability to do justice to the inherent dignity accorded to all of the children of God. Unquestionably, we have a great deal of sympathy for this view. Our only criticism is that by itself the gesture of condemnation allows sovereignty too much of what it wants.

At last, the ultimate supremacy of the sovereignty of God is the only ground to which Maritain can appeal for his performative judgment concerning the necessity of sovereignty's banishment from the Earth. In a sense, this should not surprise us: the inseparability of sovereignty's *theological* pole from its *naturalistic* pole was evident already in Bodin as we have seen. Accordingly, and this is particularly the case for Maritain, the condemnation of the function of sovereignty in the natural world serves to reanimate that function in the metaphysical world.

Naturally, it is decidedly preferable that the concept of sovereignty be used to describe things that don't exist rather than things that do; nevertheless, sooner or later, in one form or another, this theological concept will revisit itself upon the Earth. Just as the supremacy of the king can be taken as a met-

Jim Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (Brookfield, VT: E. Elgar, 1992); Geoffrey L. Goodwin, "The Erosion of External Sovereignty?" in *Between Sovereignty and Integration*, ed. Ghita Ionescu (New York: Wiley, 1974), 106–116; and Ali Khan, "The Extinction of Nation-States," *American University Journal of International Law and Policy* 7 (1992): 197–234. Louis Henkin went so far as to assert that: "sovereignty is a bad word, not only because it has served terrible national mythologies; in international relations, and even in international law, it is often a catchword, a substitute for thinking and precision": Louis Henkin, "International Law: Politics, Values and Functions—General Course on Public International Law," *Recueil des Cours de l'Académie de Droit International de La Haye* 9 (1989): 24–25.

aphor for God, so the supremacy of God can be re-impacted to the king. There is nothing that *a priori* prevents the use of referentially-null concepts in understanding concrete referents anymore than there is anything preventing the use of existentially-validated concepts in understanding referentially-null ones.²

Though for the reasons stated above we may decide not to utter similar performative declarations concerning sovereignty's banishment to the Heavens, nevertheless, there is much that we can learn about the concept of sovereignty from Maritain's indictment of its inapplicability to experience. Maritain writes:

It is my contention that political philosophy must get rid of the word, as well as the concept, of Sovereignty—not because it is an antiquated concept ... and not only because the concept of Sovereignty creates insuperable difficulties and theoretical entanglements in the field of international law; but because, considered in its genuine meaning, and in the perspective of the proper scientific realm to which it belongs—political philosophy—this concept is intrinsically wrong and bound to mislead us if we keep on using it—assuming that it has been too long and too largely accepted to be permissibly rejected, and unaware of the false connotations that are inherent in it.³

By these “false connotations” of sovereignty, Maritain was referring primarily to the peculiar notion that authority is something that can be transferred (from a person to a ruler, for ex-

² These cases are somewhat different in that beyond simply not being prohibited, the understanding of referentially null concepts indeed *requires* the application of existentially-validated ones. However, strictly speaking, concepts are always referentially null and so something other than the concept is required for encountering the truth. See Book IV, Chapter 3 of the present work for clarification.

³ Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), 29–30.

ample) or that authority and action can be legitimately distinguished (e.g., that the authority to order an act may be wholly distinguished from the enactment of the order). While political philosophers have argued throughout the centuries about which of these metaphysical positions is the proper one to hold, from Maritain's perspective (which is ours as well) they are both equally suspect. In any event, the concept of sovereignty necessarily involves holding at least one of these metaphysical assumptions concerning the nature of power, if they do not in fact amount to much the same thing.

Hobbes is the political philosopher most closely associated with the assumption regarding the transmissibility of power. The association of Hobbes with the doctrine of power's transmissibility stems largely from his account of the social contract as being constituted by an agreement among individuals to defer the exercise of the right to self-preservation to the corporate body of the Sovereign. Many of the later political philosophers (e.g., Locke, Rousseau) took issue with this point, arguing that according to Hobbes' own account the authority of the Sovereign depends upon the inalienable rights of the many; accordingly, Sovereignty must ultimately rest not in the artificial corporate body of the State, but ultimately only in the people themselves. However, political philosophers of this persuasion have the corresponding problem of having to explain why *in actual practice* the *de facto* power accorded to the State's Princes and magistrates, who are supposedly the mere servants of the people, may be as indisputable and unquestionable as it sometimes is. This inconvenient fact is explained by positing a distinction between the power to act and the authority to legitimate actions, i.e., between executive and legislative powers broadly construed—the former may do anything whatsoever as long as its power to do so is legitimated by the latter.⁴

⁴ It is possible to construct a reading of Hobbes in which something like the distinction between the power to act and the authority to legitimate already exists: When the Sovereign decides who ought to live or die, He does so *with* and indeed *as* the authority conferred by the governed. By acting, the Sovereign transforms the will of many into one. On the one hand, this power is said to originate in (and in some

In this case, we return to the very same metaphysics of power from which we began though in a different key. In the first instance, the authority of distinct individuals is asymmetrically transferred to a single Sovereign body. In the second, the authority of the will is transferred to the performance of the action willed. Even when sovereignty and the power of the sovereign are declared “inalienable,” as nearly all political philosophers agree, nevertheless, the King cannot administer the state by himself any more than the people can do so without the use of civil servants. Accordingly, any of the various theories of the sovereign state (regardless of the form of regime in question, whether monarchical, republican, etc.) in some manner presuppose either a transfer of power (from the people to the Sovereign) or a separation of powers (e.g., such as that between deciding and enacting). If social contract theory begins in Hobbes by tending to the first of these poles though still leaving room for the second, it culminates in Rousseau by tending towards the second though still leaving room for the first.

For Maritain and for us as well, both of these approaches and the common metaphysical presupposition upon which they rest are irretrievably suspect. Even if an individual desired to transfer her rights and responsibilities to another, what authority would enable her to do this? Surely, not the very authority that she was attempting to give up as this would be self-contradictory. An authority that can be given to another couldn't have ever really been yours in the first place. And if it isn't yours, then it surely follows that it isn't yours to give.⁵

sense never depart from) the rights inherent to the many as distinct individuals. On the other hand, precisely because these rights are necessarily in conflict when in the hands of distinct individuals, it is in the interest of the collective to transfer *not* the right of self-preservation itself (which as the ground for Sovereign power is necessarily innate, inalienable, inherent, etc.) but rather the right to *exercise* that right to the Sovereign. The metaphysical underpinnings of the separation of powers is the subject of Book IV, Chapter 2 of the present work.

⁵ Giorgio Agamben has identified this metaphysics of the transfer of

Properly considered, nothing of the inherent difficulty concerning the assumption that “inalienable” authority can be transferred is assuaged by simply transposing the problem into the question of the division of legislative and executive powers. Properly considered, the people can no more *decide* not to act—a decision to introduce the separation between decision and action would by definition remove the faculty necessary for the enactment of that very decision—any more than their magistrates can act without deciding. In any of its various iterations, sovereignty inevitably implicates some version of this fundamental contradiction.⁶

Maritain argues that not only are these positions self-contradictory, but more importantly, by conceiving of the fundamental and integral nature of the human being as something to be exchanged and/or divided, the concept of sovereignty is a direct violation of the inherent dignity that ought to be conferred upon humanity. The ability to direct and perform activities for and by ourselves in accordance with our own nature is a faculty given to each of us by God; as such, it is something that only God can take away. However, it is not only the place of God that has been thrown into disrepute by political philosophy’s attempt to render unto Man the power to take, divide, and reassemble the rights of Man in whatever manner He/It so

authority as existing already in a remarkably explicit way in the function of *auctoritas* in Roman society. “In the sphere of private law, *auctoritas* is the property of the *auctor*, that is, the person *sui iuris* (the *pater familias*) who intervenes ... in order to confer legal validity on the act of a subject who cannot independently bring a legally valid act into being Indeed, the Greco-Roman world does not know creation *ex nihilo*; rather, every act of creation always involves something else—formless matter or incomplete being—that must be perfected or made to grow. Every creation is always a co-creation, just as every author is always a coauthor”: Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 76.

⁶ As we will discuss below, it was Carl Schmitt’s accomplishment to recognize the inherently contradictory nature of sovereignty and, in turn, to embrace this contradiction (which Schmitt names “the exception”) as the very essence of sovereignty.

chooses—a power that can only be respectfully attributed to the Divine. The most devastating and ghastly consequences of this violation of the disposition of natural law and the limits of human reason accorded therein are not visited upon God but rather upon those poor souls unfortunate enough to be made in Her image. It is not the mirror that hurts when a hand smashes through it.

Maritain sees no way out of the violation of human dignity introduced by the concept of sovereignty other than its immediate and total renunciation as: a principle of international law, a doctrine of political theory, or a description of anything whatsoever here on Earth. However, the only resource sufficient to the task of banishing sovereignty from the human world—and thereby restoring the lost dignity of the human being—is the reanimation of the sovereignty of the Kingdom of Heaven. God alone can be assured with the task of giving rights that can't be taken away—but wasn't this the very limit Bodin introduced upon the Prince in order to define the latter's sovereignty in a manner that could be recognized here on Earth? In this manner, the negation of sovereignty—as it reaches its most complete and logical form in the thought of Maritain—is but the occasion for returning to the beginning. There is always a slippage between the theological and the natural: no victory comes in one sphere without producing disparate results in the other. To negate sovereignty's metaphysic is to submit to it.

Though even he succumbed to this metaphysic in the end, Maritain provided the most explicit account of the metaphysic underlying sovereignty's various political, juridical, and philosophical treatments throughout the centuries—i.e., power as a property of unidirectional transference. Following Maritain, we may say that sovereignty is: a volition wholly transferable without either compromise or remainder. When the word is applied to technical concerns it signifies a unity achieved between idea and act: that is, the idea has been wholly transferred into the act. In this manner, one supposes to be sovereign over a tool such as one's own body or intellect insofar as the tool in question behaves just as one asks and what's more without

talking back. In a similar manner, to be sovereign over another person means the capacity to transfer your will upon her without her talking back.

This more appropriate and more useful definition of sovereignty reveals to us something about the concept which should have been evident for a long time: What can we say about sovereignty in this (its strict and only proper) sense other than that rather than referring to anything whatsoever, it instead connotes what may be described technically as a *fantasy*? This is the most appropriate name for a concept that refers to: a mode of acting without being acted upon in turn, of receiving but not giving (power), of mastery without servitude. The very notion of a transfer or exchange necessarily implies a difference of identity between the parties in question and their mutual resistance to one another. However, the only way for this transfer of volition to be successful in the unqualified sense which sovereignty proscribes would be for one of the entities to completely encompass the other without itself somehow being fundamentally changed by the process. And yet, even if this process was to succeed (and clearly, it never could, at least not on these terms) this would also and at once be its failure; without a minimal difference of identities, a transmission of any kind makes no sense at all. Nevertheless, the fantasy of sovereignty persists. And it does so not despite but precisely because of the impossibility of realizing its desire. In the words of Hölderlin: “The immediate, in its literal sense, is impossible for both mortals and immortals alike.”⁷ In fact, this impossibility properly pertains only to fantasies, such as sovereignty, that pretend that they can immediately decide upon the immediate. If the words of the poet falter in this case at reaching the precision that is demanded by philosophy, they nevertheless succeed at expressing the problem’s intensity.

⁷ In German, “Das Unmittelbare, streng genommen, ist für die Sterblichen unmöglich, wie für die Unsterblichen”: Friedrich Hölderlin, *Sämtliche Werke*, ed. Friedrich Beissner, 6 vols. (Stuttgart: W. Kohlhammer, 1954), 5:309.

2: FOUCAULT AND DERRIDA ON THE CIRCULAR LOGIC OF SOVEREIGNTY



Disparate as their philosophical methodologies and temperaments may have been, the analyses of the concept of sovereignty offered by Jacques Derrida and Michel Foucault testifies to a quite striking symmetry. Both thinkers position their inquiries into the question by insisting upon an initial gesture of opposition toward sovereignty. For Foucault, the concept of sovereignty is to be opposed simply for its inadequacy as a description of the actual workings of power in the modern era. For Derrida, writing more recently, the condemnation of sovereignty is a fundamentally necessary existential gesture: one says “no” to sovereignty as a means of saying “yes” to a host of presently unimaginable possibilities (and impossibilities) for the practice of politics (and the art of life) that are still to come. Neither thinker makes this gesture of opposition toward sovereignty as a final judgment. For Foucault, in its descriptive inadequacy, sovereignty provides a useful contrast for spelling out some of the features unique to the dispersed apparatus of modern power. For Derrida, the gesture of opposing sovereignty provides the basis for a more complex phenomenological investigation into those aspects of sovereignty that cannot

be excised from the Western tradition of reason.¹ Finally, and this is the point of symmetry that we wish to focus upon most specifically, both Derrida and Foucault detail the concept of sovereignty as being comprised by an essentially circular structure.

This recognition of sovereignty with circularity is certainly nothing new. Its most direct formulation perhaps came in the words directed to Moses emanating from the burning bush: “I am that I am.” Similarly, in the New Testament, Jesus’ “authority” is rendered as *exousia*—i.e., as arising out of the very nature of (His) being itself, from which it never departs. However, the theological symmetry between divine authority and circularity was never confined to the theological realm alone. This symmetry was manifest in the political realm with respect to the fact that the distinction between “the king’s two bodies” was often resolved by a reassertion of their inherent unity: “The king is dead. Long live the King.” In continuation of our above description of sovereignty as a fantasy (e.g., the fantasy of a one-way transfer of power), we may say that circularity is the form in which this fantasy is structured.

By turning to the discussions of the circularity of sovereignty made by Foucault and Derrida, we can come to a more precise understanding of what is meant by describing sovereignty as a fantasy. The first thing to observe is the variety of senses of circularity that are employed in this nexus. Circularity is meant

¹ To flesh this argument out: To the extent which sovereignty arose in the West, it did so not simply alongside of but, indeed, as the very condition for the possibility of its own de(con)struction, which Derrida calls “democracy.” While the latter is indeed our best political hope, insofar as it represents the condition for the possibility of hope as such, we would only be destroying that hope if we did not recognize the intimate relationship—and indeed, *proximity*—between sovereignty and democracy. In other words, we are at our most democratic only there where we understand and recognize the fleetingness, arbitrariness, and indeed, injustice (in the form of sovereignty) upon which our democracy is based and into which it is constantly descending. Cornel West makes a similar point in Cornel West, *Democracy Matters* (New York: Penguin Books, 2004).

here to imply all of the following connotations in one respect or another: “logical” circularity, the geometric figure of the circle in mathematical analysis, and the process of returning to a point of beginning—i.e., “coming full circle.” Foucault’s analysis principally concerns the relationship between sovereignty and the first of these senses of circularity. As we will see, Foucault defines circularity as a series of interrelated claims, all of which in one manner or another rely upon a form of their conclusion as a premiss. In other words, not only does sovereignty beg the question, but the “logical” structure of sovereignty should be seen as analogous to that of the fallacy known as “begging the question” (*petitio principii*).² Derrida emphasizes the points of continuity between the “logical” circularity employed by sovereignty and the geometric and retrospective senses of the term. Furthermore, we should not investigate the “logical” circularity of sovereignty without remaining attentive to these other senses. In its ideality above and beyond its actuality, is not the form of the circle one of the first in a series of theoretical steps that turn away from empirical reality and toward the fantasy of sovereignty? In following the track laid for us by these two thinkers, let us begin with Foucault’s explication of sovereignty’s logical circularity in order for us to make our way back to the question of the circle itself.

It would not be committing an injustice to his memory to say that, at least in the manner in which he defined the term, sovereignty was not one of Michel Foucault’s primary concerns. In fact, the concept of “sovereignty” was for Foucault less an actual object of inquiry than it was a null-hypothesis against which his observations could be contrasted.³ This is very much the spirit in which Foucault takes up his rather brief discussion of the term in the *Collège de France* lectures of 1975-

² For a more detailed discussion of this fallacy and argumentative fallacies in general, see Book IV, Chapter 3 of the present work.

³ That is to say, the hypothesis that power in modernity is structured in a fashion such that no actual case may be accurately described as meeting the conditions of sovereignty enabled Foucault an invaluable point of contrast with which to sketch the workings of power under modernity.

76. For instance, Foucault introduced this discussion by saying: “As I see it, we have to bypass or get around the problem of sovereignty—which is central to the theory of right—and the obedience of individuals who submit to it, and to reveal the problem of domination and subjugation instead of sovereignty and obedience.”⁴

In this context, sovereignty is rendered not as what is to be understood or explained concerning the modern operation of power, but rather as a hindrance to such an understanding or explanation. This being said, Foucault nevertheless does provide us with something like a set of criteria for defining sovereignty. In examining these criteria, however, we must not lose sight of the fact that they are offered primarily as a negative or critical dispositive. To this effect, Foucault argues that the concept of sovereignty previously performed (but no longer performs) four roles:

First, it referred to an actual power mechanism: that of the feudal monarchy. Second, it was used as an instrument to constitute and justify the great monarchical administrations. From the sixteenth and especially the seventeenth century onward, or at the time of the Wars of Religion, the theory of sovereignty then became a weapon that was in circulation on both sides, and it was used both to restrict and to strengthen royal power In the eighteenth century, finally, you find the same theory of sovereignty, the same reactivation of Roman law, in the work of Rousseau and his contemporaries, but it now played a fourth and different role; at this point in time, its role was to construct an alternative model to authoritarian or absolute monarchical administration: that of the parliamentary democracies.⁵

⁴ Michel Foucault, *Society Must Be Defended: Lectures at the Collège De France, 1975-76*, trans. David Macey (New York: Picador, 2003), 27.

⁵ *Ibid.*, 34–35.

The fact that all of these roles are discussed in the past tense is instructive. According to this account, the time of sovereignty, even the people's sovereignty, is decidedly over and has given way to another *episteme* altogether. Whether or not we disagree with Foucault on this point, it is important to understand (as we have been arguing already) that he takes this position concerning sovereignty not as a definitive judgment upon the nature of sovereignty itself, but rather as a means of defining the parameters of modern power relations as they might be efficaciously distinguished from those which came before. In other words, we should not be surprised that he speaks of sovereignty's reign as having ended, given that this is the central hypothesis with which he is able to isolate the comparatively disparate elements of what he will first call "disciplinary" power and then "biopolitics" and later "governmentality."

The primary consequence of this recognition concerning the function that sovereignty plays in Foucault's methodology is that should we find that sovereignty is not definitively over but that it somehow continues to be reanimated. This is not in itself a contradiction of Foucault's philosophy. For Foucault, sovereignty is defined as a means of standing for all of the things which are no longer essential to the operation of power. This does not preclude the possibility that there is a continuing relationship between the current elements of power and those from the past which seem to have been exhausted. With this chief caveat in tow, Foucault's definition of sovereignty is nevertheless quite useful in that it offers a concise formulation of what we might call the history of sovereignty from Aristotle to Rousseau. This definition of sovereignty comes in its most pared-down version when Foucault claims that sovereignty

assumes the existence of three 'primitive' elements: a subject who has to be subjectified, the unity of the power that has to be founded, and the legitimacy that has to be respected. Subject, unitary power, and law: the theory of sovereignty comes into play, I think, among these elements, and it both takes them as given and tries to

found them.⁶

As can be seen by this passage, even if it was not his primary area of study, Foucault nevertheless provides an essential formulation concerning the fantastic structure of sovereignty. Each of the three “primitive” elements of sovereignty which he refers to above specify operations which are by definition redundant, or as we called it above, question-begging. If there was already a subject, why would such an entity have to be subjectified? If power was already unitary, why would it still need to be founded? If power was legitimate, why would it still need to demand respect? The last sentence of the above passage shows that Foucault was even aware of the obvious answer to all of these questions, namely the properly critical one: there is neither a subject, nor a unitary power, nor a legitimate power *apart from the processes of subjectification, founding, and legitimation*.

With this insight, Foucault disclosed the fantastic structure of sovereignty in a remarkably exact form. The subject, the foundation, the legitimacy of power: all of these can be circularly, viciously pursued precisely because they have no point of origin or none that is any more definitive than any other. A circle is a circle only insofar as any point along the circle is equal to any other—the circle is the negation of the supernumerary. Thus, mightn’t we also say: the negation of the exception, indeed, the negation of sovereignty? In the time-honored identification of sovereignty with that which is most unlike itself (i.e., the circle) lies the enduring strength of the concept. By grounding itself in the form of its own negation (the *ab-Grund*), sovereignty knows no negation. What we mean by the *fantastic* structure of sovereignty is this: there is no legitimacy without illegitimacy, no founding without destroying, and no subject without a non-subject. In other words, sovereignty works not despite *but precisely because of its illegitimacy*. It is because the object was never there in the first place that its absence can inspire such dedication in fabricating replacements.

⁶ *Ibid.*, 44.

At bottom, it is the act of fabricating itself that we enjoy.⁷

⁷ However, recognizing that the institutions that we give our allegiances to have no other foundation than the unending processes of demanding and accepting those allegiances does not mean that those institutions are simply groundless or that we can simply go along without them. Even if the Owl of Minerva flies at dawn rather than at dusk, there is still no guarantee that this will change the course of the day. Knowing too much about the illegitimate nature of institutions may even result in something like a condition of melancholia in which, far from being the best medicine, it is our knowledge that prevents us from making claims upon those institutions. For example, suppose that I know that the upcoming election is between two members of the oligarchy and is probably rigged anyway, so I don't bother to vote. By describing such an action as "melancholic" we are in no way arguing that a more positive or optimistic approach is to be preferred. For example, it's entirely possible that exercising one's right to vote could simply lend the appearance of legitimacy to a corrupt regime. What is significant, from our point of view, is not the decision that is eventually made (voting or not voting) but rather what else the agent does *before, after, and during* such a decision. Namely, are other actions fulfilled which evidence the inextinguishable doubt concerning the nature of such decisions? The correct course of action then is not simply whether one votes or not—the correct course of action is *either* to vote *and* to question the legitimacy of such an election *or* to not vote *and* to question why there wasn't someone worth voting for. This entails nothing less than a transvaluation of our understanding of the role of practical judgment as it has been passed down to us from Aristotle in his notion of *phronesis*. Exhibiting prudence in choosing the one which our experience teaches is most likely to be the best among a number of competing alternatives is in many (though not all cases) a useful strategy, however, it is by itself insufficient. The more important aspect of practical judgment is to go ahead with a given decision while nevertheless maintaining a strict attitude of doubt (and manifesting this doubt in action) concerning the adequacy or rightness of such a decision. This should also replace or at the very least substitute Kant's absurd (though interesting) notion of acting morally only for the sake of obeying the moral law itself. It should first be said that doubt would comprise an essential component of any such moral act. After all, if you did not question whether your behavior was or was not pathological, wouldn't this in itself be enough to make your behavior pathological? In other words, doubt is a necessary condition

Foucault would return to this discussion of the fantastic structure of sovereignty a couple of years later as a means of exposing what he saw as the distinct modern development of “governmentality.” In that context, Foucault described sovereignty, in contrast to governmentality, as consisting of an “essential circularity”:

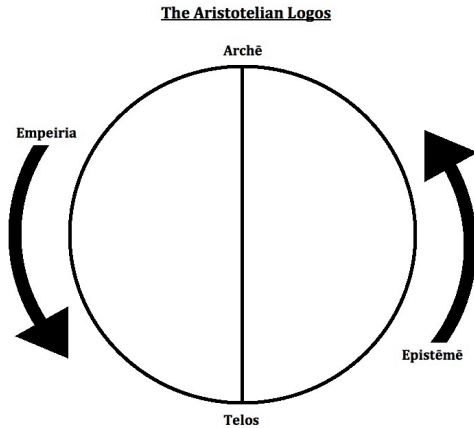
The sovereign must always, if he is to be a good sovereign, have as his aim, ‘the common welfare and the salvation of all’ In every case, what characterizes the end of sovereignty is circular: the end of sovereignty is the exercise of sovereignty. The good is obedience to the law, hence the good for sovereignty is that people should obey it. This is an essential circularity which, whatever its theoretical structure, moral justification or practical effects, comes very close to what Machiavelli said when he stated that the primary aim of the prince was to retain his principality. We always come back to this self-referring circularity of sovereignty or principality.⁸

The mention of Machiavelli is interesting in that in attempting to exemplify the era of sovereignty, Foucault once again picks an author who, like Rousseau, comes at (or perhaps even after) the end of the historical period that was supposedly being exemplified. We might ask: why not claim Aristotle or even Plato as exemplary theorists of sovereignty given that they initiated the tradition that Foucault was supposedly characterizing? This after all would be the direction of inquiry that Aristotle’s (as opposed to Foucault’s) notion of *epistēmē* would’ve suggested. For this manner of looking at the world, rationality posits that nature always begins with the most perfect and complete ex-

for moral behavior, but moral behavior (even in the Kantian sense) is not a necessary condition for doubt.

⁸ Michel Foucault, “Governmentality,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 95 [87–105].

ample which becomes successively degraded and deformed over time, through experience, and in all of its subsequent iterations. Accordingly, the only true understanding of a being in its essence is that which can be had by tracing it back to its origin/beginning, which is also its fundamental principle, its *archē*. The path of reason (*logos*) itself is that of coming back around to the beginning, of coming full circle, of healing the wound to nature that has been perpetrated by the contingencies of experience. This is the meaning of the statement (that comes near the beginning of the *Metaphysics*) that “experience [*empeiria*] seems very similar to science and art, but actually it is through experience that men acquire science and art” (*Meta.* 981a1-5). While the Aristotelian *epistēmē* does indeed come after and as a consequence of experience, it must nevertheless be fundamentally distinguished from experience even though the two may at times resemble one another. This can be illustrated via the following diagram:



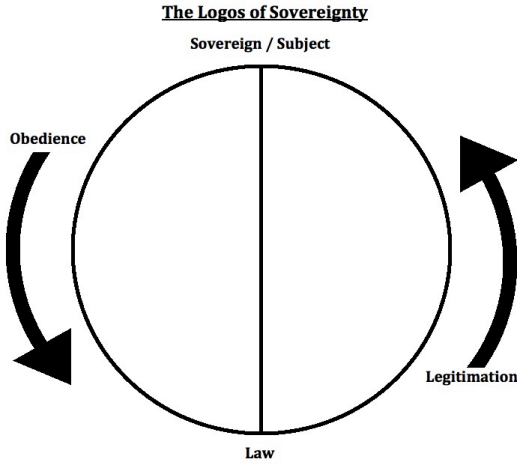
As can be seen in the figure above, both experience and “science” are moving in the same direction (clockwise) and hence their apparent similarity. However, “science” (in the Aristotelian rather than in the modern sense) can only come about after experience has traced a phenomenon to the point

of the most radical deviation of which it is capable while still retaining its fundamental characteristics. In order for “science” to operate, this sequence of the iterations of experience has to achieve closure by coming to a fixed end point (*telos*) which is the final (and most radically deviant) iteration of the original phenomenon that is possible. However, the determination that a given sequence has reached its logical conclusion can never be reached on the basis of experience alone. This is the obvious point concerning inductive logic, which Aristotle was fully aware of, that empirical observation in and of itself can never definitively predict the next term in a given sequence. As such, “science” begins not by following a sequence of phenomena to its empirical conclusion, but rather by the act of theoretically *positing* a given phenomenon as an end to the sequence. It is only once the sequence of experience has been closed (and it can never be closed by purely empirical means alone) that “science” can properly begin. Once this point has been decided upon (and it is fundamentally a *decision* in the precise sense in which we have been discussing that term) then “science” is able to perform its proper task of patiently retracing the path by which all of the phenomena of the empirical sequence (no matter how diverse or radical they may at first appear) are all in fact expressions of the original, most fundamental, most essential, most typical phenomenon of the sequence. With this step, the process comes full circle.⁹

By recognizing the way that, for Aristotle, reason itself is a fundamentally circular process we can more fully recognize the

⁹ How might this Aristotelian notion of science be differentiated from the science in the properly modern sense? The difference lies not with the beginning of the process which is in both cases the same (the positing of the theoretical—but not empirical—conclusion of a sequence) but rather with the fact that modern science does not finish once it has traced its phenomena back to their origin. In a sense, this is just the beginning of the modern scientific process in which theoretical conclusions provide the basis for subsequent processes of experience which may or may not lead to the same end point. For modern science, the distinction between science and experience is no longer tenable and as such, it is better represented by a *spiral* rather than a circle.

implications of Foucault's assertion that sovereignty shares this circular structure. On this basis, a diagram of the *logos* of sovereignty would look like:



As in the case of reason in general, the circularity of sovereignty comes about only as a result of decision. In this case, the decision concerns what constitutes law, which is the *telos* of the sequence of sovereign phenomena. This is also to say that law is decided upon as being the most extreme deviation that is possible from the origin of sovereignty. Law is, by definition, legitimate—that is to say, it is a decision concerning the essential unity and circularity of seemingly heterogeneous phenomena. By contrast, the sovereign has no legitimacy *until and unless* its unity and circularity can be retrospectively ascribed to it via the decision concerning its co-identity with law. This decision is the first step in the juridical process of the legitimation of power, which always and necessarily comes *after* the actions of the sovereign which are to be legitimated (just as “science” must always come after experience, as Aristotle recognized). When the origin of this process is viewed with respect to a sequence of actions as taken apart from or prior to the decision concerning the end/closure (*telos*) of that sequence, then this

origin is called the *sovereign*. By contrast, when that origin is regarded retrospectively after the imposition of unity and circularity to the sequence of phenomena, then in that case the origin of that sequence is called the *subject*.¹⁰

Following upon the path of Foucault's *Collège de France* lectures and certain other more recent developments, Jacques Derrida has also commented upon the essentially circular structure of sovereignty, though certainly providing his own unique spin on the subject. For Derrida, the history of political philosophy and its essential commitment to the circularity of sovereignty is precisely what, paradoxically and contrary to sovereignty's will, has made the thinking of democracy possible. Or, it may be just as correct to say that the sharing of rule by taking turns that is essential to democracy provided the essential model for the circularity of sovereignty, even *avant la lettre* of "democracy" itself. To this effect, he writes:

the turn, the return, the two turns, the by turns (*en meri* or *kata meros*) is what, even before determining

¹⁰ This recognition of the essential continuity between sovereign and subject was of course the most famous of Rousseau's contributions to the history of political philosophy. However, from our perspective, there is relatively little novelty in this observation (if any at all) apart from a mere change in terminology. As we will see, it was Aristotle, long before Rousseau, who argued that the citizens were in all cases those who comprised the city's sovereign (*kurios*) body. Moreover, even the introduction of the word "subject" is a comparatively trivial addition when it is recalled that it was also Aristotle, who argued that the city can only be ruled at all by an essential sharing or turning over of rule, such that with respect to the city, to rule always and also means to be ruled in turn—which might very well be the definition of a (juridical) subject. From this viewpoint, Rousseau's recognition of the circular structure of sovereignty only shows his continuity with the tradition of political philosophy and not the important ways in which he disclosed the possibility of breaking (from) that tradition, which is another discussion altogether. Nearly the entirety of Book III of the present work focuses on Aristotle's *Politics*, and Rousseau's continuity and discontinuity with Aristotle is taken up explicitly in Book IV, Chapter 1.

what *demos* or *kratos*, what *kratein*, means, brings together the two terms of their double hypothesis or double axiom, namely *what one says* about freedom and equality. Freedom and equality are reconcilable, so to speak, only in a turning or alternating fashion, only in alternation. The absolute freedom of a finite being (and it is of just such a finitude that we are speaking here) can be equitably shared only in the space-time of a “by turns” and thus only in a double *circulation*: on the one hand, the circulation of the circle provisionally transfers power from one to the other before returning in turn to the first, the governed becoming in his turn governing, the represented in his turn representing, and vice versa; on the other hand, the circulation of the circle, through the return of this “by turns,” makes the final and supreme power come back *to itself, to the itself of self, to the same as itself*. The same circle, the circle itself, would have to ensure the returning to come but also the return-or returns-of the final power to its origin or its cause, to its for-itself.¹¹

If democracy and sovereignty are thus inextricably linked through their mutual implication in the essentially circular structure of rule (*kratos*) as Derrida claims (and we have no reason to dispute this claim), then where does this leave the distinction that Foucault posits between sovereignty and governmentality? Given that Foucault himself recognized the circularity of sovereignty, does this mean that the new paradigm that he called governmentality has no relationship to this circular structure of rule? What would it mean to rule without circularity or auto-referentiality? Is this even thinkable?

For the tradition of political philosophy, the answer to this last question is clearly no. There is no act of ruling (or no act worthy of the name “rule”) that does not attempt to install itself retrospectively as the legitimate basis (or “rule”) for future

¹¹ Jacques Derrida, *Rogues: Two Essays on Reason*, trans. Pascale-Anne Brault and Michael Naas (Stanford: Stanford University Press, 2005), 24.

acts of ruling. However, political philosophy has often been unwilling to acknowledge the necessary consequences which follow from the circular structure of sovereignty which it has consistently described. For instance, a necessary consequence of this circularity is the fact that any attempt to rule in the full and proper sense of the term (which entails the attempt to secure its own legitimacy) simultaneously raises the possibility of the contestation of its legitimacy—where there is a rule, there is also the possibility of declaring acts to be against the rule and even of declaring the act of ruling which established the rule (and therefore the rule itself) to be illegitimate. It would seem that this ineliminable possibility of the revocation or reversal of rule stands in diametric opposition to the logic of sovereignty as it has often been hypothesized by the history of political philosophy and yet, as Derrida argues, there is no sovereignty without this possibility. In other words, while sovereignty is characteristically defined by the unconditional nature of its rule, unconditionality and rule are by definition irreconcilable.

Foucault explicitly recognizes the circular structure of sovereignty and yet he still attempts to equate sovereignty with unconditionality. His renunciation of sovereignty as descriptive of contemporary political reality stems from this equation. But what if we insist, along with Derrida, that the unconditionality (or “indivisibility” as moderns such as Hobbes and Rousseau have called it) that the history of political philosophy has attributed to sovereignty is by definition incompatible with the circular structure which that tradition has also imparted to sovereignty? In such a case, the renunciation of this unconditionality or indivisibility—far from revoking or suspending sovereignty—can itself be taken as a recovery or reanimation of sovereignty’s circularity.¹²

¹² In other words, there is no attacking sovereignty’s unconditionality that does not support its circularity. This is indicative of what Derrida calls *autoimmunity*. See Jacques Derrida, “Autoimmunity: Real and Symbolic Suicides,” in Jürgen Habermas, Jacques Derrida, and Giovanna Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (Chicago: University of Chicago Press, 2003), 85–136.

However, it should not be said that Foucault was unaware of sovereignty's persistence, that attacking it might just be what keeps it alive. While at times he presents governmentality as strictly opposed to sovereignty, this is primarily because that opposition was a founding hypothesis employed by many theorists in positing the epistemological break that constituted governmentality. This phenomenon can be seen particularly, Foucault pointed out, in the many texts of the 17th and 18th centuries that were specifically devoted to criticizing and opposing Machiavelli's *Prince*.¹³ In other words, governmentality must be understood in terms of its opposition to sovereignty simply on the basis of the hypothetical role that this opposition played within governmentality itself. While this opposition to sovereignty was certainly of great internal utility for governmentality—we may even say that this opposition was a condition for governmentality's very enunciation—this in no way suggests that the opposition should be automatically accepted in describing the actual functioning of that ideology. Nor should we be surprised to find that Foucault ultimately rejects the opposition between sovereignty and governmentality, even though it provided the initial hypothesis by which he was able to specify the latter. On this point he writes:

This is not to say that sovereignty ceases to play a role from the moment when the art of government begins to become a political science; I would say that, on the contrary, the problem of sovereignty was never posed with greater force than at this time, because it no longer involved, as it did in the sixteenth and seventeenth centuries, an attempt to derive an art of government from a theory of sovereignty, but instead, given that such an art

¹³ As Foucault writes: "Let us leave aside the question of whether the interpretation of Machiavelli in these texts was accurate or not. The essential thing is that they attempted to articulate a kind of rationality which was intrinsic to the art of government, without subordinating it to the problematic of the prince and of his relationship to the principality of which he is lord and master" (Foucault, "Governmentality," 89).

now existed and was spreading, involved an attempt to see what juridical and institutional form, what foundation in the law, could be given to the sovereignty that characterizes a state. ... [In] *The Social Contract* [Rousseau] poses the problem of how it is possible, using concepts like nature, contract and general will to provide a general principle of government which allows room both for a juridical principle of sovereignty and for the elements through which an art of government can be defined and characterized. Consequently, sovereignty is far from being eliminated by the emergence of a new art of government, even by one which has passed the threshold of political science; on the contrary, the problem of sovereignty is made more acute than ever.¹⁴

As we see here, at the point where his analysis of sovereignty culminates, Foucault was keenly sensitive to the fact that the explicit negation of sovereignty often (whether consciously or unwittingly) provided the possibility for its being preserved in a different form. Should we be surprised that sovereignty's negations are in fact continuous with the very structure they attempt to negate, that one cannot negate sovereignty without invoking it as the basis for such a negation? Not when we recall that sovereignty has always come to us in the form of the circle. One supposes to have gotten out of the circle only at the price of discovering that one has simply gotten turned around within it.

This observation concerning the difficulty of getting out of sovereignty suggests that another relatively distinct sense of circularity that we have yet to mention is also implicated by the question: the hermeneutic circle. The essential Heideggerean renovation of the understanding (*Verstehen*) was, in a sense, to renounce its sovereign ambitions. Thou shalt not understand that which thou dost not understand all-ready. However, the consequence of this denial of the capacity of the understanding to step outside of itself was effectively that of affirming the

¹⁴ *Ibid.*, 101.

power inherent to the understanding.¹⁵ While I may not be able to step outside of the hermeneutic circle, there is no distinct limit to what I can possibly subsume within that circle—and in this respect, everything that is has been understood (whether “correctly” or “incorrectly,” “implicitly” or “explicitly”) all-ready. In a similar fashion, and this is what Foucault associates with the historical process known as “governmentality,” the renunciation of sovereignty’s ability to confront the exception amounts to the assertion that when it gives up such a pretense (and thereby returns to its proper circularity) it knows no exceptions whatsoever.

¹⁵ Emmanuel Levinas has provided a thorough critique of Heidegger on this point, starting from some of his earliest writings: “the fact of being launched [*embarqué*], this event to which I am committed, bound as I am to what was to be my object with bonds that cannot be reduced to thoughts, this existence—is interpreted as understanding The first sentence of Aristotle’s *Metaphysics*, ‘All men by nature desire to know’, remains true for a philosophy that, without due consideration, was thought to be contemptuous of intellect.” Emmanuel Levinas, *Entre Nous: On Thinking-of-the-Other*, trans. Michael B. Smith and Barbara Harshav (New York: Columbia University Press, 1998), 3.

3: CARL SCHMITT THERE IS NO OUTSIDE SOVEREIGNTY



As we have already had occasion to remark, the work of Carl Schmitt has comprised one of the most influential sources for contemporary scholarship on the question of sovereignty. Prominent subjects of scholarly debate concerning Schmitt include but are not limited to: the relationship between Schmitt and the political philosopher Leo Strauss,¹ the prescience of Schmitt's juridical reasoning with regards to the various circumventions of *habeas corpus* initiated by the Bush Administration in its Global War on Terror,² and the contemporary importance of Schmitt's critique of liberalism for re-imagining the political sphere as a whole.³ The importance of

¹ Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue* (Chicago: University of Chicago Press, 1995), and John P. McCormick, "Fear, Technology, and the State," *Political Theory* 22.4 (1994): 619–652.

² William E. Scheuerman, "Carl Schmitt and the Road to Abu Ghraib," *Constellations* 13.1 (2006): 108–124.

³ The attempt to turn Schmitt's critique of liberalism into a positive political project in a different key has been approached from a variety of perspectives and to different degrees by many prominent contem-

Schmitt for the present study does not explicitly concern any of these broader issues with which his name has come to be associated. Our interest in Schmitt lies exclusively with the place occupied by his treatment of the concept of sovereignty with respect to its history in political philosophy. In a preliminary fashion, we may say that Schmitt's treatment of sovereignty is diametrically opposed to that of Maritain. Whereas Maritain saw sovereignty as a concept utterly inadequate for describing anything whatsoever having to do with the relationships between human beings, for Schmitt, sovereignty was nothing less than the fundamental ground of human existence.

The recognition of sovereignty as having a central place within the political sphere was in itself nothing new; ruminations on this theme were quite commonplace for Bodin, Hobbes, and other political philosophers of the modern era. While sharing the recognition of sovereignty's centrality for politics with the tradition of political philosophy, Schmitt's treatment of sovereignty nevertheless remains fundamentally distinct from that tradition. Schmitt stands outside of the history of political philosophy because he regarded the exercise of sovereignty as more fundamental than the exercise of politics. *Rather than grounding the concept of sovereignty in the exercise of politics, instead, Schmitt sought to ground the concept of the political in the exercise of sovereignty.* It is this innovation that

porary political theorists, including Wendy Brown, Jacques Derrida, Giorgio Agamben, Michael Hardt & Antonio Negri, and Kenneth Reinhard. See Wendy Brown, "Sovereignty and the Return of the Repressed," in *The New Pluralism: William Connolly and the Contemporary Global Condition*, ed. David Campbell and Martin Schoolman (Durham: Duke University Press, 2006), 250–272; Jacques Derrida, *Politics of Friendship*, trans. George Collins (London: Verso, 2005); Agamben, *State of Exception*; Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000); Kenneth Reinhard, "Towards a Political Theology of the Neighbor," in Eric L. Santner, Slavoj Žižek, and Kenneth Reinhard, *The Neighbor: Three Inquiries in Political Theology* (Chicago: University of Chicago Press, 2006), 11–75.

is chiefly responsible for Schmitt's unique place *vis-à-vis* the history of political philosophy: by insisting that sovereignty was more fundamental than politics itself, Schmitt was the messenger of political philosophy's *end*—in the sense of both temporal finality and metaphysical culmination.

Schmitt's break with the political philosophic tradition is already evident in the fact that his political reflections were in all cases essentially derived from an extended metaphor between politics and law. In his juridical works, Schmitt found in the legal decision an essential aspect of what made the law what it is that could be neither reduced to nor explained by either the positive or normative conceptions of law.⁴ Followed to its letter, no law, no matter how detailed it attempts to be, can possibly predict all of the innumerable facts and circumstances surrounding a particular case. At the other extreme, even if law is thought of as a mere codification of the prevailing social norms and conventions (and Schmitt has a particular contempt for this thesis), this too presupposes the power of the decision for adjudicating each respective case on its merits. Either way, there are facts present in any given case which stand out as exceptions to the particular law or code in question and to the body of law as a whole. Decision upon the exceptional aspects of a given case is required *a priori* for the law to be enforced. However, because it specifically concerns those aspects of a case which the prior body of law has not anticipated, this act of decision (which both extends the law and makes it applicable) is not itself "legal" before the fact of its own enunciation. In other words, the exercise of law upon the exception (and viewed on its own merits, each and every case is an exception) itself presupposes the extra-legal act of decision. This juridical concept of the exception as requiring extra-legal decision was in turn applied to the executive's unique power in a constitutional state to suspend or revoke the constitution as a

⁴ Representative works of Schmitt's early juridical phase can be found in Carl Schmitt, *Gesetz Und Urteil* (Munich: C. H. Beck, 1968), and Carl Schmitt, "Juristische Fiktionen," *Deutsche Juristen-Zeitung* 18.2 (1913): 804–806.

whole in times of exceptional emergency.⁵ Hence, Schmitt's now famous definition of the sovereign as "he who decides upon the exception."⁶

The priority that Schmitt accorded to the exercise of law in relation to political phenomena was not simply methodological but indeed phenomenological. Even in his works which most explicitly consider the tradition of political philosophy and the question of the political as such, the specter of the law never seems to disappear. To the contrary, it is something like the "wizened dwarf that knows to keep out of sight" while manipulating the puppet named "The Political." Without the juridically-defined notion of *exception*, Schmitt's "concept of the political" is essentially empty.

Schmitt's method of demonstration in *The Concept of the Political* is to show how the classical political problems concerning representation, the separation of powers, the authoritative element of a regime, etc. are all rooted in an antagonism of a more fundamental and indeed existential nature. It is only

⁵ Schmitt's critique of constitutional law was already foreshadowed by Austin. Consequent to his definition of law as the giving of orders by superiors to subordinates, for Austin, "constitutional law" is no law at all in that it presupposes that a given governing body can legislate upon itself. If there is no clearly defined superior ("governor" in Austin's terminology) then there can be no "positive law" but only a "positive morality." Also, in a passage that strongly anticipates Schmitt's description of the legally undecidable status of the state of exception, Austin asserts that: "every supreme government is free from legal restraints, or (what is the same proposition dressed in a different phrase) every supreme government is legally despotic." John Austin, *Lectures on Jurisprudence*, ed. Robert Campbell, 5th ed., 2 vols. (London: John Murray, 1885), 1:276.

⁶ This famous definition comes from: Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge: MIT Press, 1985), 5. The other important historico-juridical work of Schmitt that would set the stage for his later more explicit encounters with political philosophy may be found (recently translated) in Carl Schmitt, *Constitutional Theory*, ed. and trans. Jeffrey Seitzer (Durham: Duke University Press, 2008).

by disclosing this essential antagonism that lies behind all of the limited, incidental, and ontic disputes of mere “politics” that the properly ontological nature of The Political can be encountered. By recognizing the essential political antagonism, it will also be possible to distinguish the nature of political inquiry from all other sorts of inquiry in the most clear and definitive way.

The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.... Insofar as it is not derived from other criteria, the antithesis of friend and enemy corresponds to the relatively independent criteria of other antitheses: good and evil in the moral sphere, beautiful and ugly in the aesthetic sphere, and so on. ... The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation. ... The political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible. These can neither be decided by a previously determined general norm nor by the judgment of a disinterested and therefore neutral third party.⁷

The fundamental political antagonism between friend and enemy consists of a strange concurrence between definiteness and indeterminacy. Anyone may potentially be a friend just as anyone may be an enemy; there are no positively definable properties which would definitively preclude the necessity of

⁷ Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: University of Chicago Press, 1996), 26-27.

either designation. Moreover, even once the designation of friend/enemy has been made in a particular instance, it nevertheless remains perpetually subject to the possibility of revision as the facts at hand are themselves constantly changing. In a peculiar way, however, this essential contingency of the designation when considered cross-contextually is precisely what necessitates the absoluteness of the designation with respect to a particular case. That the friend/enemy designation cannot be decided by either a “general norm” or a “neutral third party”—and thus, is fundamentally arbitrary—means that no political action whatsoever can take place until and unless I make a decision concerning who specifically my enemy/friend is in that particular instance.

The friend/enemy antagonism plays an essentially double role in Schmitt’s cosmology. On the one hand, the antagonism constitutes the specific difference that defines “the political” as a category opposed to other such categories (e.g., the economic, the moral, the aesthetic, etc.). On the other hand, he will go on to assert that, as it is phenomenologically encountered in experience, the friend/enemy antagonism constitutes not just one particular “ontic” form of antagonism among others but indeed *the* fundamental ontological condition of antagonism *as such*. “The friend and enemy concepts are to be understood in their concrete and existential sense, not as metaphors or symbols The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping.”⁸ And yet, it is precisely here where Schmitt seems to be declaring the potentially political nature of human experience in its entirety that his refusal to take the political seriously (and his decided preference for the juridical) becomes most evident.

Schmitt’s “concept of the political” is a peculiar concept in that it confers absolutely nothing in the way of content and is in this respect quite reminiscent of the referential nullity that

⁸ *Ibid.*, 27–29.

we have already identified as being proper to the concept of sovereignty in political philosophy. As Schmitt writes:

From a practical or theoretical perspective, it really does not matter whether an abstract scheme advanced to define sovereignty (namely, that sovereignty is the highest power, not a derived power) is acceptable. About an abstract concept there will be no argument What is argued about is the concrete application, and that means who decides in a situation of conflict what constitutes the public interest or interest of the state, public safety and order, *le salut public*, and so on. The exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like, but it cannot be circumscribed factually and made to conform to a preformed law.⁹

The significance of the distinction between friend and enemy is not that I have either reason or desire to call a friend a friend and an enemy an enemy, but simply that in order for the political to be constituted such a distinction must be made. As a consequence, my reasons for appreciating a friend or an enemy appear as derivative of—and indeed structured around—the logical necessity of the decision before such reasons. The “concept” of the political is quite simply a dumb box consisting of nothing but the refusal to be penetrated by any and all questions of legitimacy. For Schmitt, “legitimacy” is nothing but the excremental excess produced by decision; reasoning and explanation are simply what the judge comes up with after having made the decision regardless of any and all justifications.

Schmitt’s singular insight which definitively brought the tradition of political philosophy to a close was the following one: *The concept of the political is the concept of sovereignty*. To define the political on the basis of the priority of sovereign de-

⁹ Schmitt, *Political Theology*, 6.

cision is at the same time to reduce the place of deliberation—regardless of whatever particular body is thought to exercise this capacity in a regime, whether it be the people or the parliament or even the king—to a secondary and derivative (and therefore, not distinctly *political*) phenomenon. As we have seen, the tradition of political philosophy (particularly in modernity) had already articulated both the referential nullity of the concept of sovereignty and the essential place of sovereign decision in the exercise of politics. Nonetheless, in one manner or another, all of the great political philosophers had also provided a distinctly *political* role to deliberation, however limited or provisional that role might have been. Even Machiavelli's *Prince* deliberates about how to best maintain power and the methods posited in the *Discourses*—that is, those of deliberation—might very well be the most efficacious; even for Hobbes, it is still a *question* whether I will recognize the Sovereign's decision as legitimate when I am the one who bears its brunt (i.e., when such a decision is in conflict with my own right to self-preservation from which the Sovereign's authority is itself derived). As Maritain reminded us, the concept of sovereignty has always been dwelling within the tradition of political philosophy. Schmitt provided that tradition with both its teleological culmination and its historical dissolution by defining the political as completely devoid of deliberation—that is to say, as *sovereignty and nothing but*.¹⁰

¹⁰ Schmitt's critique of parliamentary democracy is made precisely on the grounds that it mistakenly takes deliberation as the most fundamental political activity. If this has any validity at all, it is only when deliberation becomes sufficiently intense so as to resemble the properly political antagonism. More often though, especially as it is enacted in parliamentary democracy, deliberation has the role of obscuring the facticity of cohesion among friends (who often appear primarily as adversaries and rivals) and the hostility of external threats (who may go collectively unrecognized due to internal disputes). Only in the context of the potential dissolution of the state do the disagreements between parties take on anything resembling the specifically political nature of true (external) enemies: "The enemy is not merely any com-

Schmitt's destruction of political philosophy must be confronted not simply on political grounds, but more fundamentally with respect to the formal system of thought that undergirds his politico-legal philosophy. This system is derived from one fundamental axiom: decision is phenomenologically prior to deliberation. Schmitt's attacks upon legal normativism and positivism exhibit his formal defense of this axiom. Even when deliberation takes place "first" chronologically speaking, it becomes recognizable as "deliberation" at all only once a decision has been made. Even deciding not to decide is still making a decision. Accordingly, *there is no outside sovereignty*.

Throughout its history, political philosophy has been constituted by the essential antagonism between deliberation and decision. Schmitt brought this tradition to an end by deciding definitively in favor of decision. This rupture in the heart of political philosophy has killed the host and split its offspring into two separate bodies. But if today decision roams free as sovereignty, then perhaps so does deliberation as well. Considered apart from any and all exceptions (i.e., decisions), deliberation has now become truly itself, that is to say truly *absolute*. Devoid of any necessary relation to decision, deliberation is at once and at last worthy of its true name, the name from which it has heretofore fled and from which it need flee no longer: *doubt*.

petitor or just any partner of a conflict in general. He is also not the private adversary whom one hates. An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity. The enemy is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship. The enemy is *hostis*, not *inimicus* in the broader sense; πολέμιος, not ἐχθρός" (Schmitt, *The Concept of the Political*, 28).

4: GIORGIO AGAMBen

HOMO SACER AS SOVEREIGNTY'S NEGATIVE



While Giorgio Agamben is not single-handedly responsible for the reintroduction of the question of sovereignty to scholarly debate, without his work that question would certainly be missing one of its most provocative formulations. Out of all of Carl Schmitt's contemporary interpreters, Agamben has perhaps done the most to present the distinctive relevance of the Schmittian formulation of sovereignty for the emerging framework of the Global War on Terror. Beyond simply offering an analysis or explanation of the historical precedents and logical consequences of the Global War on Terror, Agamben has also offered a series of theoretical speculations on the positive reformulation of the political sphere (primarily with his notions of "the coming community" and "making inoperative"). For the present study, we will leave these positive contributions aside and focus exclusively upon Agamben's useful suggestions concerning how to understand the consequences implied by Schmitt's decoupling of the concept of sovereignty from the tradition of political philosophy.

Agamben takes Schmitt's doctrine of legal (and extra-legal) decisionism to its logical conclusion by demonstrating that as the sovereign acts outside of the law and in so doing decides upon the limits of the law, at the same time this renders at least

one of the state's subjects as similarly outside of the law. Accordingly, such an individual is no longer strictly speaking a subject at all, but is instead *homo sacer*, sacred man, who "anyone can kill but no one can sacrifice."

What defines the status of *homo sacer* is therefore not the originary ambivalence of the sacredness that is assumed to belong to him, but rather both the particular character of the double exclusion into which he is taken and the violence to which he finds himself exposed. This violence—the unsanctionable killing that, in his case, anyone may commit—is classifiable neither as sacrifice nor as homicide, neither as the execution of a condemnation to death nor as sacrilege.¹

As an inversion of Schmitt's hypothetical figure of pure subjective decision—the extra-judicial sovereign whose decision upon the law's limits lacks any and all determinate limits—*homo sacer* is a corresponding but opposite object of pure victimhood, a victim with no legal standing or recourse whatsoever, and thus, one whose victimhood is by definition so absolute that even the possibility of recognizing such a person as a victim in the legal sense of the term is *a priori* excluded. "At the two extreme limits of the order, the sovereign and *homo sacer* present two symmetrical figures that have the same structure and are correlative: the sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns."² The stereoscopic picture of political life that emerges from overlapping the images derived from these two equal but opposite logical constructs—*homo sacer* and the exceptional sovereign—is of immediate contemporary import.

In seeking to isolate the irreducibly subjective kernel at the heart of the concept of sovereign decision from any and all of

¹ Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 52.

² *Ibid.*, 53.

the social, practical, technical, or ethical circumstances and constraints that actually govern human beings at any particular moment in time, Schmitt was quite possibly—albeit in the form of negation—describing a fundamental depersonalization of governmental control over life and death. From this view, the potentialities and impotentialities of exceptional decision are encountered most immediately and essentially with respect to the Sisyphean task of determining the limits of life and death *in general*. The world-historical necessity to confront this question existentially—in the form of the fundamentally evolving and perpetually contested antagonism “life/death” that demarcates the zone of intellectual and spiritual contestation constitutive of the theological—in turn can be regarded as the central problem of industrialized society. How to know the difference between life and death in a world in which the burgeoning of the technical means to preserve and to destroy constantly upsets that distinction?

As Schmitt's contemporary Walter Benjamin famously witnessed, the very moment at which the theological recedes as an explicitly transcendent and immaterial discourse is also the moment at which every discipline under the sun finds itself confronting a displaced theological problematic as an immanent, immediate, material, and existentially-defining task. The political question of separating friends from enemies becomes instead the political-theological problem of separating who must live from who must be killed. The economic question of separating the useful from the useless becomes instead the economic-theological problem of separating those who lead productive, industrious, and profitable lives from lazy, squandering, destructive do-nothings and anarchists. The aesthetic question of separating the beautiful from the ugly becomes instead the aesthetic-theological problem of separating pleasing forms of life (to be preserved, archived, expanded, multiplied) from displeasing ones (to be deleted, excreted, minimized, replaced). The medical question of separating sickness from health becomes the medico-theological problem of separating living systems from both pathology and functionality. The ethical question of separating the good from the bad in-

stead becomes the ethico-theological problem of separating those with a right to a good life from those whose lives must be turned into living hell for the sake of illustrating the difference.

If it is true that the figure proposed by our age is that of an unsacrificeable life that has nevertheless become capable of being killed to an unprecedented degree, then the bare life of *homo sacer* concerns us in a special way. Sacredness is a line of flight still present in contemporary politics, a line that is as such moving into zones increasingly vast and dark, to the point of ultimately coinciding with the biological life itself of citizens. If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*.³

In the era of biopolitics, citizenship is quite literally inscribed on the body through any number of governmental and corporate practices that grow increasingly difficult to differentiate from one another. Whatever rights one may or may not presume to have on paper, it is unclear what (if anything) such rights amount to in a reality in which public space means little more than a zone for the unimpeded corporate-governmental surveillance of the population in the interest of extracting the greatest amount of rent. If this occurrence seems particularly striking to us today, this is likely because no one any longer believes that the imagined zone of physical and psychological freedom that was the traditional counterbalance to the power of authorities over citizens—namely, “privacy”—actually exists.⁴

³ *Ibid.*, 68.

⁴ While the legal fiction of privacy no longer seems particularly potent, it is important to remember both for the assurances it was at times able to provide and for those it wasn't. The common law tradition does indeed valorize the private sphere (and, particularly, the sacrosanct privacy of the home) as generally inviolable, however, one's right to privacy is established only vis-à-vis a relation to property. The not always prevailing good sense of this tradition was to regard the

While one need not look very far for evidence that the stripping of constitutional rights from populations has become a basic feature of contemporary society, the prohibition of drugs is a particularly instructive and multifaceted example. The prohibition of drugs serves not only to ensure that members of the population generally maintain cognitive states conducive to the performance of alienated labor but also as a means to eliminate competition for the handful of entrenched interests that profit most robustly from the production and distribution of legal and illegal inebriants (e.g., the alcohol, tobacco, and pharmaceutical industries; the infinitely leveraged corporate banks that depend upon illegal drug money as a rare source of cash deposits, etc.). Given its reliable frequency of occurrence among a more or less random subset of the population—and the relative ease of fabricating such occurrences when they prove less than forthcoming—drug possession is a conceptually perfect crime for legitimating the bodily search, harassment, and/or detention of nearly anyone, in theory. In

actual and ongoing uses of property as more fundamental than the fictional construct of titled ownership and thus to convey a certain protection from the scrutiny of authorities to renters and other non-titled users of property as well. In contradistinction to this good and common sense, far too often, the rights conveyed via the legal fiction of titled ownership trump the rights of those who actually use and dwell with things. It is of little surprise then that one of the primary motivations for acquiring property is to acquire the privacy that property confers. Moreover, property must be distributed more liberally than amongst its titled owners or it could never be put to use at all—including the use of acquiring more property titles. However, the exponential accumulation and consolidation of property titles is feasible only there where it is possible for titled owners to maintain strict oversight concerning the uses of property. Recognizing their interests as a class, and recognizing the indispensable role of the law as an instrument for pursuing those interests, titled owners often take great pains to ensure that the central terms of employment, tenancy, lending, etc. serve to diminish the rights of those who use things rather than simply own them on paper. Accordingly, the general function of law enforcement is to ensure the inviolability of title by ensuring the violability of the population's personal space and communications.

practice, of course, law enforcement knows very well that it is expected to utilize its extralegal powers only upon particular elements of the population and, generally speaking, it maintains this restraint. Accordingly, “suspiciousness” becomes the official legal repository for any and all prevailing social prejudices concerning race, ethnicity, language, gender expression, dress, demeanor, etc. For a society in which constitutional rights mean a great deal more in theory than in practice, generally speaking, the degree to which one is an object of such social prejudices is, unsurprisingly, proportional to the scrutiny that one receives from law enforcement. Finally, money remains the only reliable alibi for extricating oneself from prosecution for violations of the social code of any nature, however heinous or banal, real or imagined.

The ubiquity of law enforcement in public space and the concomitant social supposition that no space is beyond the reach of surveillance together serve as a constant threat to each of us—though this threat is always more acute for some than it is for others—that any moment carries with it the possibility of being thrown outside of the law, of having our citizenship and the rights entailed by it revoked if we do not discipline our bodies and minds in accordance with the will of the biopolitical sovereign. Though a more thorough investigation of these matters falls outside the scope of the present inquiry, we should actively debate both the origins and the functions of this social arrangement, whether or not there is anything particularly novel about its contemporary form, and whether or not it is worthwhile to appeal to any of the various rhetorical and ideological forces that have at times served (or could conceivably serve) to ameliorate the abuses of populations facilitated by corporate-governmental surveillance. What appears less in dispute however, and the matter which is of most immediate significance for the present discussion, is the simple fact that any number of people live today quite aware of the fact that abiding by the law affords little if any protection from even the law itself—both in terms of direct abuses to one’s body and/or interests at the hands of law enforcement, collectors, etc. and the surveillance that serves as a pretext for such abuses. If per-

sonhood is primarily a legal fiction, what do you call a fiction that knows just how vulnerably fictive it is, indeed, a fiction that is everyday a bit more aware that its internalized narrative structure may well be synonymous with privation and confinement if not extinction?



In light of accounts that characterize political life as a zone of indistinction between law and legal exception such as the one given above, it does indeed seem reasonable to temper our understanding of a political concept like citizenship with the recognition that it was never a property inherently given. In fact, to the extent which it means anything at all, “citizenship” has always referred to the continual performance of a body of practices.⁵ As such, whatever modest protections a given legal status may at times afford an individual can be revoked at an instant, if and when practices of citizenship are not performed or if they are performed in a manner the sovereign deems inappropriate or insufficient. Does this mean that each of us today lives with the potential of being in the extreme position of *homo sacer*—i.e., an object of indiscriminate violence that is

⁵ By saying that citizenship is constituted by a body of practices, we do not mean to suggest that certain of these practices are not designated as more or less innate or inherent than others, such as, e.g., having been born in a particular territory, or with a particular skin color, or with a particular set of genitals, etc. However, even persons for whom these practices do arise more or less naturally have to perform them in one manner or another. This is clearly indicated by the fact that as soon as one starts to perform actions which contradict the inherent-ness of given bodily properties, those properties are inherent no more. As such, it is both unnecessary and misleading to posit a difference of kind between any of the various activities which constitute citizenship; gender and even place of birth are not the same as but are more or less continuous with phenomena such as language, religion, and kinship. In short, there is no body other than a body of practices. Consequently, we must never speak of “the body” as if there were such a substantial entity but only of “bodily functions.”

also unworthy of ritual sacrifice—in the event that we perform certain inappropriate civic activities, e.g., announcing support for Al Qaeda? Would such a performance exhaust the conditions necessary for turning the potentiality of being a *homo sacer* into an actuality? Also, what does this suggest for the majority of us who have made no such performances and have passed the *bona fides* tests of citizenship? Is a framework that draws upon the case of *homo sacer* relevant as a description of our actual functional abilities and disabilities?

The difficulty of answering these questions can be taken as indicative of the essential ambiguity at the heart of the concept of *homo sacer*: does it refer directly to a *determinate case*—i.e., an individual or group of individuals placed totally outside the law—or does it instead plot a *limit* which situates political subjects in relation to one another but which directly refers to no subject in particular? It would seem initially that the latter interpretation is the obviously more robust one, as when Agamben writes: “If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*.” And yet, Agamben takes great care to preserve this ambiguity, even going so far as to name a determinate case:

The Jew living under Nazism is the privileged negative referent of the new biopolitical sovereignty and is, as such, a flagrant case of a *homo sacer* in the sense of a life that may be killed but not sacrificed. His killing therefore constitutes ... neither capital punishment nor a sacrifice, but simply the actualization of a mere “capacity to be killed” inherent in the condition of the Jew as such. The truth—which is difficult for the victims to face, but which we must have the courage not to cover with sacrificial veils—is that the Jews were exterminated not in a mad and giant holocaust but exactly as Hitler had announced, “as lice,” which is to say, as bare life.⁶

As historical analysis, this passage is quite compelling inso-

⁶ Ibid.

far as it provides a meaningful and critical context for interpreting an event that public history generally refuses to acknowledge as anything other than a “senseless” tragedy. In this respect, the significance of naming “the Jew living under Nazism” as “the privileged negative referent of the new biopolitical sovereignty” is to suggest that such a particular and indeed exceptional case—a form of life that most of us generally regard as so distant from our everyday experience as to be positively inexplicable—is in fact an exemplary instance of the very corporate-governmental rule over life and death that determines so much of what we today can and cannot do with our bodies. If the laboratory, the factory, the prison, the asylum, and the slaughterhouse could become so thoroughly intermingled in both theory and practice as they were in the Nazi camps, then it would be nothing short of hubris of the most dangerous sort to think that these institutions—which in their collective logic comprise the biopolitical core of industrial society—are not continually co-evolving through the mutual exchange of materials, methods, and applications. To utilize any one of these industrial institutions is to presuppose the operation of them all just as everyday instruments presuppose tasks that presuppose other instruments.

This lesson, which seems so instructive concerning the macroscopic social function of the institutions that play no small part in the making and unmaking of so much of our food, infrastructure, bodies, and minds today, comes to us by way of a rather tortuous logical process. We start from an abstract definition of *homo sacer* conceived as a limit case, thereby logically assuming that such an entity cannot be found to exist. Next, we turn to the historical record, immediately proceeding to identify an actual, and indeed, “flagrant” case of the very entity that was logically considered impossible. Finally, we assert that the demonstrated historical reality of such a case having actually existed in the past in turn proves that no one can logically preclude the possibility of such a condition existing today and thus “perhaps we are all virtually *homines sacri*.” Upon reflection, however, it is not entirely clear why it should

be so easy to identify a *homo sacer* in the past when it is evidently so difficult to do so in the present.

The closer we look at the ready-to-hand historical example of supreme and total victimhood without standing that supposedly constitutes sovereignty's "privileged negative referent," the less clear it is that there is anything strictly referential (much less uniquely so) about such an example. Certainly, an initial consideration of the condition of "the Jew living under Nazism" would seem to coincide with the two conditions of *homo sacer*. Any German citizen could've killed just about any Jew without the fear of facing condemnation by the community for such an act. Moreover, it would be unlikely that such an act would be worthy of any more celebration than is usually accorded to the domestically necessary activity of refuse removal. However, what is missing from such an account—and what is evident as soon as one hypothesizes that such an account is inadequate precisely because it appears to coincide with the conceptual limit case originally theorized and therefore requires a greater level of detail—is the immensely valuable function of social binding that was provided to the German state by the routine designation of persons as less than human. While perhaps it is true that no given act of killing a Jew or a homosexual or a gypsy would've been necessarily considered as the making of a sacrifice, without the designation of an existentially-quantified category of persons deemed "less than human" the Third Reich would've been unimaginable.

In other words, the closer that we look at this supposedly privileged example, the more it seems to comport with the rather less arcane logic of sacrifice. It would seem that at the very point where such a "referent" for *homo sacer* is empirically discovered—or, to put it more gravely, biopolitically manufactured—the very act of existentially quantifying this category itself undoes the referential status of the case in question and the potential universality of the category in general along with it. We may even conclude formally that to name a *homo sacer* as such—e.g., by designating those subject to extralegal violence as a demographic category—is in effect to name a collective sacrificial victim. For *homo sacer* to serve solely as an ob-

ject of publicly tolerated extralegal violence, such violence must remain strictly *impersonal* equally with respect to its agent as well as its object. Indeed, just as the sovereign places any number of intermediaries and functionaries between the uttering of the order word and the actual acts of violence that the order ordains, all the while clothing the executioners in the best anonymity money can buy, so the sovereign goes to great lengths to *unlearn* the names of its victims for it knows very well that victims are only victims if they have names. In that sense, to ask for the name of a true, verifiable *homo sacer* is every bit as impossible of a request as asking for the true name of God.

Perhaps, then, it is the very *inapplicability* of the concept of *homo sacer* that allows us to deepen our understanding of how biopolitical institutions actually work. Perhaps the “privileged” status of the Nazi camps as somehow uniquely disclosive of the logic of biopolitical sovereignty in fact stems from the unwillingness of public history to interrogate the commonalities between the context and conditions determining of that historical episode and the circumstances found in a number of contemporary institutions (e.g., refugee camps, detention camps, prisons, asylums, etc.) present throughout the world today. In fact, with the benefit of hindsight, one might say that the Nazis made a rather severe conceptual error in their use of biopolitics; namely, in thinking that the essentially biological processes that provided the animating force for their society could be brought to an ultimate and static culmination, i.e., the “final solution.” By necessity, biopolitics requires a perpetual supply of biopower. Perhaps it is in this regard that the United States criminal justice system has succeeded where the death camps failed. Here we see, as in other slave states past and present, the perpetual dehumanization of a given subset of the population turned into a source of long-term profits (for titled owners and financial speculators), reliable employment (for police, lawyers, guards, nurses, psychiatrists, etc.), and public morality tales (for the consumption of society at large).

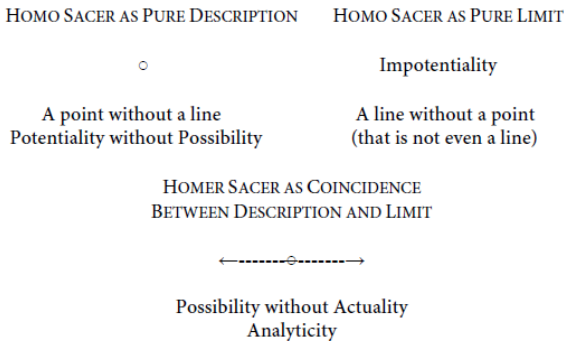


This analysis suggests once again that the concept of *homo sacer* is a limit rather than a description. However, upon further consideration, the concept would be of little or no use for analysis if it was considered *only* as a limit and not as at least *potentially* comprising a description of an empirically-identifiable entity. In the discussion above, notice that the demonstration of the distance between a given empirical case and the concept of *homo sacer* conceived as a limit was possible only as a result of the prior “false,” “superficial” identification of the empirical case in question with the concept of *homo sacer* conceived as a description. If it was not thought potentially viable for an empirical case to coincide with the concept of *homo sacer*, then there would be no reason to interrogate a given case in order to find its distance from that concept conceived as a limit. Thus, without taking seriously the potential of *homo sacer* as an empirically-valid description, it would be impossible to offer an analysis of an empirical case as approaching but never reaching *homo sacer* conceived as a limit. In conclusion, the utility of the concept of *homo sacer* for analysis requires that the potential of an empirical entity which fully meets the criteria of the concept can never be excluded *a priori*.

However, we have good reason to suspect that *homo sacer* cannot be—or at the very least, has not yet been—shown to exist in experience. Indeed, it remains doubtful that an empirical case which meets the necessary criteria for the concept of *homo sacer* ever could be found to exist, at least according to our present understanding of the nature of experience. In this sense, we may say that a satisfactory empirical case of *homo sacer* is an *impossibility*. However, as we have seen, even when the concept of *homo sacer* is conceived as a limit—thereby becoming subject to use as a basis for the analysis of empirical cases without ever describing them directly—its being *potentially* found in experience is still presupposed. In this manner we may say that as concerns its relationship to the world of

experience, *homo sacer* is a practical (i.e., actual) *impossibility* that is simultaneously conceived as a *potentiality*.

It is as a result of recognizing this peculiar position taken with respect to the world of experience in the question of the *homo sacer* that we begin to see why the *ambiguity* between the descriptive and limiting interpretations of that concept is fundamental to the concept's utility. Conceived only as a description, *homo sacer* applies to nothing whatsoever. However, even the initial conception of *homo sacer* as a limit requires the presupposition of a point of potential identity from which the operation of infinitesimal distinction can proceed. In other words, taken only as a description without introducing its interpretation as a limit, *homo sacer* is useless in that it applies to nothing and no one whatsoever. It is similarly impossible to employ *homo sacer* as a limiting function without first positing its potentiality as a description: in fact, such an example may not even be conceived at all. Accordingly, *homo sacer* may be regarded as both a description of experience and a limit to experience, but only insofar as these operations are finally indistinguishable and fundamentally ambiguous. In other words, the applicability of the concept of *homo sacer* to the world of possible (though not actual) experience depends upon the coincidence of its potential (though impossible) and impotent polarities. A rough diagram of the concept would look like:



As we see, the usefulness of *homo sacer* for empirical analysis

in no way requires the *actual* empirical presence of a case to which the concept refers. Rather, *homo sacer* may be used as a concept in empirical analysis—i.e., the process of marking the distance between a given empirical case and the concept of *homo sacer* rendered as a limit—upon the acceptance of both of the following presuppositions: 1) the appearance of a case of *homo sacer* must be regarded as a *potentiality* even though it may in fact be an impossibility at any given time and 2) an empirical case capable of voiding the potentiality of *homo sacer* must be regarded as not only an impossibility but indeed an *impotentiality*.

These presuppositions correspond to one another and mutually imply one another; that is to say, they have what we have been referring to as “ambiguity.” To accept the potentiality of an empirical case that meets the criteria of *homo sacer* (in the face of the impossibility of such a case) is at once and the same time to deem the notion of an empirical case that could demonstrate the falsity or even the inapplicability of the concept of *homo sacer* to experience as an impotentiality. In this respect, *homo sacer* is the precise negative image of the concept of sovereignty as the latter was conceived explicitly in its most systematic formulation in the work of Carl Schmitt and implicitly by the tradition of political philosophy under modernity. Sovereignty necessarily presupposes the potentiality of a case of action without reaction, of decision without doubt. As we have seen, the concept of *homo sacer* necessarily presupposes the potentiality of the *homo sacer* as an empirical case—i.e., an entity of pure inaction and indecisiveness.⁷ According to the terms of each of these presuppositions, neither the concept of *homo sacer* nor that of sovereignty may ever be disconfirmed by any event whatsoever that actually has or that potentially could transpire in the course of experience.

⁷ “Indecisiveness” as we are referring to it here should not be confused with doubt in the full and proper sense of the term. Indecision still posits decision as the norm and itself as the exception. By contrast, doubt is truly absolute in that it knows nothing but itself. In other words, doubt arises in the course of experience as a pure actuality.

Not only are these concepts referentially-null in actuality, more importantly, the analyses drawn from them have the danger of being more or less universally-applicable and thus, as Popper would point out, inherently unscientific.⁸ However, this claim of unscientificity (or perhaps simply non-scientificity) should not be taken dogmatically as if by saying that a concept is unscientific (and thus, not a “theory” in the proper sense of the term) this is the same thing as saying that such a concept is useless. In fact, it is more like saying the opposite: the problem with concepts that don’t meet the standard of falsifiability necessary for science is not that they’re useless but rather that they’re all too useful. This may be seen with respect to the concept of *homo sacer* when it is claimed that all of us who are today members of a constitutional state exist with the potentiality of being thrown outside of the legal order and into the position of *homo sacer*. No counter-example could dispute this claim simply because the inquiry has been framed from the outset so as to preclude the possibility of such a counter-example. Accordingly, the problem with such an analysis is certainly not that it has nothing to tell us about the conditions of possibility of the present juridico-political climate—the example of drug prohibition discussed above surely attests to the contrary. The “problem,” if one may put it in such terms, instead stems from the inadequacy of analytic concepts (such as sovereignty and *homo sacer*) for confronting the fundamental undecidability that is actuality.⁹ As a concept, sovereignty func-

⁸ Karl R. Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (New York: Harper & Row, 1965).

⁹ Analysis is fundamentally insufficient for the purpose of *critique* in that the implied goal of the former is that of resolving doubt, whereas doubt is precisely what is being pursued through the process of critique. Even Donald Davidson has defined the analytic method as consisting of the resolution of doubt. According to Davidson, analysis “is a method that starts with a question or a doubt and tries to find an answer or to resolve the doubt”: Donald Davidson, “Foreword,” in *Two Roads to Wisdom?—Chinese and Analytic Philosophical Traditions*, ed. Bo Mou (New York: Open Court, 2001), v. Davidson goes on to point out that the resolution of doubt implied by analysis is always

tions in a manner exactly contrary to scientific concepts. While sovereignty may never be definitively confirmed, nor can it ever be definitively falsified because, by definition, it refers to an empty set; given that it has no cases, neither does it have counter-cases.

To guide us on this path, we must turn to the scientific method—whether or not this alone is adequate to the task. It is not that we have any illusions concerning the nature of science as being metaphysically pure or without its own presuppositions. The essential difference between an analytic concept and a properly scientific theory is that the former necessarily presupposes the unconditional affirmation of its potential confirmation whereas the latter necessarily presupposes the unconditional affirmation of its actual negation. In other words, it is mistaken to understand what is commonly termed the “null-hypothesis” as simply referring to a potential case that may or may not come to exist. Rather, as it is encountered directly in the course of scientific practice, the null-hypothesis is instead the verifiable fact that whenever inquiry proceeds indefinitely *any actual entity whatsoever* will be shown to have properties that negate any and all concepts used to analyze such an entity. As such, a “theory” is only properly so-called insofar as it amounts to an inquiry with the tendency to disclose the radical conceptual negativity that is proper to any given actuality. “Science” is the name given to the sum total of all activities that temperamentally embody this negativity-toward-concept.

This is not to say that we can proceed scientifically without analytic concepts. It is instead to say that the measure of scientific diligence is not found in the explanatory power of the analytic concepts employed therein, but rather in the negation of those concepts in, by, and as experience. Granted, scientific “advances” often take the form of new and more expansive analytic concepts as in the obvious example of the procession of modern physics from Newton to relativity to quantum theo-

provisional, revisable, and subject to further criticism and refinement. While analysis may be regarded as perpetually unfinished, its goal is still fundamentally distinct from that of critique.

ry to string theory to whatever new conceptual paradigm will arise only to be overcome. The truth of these “advances” lies not in the analytic frameworks they expound but rather in the fact that such frameworks force an encounter between the prior concepts being overturned and the radical negativity of actuality itself. The more expansive and profound the encounter with negativity that it is capable of provoking, the closer to the truth is any given scientific theory. Similarly, the point at which any given analytic concept closes and/or prohibits the encounter with actuality (and therefore, the encounter with its own negation) is the point at which such a concept becomes scientifically false. Consequent to this fact, any analytic concept concerning the nature of science (including the one we are presently expounding) is bound to be scientifically false.

What is too often overlooked, however, is that far from being a cause for our disillusionment with science, the falsity of its concepts should instead be cause for our elation. We never will achieve the Enlightenment fantasy of a single, all-encompassing, complete, value-free, physical description of the universe. We might add: Thank God! Recognizing that our concepts fail to describe the universe is not at all the same thing as saying that we cannot encounter the universe in its actuality. In fact, facing the inevitable inadequacy of our analytic concepts with respect to actuality is a necessary precondition for our encounter *with* actuality. Science is a primary modality in which such an encounter may occur because it recognizes that a *temperament* of practical action (i.e., the “scientific method”) is more fundamental than any analytic concept which it has adopted or even those which it may conceivably adopt in the future. In other words, insofar as it exists at all, science is scientific practice.

In no way are we claiming that analytic concepts may not be of use in initiating the activity of scientific practice. Even Popper recognized that analytic concepts which he considered “unscientific” (such as psychoanalysis and Marxism) could conceivably be reformulated into properly scientific hypotheses at a later point in time. His only error was in supposing that the difference in kind that may be posited between genuinely

scientific theories and unscientific analytic concepts is itself a function of conceptual distinction. In fact, the difference between the two concerns only the degree to which they facilitate and do not prevent the expansion of scientific practice. Scientificity should never be taken as a property of any concept whatsoever (regardless of whether or not such concepts attempt to conceptualize their own falsity, as “theories” do) but rather as a condition always and only immanent to scientific practice itself—that is to say, immanent to the encounter with the radical negativity of actuality.

While some concepts are likely to be better than others at making way for such an encounter—which, in truth, amounts to simply not getting in its way—nevertheless, regardless of its possible intentions, no concept may definitively preclude the possibility of its giving way to actuality. As we have already mentioned, each in their own way, sovereignty and *homo sacer* foreclose the possibility of being refuted by a counter-example. They are concepts which are formulated upon the analytic distinction between potentiality and actuality—as such, they comprise the very essence of conceptualization itself.¹⁰ No other concept could ever refute them without refuting its own basis as a concept; accordingly, such a refutation is conceptually impossible. However, this is also and at once to say that this conceptual refutation is immanent to the practical condition of

¹⁰ Agamben explicates this point adeptly: “Hence the constitutive ambiguity of the Aristotelian theory of *dynamis/energeia*: if it is never clear, to a reader freed from the prejudices of tradition, whether Book Theta of the *Metaphysics* in fact gives primacy to actuality or to potentiality, this is not because of a certain indecisiveness or, worse, contradiction in the philosopher’s thought but because potentiality and actuality are simply the two faces of the sovereign self-grounding of Being. Sovereignty is always double because Being, as potentiality, suspends itself, maintaining itself in a relation of ban (or abandonment) with itself in order to realize itself as absolute actuality (which thus presupposes nothing other than its own potentiality). At the limit, pure potentiality and pure actuality are indistinguishable, and the sovereign is precisely this zone of indistinction.” Agamben, *Homo Sacer*, 32.

actuality. In other words, while they may not be contradicted conceptually, both sovereignty and *homo sacer* are rendered false immediately upon their being confronted with any practical experience whatsoever. At the edge of the horizon, we can even make out the gradual emergence of a vague figure who may come to embody the practical undoing of sovereignty and its inverted image: a citizen who sacrifices control of her body in order to name those the sovereign seeks to render nameless.

Though conceptually we have no apparatus capable of showing that there is or is not a *homo sacer*, something like this becomes possible when we abandon conceptualization alone in favor of practical action. Suppose that we have made the initial identification of a given person with the description of *homo sacer*. Analysis alone can only tell us that, when we examine the case closer, such a person has not *yet* reached the point of *homo sacer*. In other words, analysis alone cannot dispel the *potentiality* of that person's reaching that point. The only way that such a potentiality can be invalidated is by intervening practically in the situation itself.¹¹ That is to say, we cannot

¹¹ This is not to say that we hold the conventional, quasi-pragmatic view that one should forego analysis because it is paralysis—that is, because analysis doesn't in and of itself “do” anything. While we are deeply sympathetic to (and even ultimately identify ourselves with) the concern with practical consequences that underlies this view, we nevertheless would like to remain critical of this formulation. The problem with the quasi-pragmatic view of the association of analysis with inactivity is that this notion is itself analytic rather than practical. When an analytic framework is inadequate to a given situation—and all analytic frameworks are fundamentally inadequate to all empirical cases in their actuality—this should naturally be pointed out. However, the true (and only properly practical) measure of the inadequacy of an analytic concept with respect to a given case lies in the degree to which that concept forecloses the possibility of the encounter with the actuality of that case—that is to say, the degree to which the concept forecloses the radical doubt that is immanent to actuality. A category mistake is made whenever action is opposed to doubt, rather than seeing the fundamental identity of the two. Doubt is action and action is doubt. This basic point has been so difficult to see for the Western tradition largely because of the mistaken association of action with

conceptually prove that a given person may not become a *homo sacer*. What we can do is to take practical steps in order to prevent such a potentiality. This is not to say that there are any definitive assurances that may be granted with respect to these practical interventions; we know not whether they will have the effects intended or that they will invalidate the potentiality of *homo sacer*. What we can know, however, is that whether or not our practical interventions will succeed in a given case, *they are the only means with a probability to succeed*.

In such cases, we will never know if we are really making a difference through our actions, but we will have to go on acting anyway. Concepts of pure analyticity (such as *homo sacer* and sovereignty) are as useful for the understanding (*Verstehen*) as they are innocent from doubt. It is only with respect to those situations which do not pertain to the understanding (at least

decision and therefore with exception. The tradition of practical judgment (as exemplified by Aristotle's *phronesis*) has always recognized that the practical consequences of a given action can never be predicted definitively in advance of the action's actual undertaking. However, this tradition still assumes that a decision about how and when to begin a course of action can be made (this is called a "choice"), or at least that when an action is already underway, a decision may be made concerning when and how to stop it (this is called a "voluntary" act). An action outside of this parameter of decision concerning either initiation or injunction is "involuntary" and, therefore, by definition outside of the framework of practical judgment. When it is assumed that one has to decide as a necessary precondition in order to act, "inactivity" is thereby ascribed as the natural and normal; therefore, action is falsely conceived as an exception. This view has become increasingly ridiculous from the perspective of modern science. Any biologist knows that action is in fact the norm, that anytime one assumes an organism to be inactive one simply isn't looking closely enough. Accordingly, from this perspective, the (impossible) question of how to initiate or end a course of action is discarded and is instead replaced by the infinitely more practical question of how to alter or change the course of action as it is already underway and as it will never cease (as long as the organism persists at any rate). One may neither bring action to a beginning nor to an end, but one certainly can redirect it.

as it is conventionally understood) that the “limits” of analytic concepts—that is the “limits” of limits themselves—are properly disclosed. That is to say, analysis can help us with everything except our own experience. As rendered in the course of practical activity, our experience is at once both of and as *doubt*. In this respect, experience is to be radically opposed to any concept of the understanding that emphasizes decisiveness. Properly considered, every actuality presents a radical challenge to the understanding, a challenge which the latter may only secondarily contain but may never properly assimilate. *Doubt is the only “thing” that is real*, though it’s not a thing at all but rather an *activity*.

5: HARDT AND NEGRI SOVEREIGNTY WITHOUT TERRITORY



The collaborative works of Michael Hardt and Toni Negri (principally 2000's *Empire* and 2004's *Multitude*) have provided the undeniable geopolitical changes of the last 20 years with their most complete and coherent analysis to date. Moreover, in their detailed descriptions of the historically-specific phenomena (e.g., the Internet, globalization, the Iraq Wars I & II, 9/11, etc.) that have comprised the geopolitical changes in question, Hardt and Negri have always situated these phenomena in relation to a broader politico-philosophic context. Due to the restrictions of the present study, our investigation will be confined to examining the interpretation of the history of political philosophy that is both indirectly implied and explicitly discussed in their works.

The central insight from which all of Hardt and Negri's empirical analyses and systematic concepts have subsequently derived is fundamentally correct and without it the present study would be unimaginable. This insight consists in the simple observation that the concept of sovereignty has always been an inaccurate description of political reality as it actually transpires. As soon as one turns to investigate any actual event whatsoever, what one sees (instead of the concept of sovereignty) is that the actors implicated in such events are all more or

less constrained just as they are all more or less able. Moreover, while sovereignty has always in some sense been false in relation to experience, Hardt and Negri insist that the increasingly global nature of political phenomena makes the concept of sovereignty increasingly less applicable for our world. This central insight is the basis for the fundamental concepts Hardt and Negri have contributed to the analysis of political reality in general and the contemporary political sphere in particular, namely “empire” and “multitude.”

Empire is the name given to denote the apparatus of global power that have replaced sovereignty in the contemporary era. As Hardt and Negri write: “The fundamental principle of Empire ... is that its power has no actual and localizable terrain or center. Imperial power is distributed... through mobile and articulated mechanisms of control.”¹ What is so distinct about imperial power, when considered in relation to sovereign power, is that it does not derive its power from the structural differentiation of inside/outside as produced by the *exception* or the *ban*.² By contrast, the logic of imperial power is that of what we would call “the goes-with.” For the goes-with, there is no need to erect borders between people and artifacts or to impose hard and fast distinctions regarding who and what belongs where. The goes-with never directly opposes any particular cultural tradition or system of governance or business practice but instead simply incorporates all of them (even if they are opposed to the goes-with). In this respect, it is paradigmatic of the use of *pastiche* that Fred Jameson has famously identified with postmodernism.³ This logic can be seen in myriad

¹ Hardt and Negri, *Empire*, 384.

² Giorgio Agamben has described the force of the ban in the following terms: “The banishment of sacred life is the sovereign *nomos* that conditions every rule, the originary spatialization that governs and makes possible every localization and every territorialization.” Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 111.

³ “Pastiche is, like parody, the imitation of a peculiar or unique, idiosyncratic style, the wearing of a linguistic mask, speech in a dead language. But it is a neutral practice of such mimicry, without any of

examples around us today: the multinational fast food chains that have no problem incorporating various ethnic foods (e.g., the taco, the pita, sushi, etc.) into universally (un)palatable synthetic reproductions, the “communist” governments that utilize their repressive state apparatus in order to defend the sovereignty of private property and to deprive their workers of labor unions, and the “capitalist” governments that use the public treasury as a generous welfare system for multinational corporations.

This logic is deployed in a host of modalities throughout our world without the need for those deployments to have an underlying system or scheme beneath them precisely because the logic of the goes-with itself consists in the determination that no such system or scheme is necessary. However, for this reason, even though we may contrast (as Hardt and Negri do) the goes-with logic of Empire with the sovereign logic of the ban, there is nothing that prevents the former from deploying the latter as one of its modalities—indeed, if the goes-with were *a priori* opposed to such a deployment, then it would not be what it is. For instance, multinational corporations that harbor no particular defined political antagonisms whatsoever have no problem utilizing the seemingly infinite supply of cheap labor provided to them in the form of large populations of refugees, displaced persons, and “illegal” (i.e., non-citizen) immigrants. These persons can play the role that they do in the global economy precisely because the sovereign decision places them outside the bounds of a given political community. While Hardt and Negri may very well be correct that our world is increasingly moving towards becoming an Empire whose primary modality is the goes-with, there appears to be no inherent analytic reason (nor any empirical basis) for concluding that this “smooth” modality will not always incorporate pockets of sovereignty.

Hardt and Negri explicitly recognize the dependence of

parody’s ulterior motives, amputated of the satiric impulse, devoid of laughter”: Fredric Jameson, *Postmodernism, or, the Cultural Logic of Late Capitalism* (Durham: Duke University Press, 1991), 17.

Empire upon persons deemed “criminal” and/or “illegal.” In fact, it is precisely from the recognition of this relationship of dependence that they introduce the coming into being of the “multitude” as a political subject that confronts Empire directly:

Is it possible to imagine U.S. agriculture and service industries without Mexican migrant labor, or Arab oil without Palestinians and Pakistanis? Moreover, where would the great innovative sectors of immaterial production, from design to fashion, and from electronics to science in Europe, the United States, and Asia, be without the “illegal labor” of the great masses, mobilized toward the radiant horizons of capitalist wealth and freedom? Mass migrations have become necessary for production.⁴

Capital has an absolute lack of allegiance to any principle other than itself. Accordingly, when it finally breaks free of all of the anachronistic contrivances of boundaries, parochialisms, and provincialisms that have held it back—i.e., those preferences and limitations posed to the production process by the limits of nationality, religion, ethnicity, culture, language, social status, sex, gender, etc.—it functions according to the goes-with logic of Empire. In following its natural course and seeking the absolute cheapest supply of labor, all other considerations will be cast aside. As such, what has previously been referred to as the “working class” will instead be constituted by a body deprived of any and all political or group affiliations whatsoever. In so doing, Empire will establish a direct relationship of mutual dependence with the multitude. Empire cannot exploit the radical singularity of the multitude as a constitutive power that is radically un-defined by all exceptions, bans, and boundaries without simultaneously introducing the possibility for the multitude to resist that exploitation. In this case, the multitude may resist its exploitation *directly* and without conforming to

⁴ Hardt and Negri, *Empire*, 397–398.

any identifiable and definable class or body (which would cease its being a multitude). The multitude does not need to organize itself in order to resist—it simply resists wherever and however Empire depends upon it.

Both Empire and multitude imply the contestation of the concept of sovereignty in its most determined form—the connection between authority and territory. The multitude has always contested sovereignty implicitly but it could not engage in this fight directly without becoming something other than itself. Nevertheless, this contestation has a history and one that is not entirely separate from the history of political philosophy. In a recent, sole-authored piece, Michael Hardt has addressed this peculiar historical relationship between the multitude and sovereignty:

The history of modern European political philosophy can be divided, simplifying the matter a great deal, by two basic notions of sovereignty. The first line is born of a thoroughly modern notion of freedom that posits the autonomy of the multitude and its social relations against any pre-established or divine conceptions of social order or hierarchy. According to this conception, sovereignty is secondary; it arises only from a relationship between the rulers and the ruled, and in this relationship the multitude is always primary over the sovereign. This line of thought extends at least from the Machiavelli of the *Discourses* to Spinoza's political treatises. The only real, substantial bodies are those of the multitude, according to a common metaphor among revolutionaries in the English civil war, whereas sovereigns and rulers are merely shadows created by the light cast off those bodies. This play of bodies and shadows emphasizes the autonomy and primacy of the multitude in the relationship of sovereignty. The second line, which is in many ways the victorious line historically, views sovereignty as primary. In the most extreme examples of this line—one might think of the work of Jean Bodin and Thomas Hobbes—sovereignty or majesty is

conceived as an autonomous substance, and thus the multitude of its subjects follow from the sovereign's power. Hence the common analogy in this line of thought between the sovereign and the divine: the sovereign is a god on earth, in the position of the creator, whereas its subjects are creatures, created, and hence secondary. For many authors of this line, Hobbes again is a good example, sovereignty is at times posed not as an autonomous substance but as a relationship, such that the sovereign ruler needs to gain the consent of the ruled to exert hegemony, but the sovereign always has the power to predetermine this relationship, the power, in the final analysis, to create consenting subjects. What is central to this second line, in short, is that sovereignty always remains primary.⁵

What exactly does Hardt mean when he describes both of these tendencies of political philosophy as “two basic notions of sovereignty” but also says that sovereignty remains primary in the second line? The implication seems to be that the first line, “multitude,” is a form of sovereignty that subverts sovereignty. We might ask: how and in what sense? While the multitude can at times take on the appearance of a sovereign body (e.g., in the form of a republican citizenry) this identification of the multitude with sovereignty inevitably and at once becomes the possibility of sovereignty's undoing. The multitude can participate in the exercise of sovereignty—i.e., it may be said to comprise “a relationship between rulers and ruled”—only insofar as it is given a determinate boundary (such as: the criteria of citizenship for a nation, the ethnic type for a diaspora, the acceptable body of opinion for a deliberative community, etc.).

However, the multitude *as such* is by its very nature determined by no *a priori* boundary; rather, in its actuality, the multitude *actually is* the excess, undoing, and irrelevance of any and all determinate boundaries which have no actuality unto

⁵ Michael Hardt, “Jefferson and Democracy,” *American Quarterly* 59.1 (2007): 59 [41–78].

themselves. Accordingly, whenever it is associated with a given boundary (such as a nation or a diaspora or a deliberative community) the multitude will constitute that boundary's undoing. The multitude itself is never what it is said to be; it constitutes the empirical fact that there are always more cases that fall outside of a given boundary than there are within it. In fact, the multitude is a multitude only insofar as *any* of its elements—when examined with an adequate level of specificity—will be shown to fall outside of any and all determinate boundaries whatsoever.

In this manner, the multitude short-circuits the nexus between *authority* and *territory* that is and has always been fundamental to the concept of sovereignty. Without examining it explicitly, we have already acknowledged the enduring historical and metaphysical association of the political and juridical notion of sovereignty with the geographical notion of a territory. Though Bodin uses the word “commonwealth” rather than “territory” in his definition, the former word has a structural function closely analogous to that of the latter word as it is employed in contemporary legal definitions of sovereignty. In both cases, the work being done by “commonwealth” and “territory” in the definition of sovereignty is that of marking the boundaries (at once both physical and metaphysical) of the sphere in which the “supreme authority” being posited really is supreme. Hardt and Negri write:

Modern sovereignty has generally been conceived in terms of a (real or imagined) territory and the relation of that territory to its outside. Early modern social theorists, for example, from Hobbes to Rousseau, understood the civil order as a limited and interior space that is opposed or contrasted to the external order of nature. The bounded space of civil order, its place, is defined by its separation from the external spaces of nature. In an analogous fashion, the theorists of modern psychology understood drives, passions, instincts, and the unconscious metaphorically in spatial terms as an outside within the human mind, a continuation of nature deep

within us. Here the sovereignty of the Self rests on a dialectical relation between the natural order of drives and the civil order of reason or consciousness.⁶

However, as a consequence of this definition, the boundaries of a sovereign power are not simply incidental to the workings of that power. As the concept is conventionally understood, a sovereign can be recognized as supreme only insofar as that supremacy pertains to a specific and limited sphere, such as a determinate physical territory and/or a defined political constituency. As Carl Schmitt has shown us, by determining where such boundary lines are drawn, the sovereign is both within and outside of those limits. While the line is always being moved at the sovereign's discretion, nevertheless, if there were no line, there would be no sovereign. As such, the metaphysical existence of such a line (as opposed to the actual means by which the line is drawn) is the original and most fundamental political concern for Schmitt.

The history of the concept of sovereignty has insisted upon the category of *territory* as the most fundamental and irrevocable of all the possible boundaries that may be imposed upon the authority of the multitude. After all, a territory denotes a *physical* place whose borders are marked by particular geographical impediments—usually bodies of water, e.g., rivers, seas, oceans, lakes, gulfs, wetlands, etc., but also mountains, gorges, canyons, etc.—posed to the unfettered flow of living beings and their artifacts. While these impediments have always been transgressed in one form or another, usually at great expense, what has changed over time is the ever-increasing rate and speed of these transgressions. For Hardt and Negri, it is these quantitative changes in the transgression of boundaries which have effectively constituted a fundamental change in kind with respect to both the nature of the boundaries and the bodies identified in relation to those boundaries. The significance of the identification of territory with certain topographical features of the Earth never had anything to do with some-

⁶ Hardt and Negri, *Empire*, 186–187.

thing inherent to the physical nature of those topographies themselves. Rather, what was always significant regarding the use of topographies in defining a territory was the *metaphysical* functions of enclosure and separation that they performed—*not* the fact that the *physical* features of the Earth provided the *means* for those metaphysical functions.

In a sense, we may say that the contemporary legal definition of sovereignty makes a “mistake” by implying that a particular area of land or sea is a necessary condition for sovereignty. What seems minimally metaphysically necessary for the concept of sovereignty is that its sphere of authority be bound in *some* determinate way. Why should the definition of the concept insist that this binding of the sovereign body exclusively imply its *topos* on the face of the Earth? Isn’t it possible, for example, to attain a position of supremacy as the leader of a diaspora or a religious community (to use only two ready at hand examples) that has no fixed *physical* boundaries but does have a determinate polity? However, to the extent which such a definition is regarded *positively* in the juridical sense of the term, questions regarding the validity of the definition are meaningless. Sovereignty means the supreme authority in a territory simply because that’s how it has been and is defined. Thus, it is simply as a function of this definition alone that claims to sovereignty made by any and all bodies not possessing of a territory are deemed illegitimate. Until and unless this conceptual definition of sovereignty is changed and/or other circumstances are regarded as more important for deciding a case than the terms of that conceptual definition, claims to sovereignty made by any and all bodies without a determinate territory will be without any and all grounds for legal recourse or appeal.⁷

⁷ This legal framework helps us to understand the difficulties encountered, for example, by Malcolm X’s appeal, in Cairo in 1964, to the United Nations to intervene with respect to the institutional apartheid of the United States (“Speech to the Organization of African Unity”). African-Americans had no effectual means to acquire a determinate and distinct territory *de facto*. As such, the claim to international law had to be made on the basis of “human rights” rather than “sovereign-

It is this anachronistic conception of sovereignty—and not necessarily the concept of sovereignty as such—that stands as the most immediate impediment to the legitimacy of international law. The metaphysically “correct” definition of sovereignty insists only that the sphere of influence that pertains to the supreme authority in question need be definitely and determinately bound in one manner or another. In other words, the definition of sovereignty need not (and, insofar as it is “correct,” *should not*) proscribe the specific means concerning *how* the boundaries of sovereign authority ought to be set; it need only stipulate *that* such boundaries need to exist. The recognition of this distinction on the part of the international community seems the only viable possibility for the construction of an “international community” worthy of the name.

In their analysis of the contemporary geopolitical horizon, Hardt and Negri have undeniably demonstrated the utter contingency and fallibility of the link between territory and authority. Throughout the centuries, the identification between authority and territory has provided the concept of sovereignty with its most enduring and impenetrable iteration. At last, no longer need we live under the illusion that the *ontic* and *historically-contingent* role that has at times been played by physical territories in the binding of peoples is metaphysically *necessary* for the binding of peoples. By having dispelled sovereignty’s most durable mythical support—or simply by providing a description of the myth’s being overturned in fact—Hardt and Negri take this as equivalent for all practical purposes to a demonstration of the falsity and irrelevance of the concept of sovereignty as such. Though we would perhaps wish to supplement this argument with one of our own, the conclusion—that whenever it is taken as a description of political reality, sovereignty is undeniably false—is fundamentally correct.

Our only disagreement lies not with the analysis Hardt and Negri put forward, but rather with the political prescriptions

ty,” a comparatively much weaker legal concept with scarce precedents both then and now. See Book IV, Chapter 5 of the present work for a discussion of human rights.

made on the basis of that analysis. Hardt and Negri themselves recognize the distinction between these two aspects of their work but then immediately after doing so, they announce that they will be trying to transcend the distinction in order to offer something like a pure ontology.

In the course of our argument we have generally dealt with Empire in terms of a critique of what is and what exists, and thus in ontological terms. At times, however, in order to reinforce the argumentation, we have addressed the problematic of Empire with an ethico-political discourse, calculating the mechanics of passions and interests—for example, when early in our argument we judged Empire as less bad or better than the previous paradigm of power from the standpoint of the multitude. English political theory in the period from Hobbes to Hume presents perhaps the paradigmatic example of such an ethico-political discourse. ... This style of political theorizing, however, is no longer very useful. ... The transcendental fiction of politics can no longer stand up and has no argumentative utility because we all exist entirely within the realm of the social and the political. When we recognize this radical determination of postmodernity, political philosophy forces us to enter the terrain of ontology.⁸

I believe it is this very failure (conscious as it may be) to recognize the distinction between an *ought* and an *is* (relative and provisional as that distinction may be) that constitutes the most fundamental misstep in the Hardt and Negri “program”—if it may be so-called. It also marks the fundamental difference between the postmodern premisses upon which their argument rests and the modern premisses utilized by ours. The unfortunate consequence of their acceptance of postmodern premisses is that the clarity and accuracy of Hardt and Negri’s descriptions of political reality are muddled with a

⁸ Hardt and Negri, *Empire*, 353–4.

series of political prescriptions that are falsely presented as necessary and inevitable—i.e., these prescriptions are presented as fundamentally identical to “ontology.”

For instance, the following descriptive statements are fundamentally correct (and not just analytically but empirically) when read only as descriptions: the multitude is reducible to no single body, name, identity, category, boundary, or form nor to any possible combination of these and even if such combinations were infinite. This irreducibility remains as true for any element of the multitude as it is for any other (or for the “multitude as a whole,” though this phrase falsely implies that such a thing would be distinct from its elements, but these are themselves always and only “whole” multitudes). However, on the basis of these fundamentally correct *descriptions* (borrowed from Deleuze and Guattari for the most part) Hardt and Negri then assert that the following *prescription* follows necessarily: no *determinate* bodies, names, identities, categories, boundaries, or forms should be placed upon the multitude. The word “determinate” is meant to distinguish those particular bodies, names, identities, categories, boundaries, or forms which are comparatively rigid and ossified (rather than porous and malleable) with respect to their ability and/or willingness to embrace more of the multitude than they do at present. Our concern is not that this prescription is simply wrong—in fact, we believe that it is likely to work better in most cases than most other possible prescriptions—but rather with the fact that it is not presented as a prescription at all but as a necessary part of an ontology.

By confusing this prescription with a description, Hardt and Negri fail to recognize that the success or failure of such a prescription—both its value and validity—may be determined always and only with respect to the effects and consequences that result from the application of that prescription to a specific case. That is to say, we may have no *a priori* guarantee that a given prescription is right—i.e., that it is being applied correctly or incorrectly. This is not to say that moral principles are of no value whatsoever, but only that their value is a matter of inductive probability rather than deductive certainty. That is to

say, the value of any given moral principle can only be assessed with respect to its (actual and possible) applications and it may never be assessed definitively before the fact of its application to a given case. Accordingly, we may never preclude the possibility that our most dearly held and practically successful moral principles of the past may be simply inappropriate and/or downright pernicious when applied to the facts at hand in the present case.⁹ Similarly, we may never preclude the possibility that any of the various prescriptions which we have found unsuccessful in past circumstances will not someday find a case for which they are better suited than any of the other prescriptive measures that we have at our disposal.

Let us give an example of just such a generally troublesome prescriptive measure that we have no trouble adopting and advocating in particular cases: national sovereignty. Hardt and Negri correctly observe the troublesome way in which this prescription is applied to inappropriate cases (as it too often is) when they write: “Every imagination of a community becomes overcoded as a nation, and hence our conception of community is severely impoverished.”¹⁰ Interestingly, Hardt and Negri’s recognition of the generally troublesome function of this prescription does not prevent them from having a somewhat nuanced view with respect to its varied deployments: “Stated most boldly, it appears that *whereas the concept of nation promotes stasis and restoration in the hands of the dominant, it is a weapon for change and revolution in the hands of the subordinated.*”¹¹ However, after making these promising and intriguing observations, Hardt and Negri unfortunately conclude the discussion by drawing a prescriptive lesson (which, like the

⁹ Classically, this is known as the fallacy of accident. Given that we recognize induction as the only legitimate basis for logic, the recognition of this fallacy is accorded a particularly central place. In some sense, *accident* may even be regarded as *the* fallacy. See Book IV, Chapter 3 of the present work.

¹⁰ Hardt and Negri, *Empire*, 107. Recall that in this context, “nation” means the link between authority and territory as discussed above as the most enduring form given to the concept of sovereignty.

¹¹ *Ibid.*, 106, emphasis in original.

performative utterance, masquerades in the form of a description): “As soon as the nation begins to form as a sovereign state, its progressive functions all but vanish.... With national ‘liberation’ and the construction of the nation-state, all of the oppressive functions of modern sovereignty inevitably blossom in full force.”¹²

Taken together, these statements can be read as making the following prescriptions: Don’t make nation-states. If and only if you’re oppressed and you have no other choice then you may utilize national rhetoric. However, if you do so, it is imperative that you don’t succeed in actually building the nation of which you speak. In fact, it is better if you don’t even make a sincere attempt. The only legitimate use of national rhetoric is as a means of drawing attention to your cause so that it can be remedied in other ways. By using it to do anything else, you are acting at your own peril.

Our concern with this lesson stems from its practical and performative implications. Practically, while it does indeed imply the homogenization of the multitude into a people (and thereby the reanimation of sovereignty) the nation-state has been shown to be a structure capable of rendering certain benefits to its people in the course of this homogenization, such as: security, employment, education, housing, health care, food, disaster insurance, etc. We are not saying that these benefits need be supplied by the nation-state, nor even that they are best provided that way, but only that the possibility of their being supplied by the nation-state should not be dismissed particularly when no other similarly effective means are available. Performatively, isn’t the declaration that the nation-state will “inevitably” lead to “all of the oppressive functions of modern sovereignty” far more likely to discourage rather than encourage the possibility of the nation-state’s reinvention? By dismissing the nation-state from the outset, doesn’t this foreclose the possibility of working within national structures e.g., so as to redefine the criteria of citizenship in increasingly expansive terms? At its worst, wouldn’t this also be to cede the

¹² Ibid., 109.

management of the nation-state to those who have the least interest to use it in order to improve the conditions of the people and the greatest interest in homogenizing the identity of the people? While we agree that the nation-state is rooted in an incorrect understanding of the metaphysical concept of sovereignty and that the nation-state often provides an instrument for oppression, we do not conclude that it does so necessarily.

On December 20, 2007, the Lakota Nation unilaterally withdrew from its treaties with the United States and reasserted its authority over a contiguous territory that occupies a portion of North Dakota, South Dakota, Nebraska, Wyoming, and Montana. The Lakota case for *de jure* territorial independence (though not necessarily as confined to that particular territory) seems undeniable. It will be interesting to see whether the Lakota can continue to build independent political and social institutions in order to further substantiate the claim. In fact, this point should lead us to ask, if a substantial level of independence were indeed achieved with respect to all relevant state institutions (e.g., parliament, schools, courts, police and emergency services, tax collection, infrastructure construction, social welfare programs, etc.) would the recognition of sovereignty even matter? Though the transformation of social institutions is the final goal of any independence movement (and thus, that transformation is by definition more important than the recognition of independence in and of itself) external recognition of that independence certainly can provide a means toward achieving that transformation. As such, we have no problem supporting the claim of sovereignty made by the Lakota Nation and we will continue to do so after the Nation's international recognition has been achieved. Furthermore, we recognize this claim as much more than a mere rhetorical device used for garnering attention, but as an important and viable means toward the construction of institutions. Thus far, we are encouraged by the fact that there are no requirements for citizenship other than living in the Nation's territory and renouncing US citizenship. While these are still conditions (and therefore limitations upon the multitude) they seem to be the most minimally necessary conditions given the practical reali-

ties involved. By taking this initial stance of affirmation with respect to the Nation, we are able to expect (and therefore to demand) a high level of equality and justice from its institutions.

In conclusion, while we recognize that ultimately, sovereignty is a metaphysical construct that has nothing to do with reality whatsoever, nevertheless, we have no problem in affirming the practical usefulness of that construct with respect to a particular case. Moreover, we find that a much more immediate practical problem than the metaphysical nature of sovereignty in general is the effective reduction of sovereignty to its territorial form (although, as in the case of Lakota, we have no problem affirming that either in particular instances). We believe that one manner of (temporarily, provisionally) overcoming the deadlocks that currently seem irresolvable in the framework of international law—and we think that it is the most reasonable manner of those available to us—is to broaden and extend the notion of a sovereign political community beyond its identification with the territorially distinct nation-state. If we can recognize today that territoriality's *raison d'être* as a necessary criteria of sovereignty was but an anachronism, then why don't our norms and institutions regarding the adjudication of claims and interests between sovereign political bodies catch up with that fact?

As soon as we conceive of these frameworks as merely *international* we are doomed to perpetuate this very anachronism. What we need rather than internationalism is a truly *global* framework of sovereign contestations and recognitions. This does not mean that we should exclude nation-states from participating in such a framework altogether; only that they should be accorded a place no more legitimate than any other self-bound political body. The only *a priori* criterion for participation in such a framework would be that such a body must have some discernible criteria of membership, though it need not demonstrate itself as having authoritative "supremacy" over its constituency before the fact. Rather, a "sovereign" body need only present the claim that it has the greatest ability to procure a particular set of interests for its constituency. The

responsibility to procure these interests (and therefore, the quasi-authoritativeness of such a body) need not be determined from the outset because that is exactly what ought to be contested and/or recognized in the course of the framework for determining the assignment of such a responsibility.

We have no illusions that the multitude will ever be addressed directly in such a framework. Rather, we would instead hope only that the greatest good of the greatest number could be approximated when their interests are addressed by a heterogeneous plurality of sovereignties. Hopefully, though we cannot determine this before the fact, there would be enough overlapping sovereign entities involved so that anyone denied membership (or more importantly, anyone whose interests are not being met) by one group could be included in another. We cannot claim that such a framework would succeed in all cases, but only that it's more likely to do so than the others we have at our disposal.

According to this framework, what we used to call “international” NGOs and labor unions (along with any other self-bound political bodies) would be able to question nation-states (and other self-bound political bodies) directly. Any sovereign body could interrogate another regarding the probable-abilities of the body in question to procure the interests of its people directly *and* its abilities to help other sovereigns procure their own peoples’ interests (through reciprocal arrangements, which would in turn benefit the interests of the peoples’ of all the political bodies involved). If the nation-state, or another political body, was shown to be neglecting and/or infringing upon the interests of its people that it had previously committed itself to serving, then the responsibility of looking towards those interests would be taken away from the failing political body and given to another.¹³ Such conditions of sovereign failure would be pointed out by other sovereign bodies looking to take over the responsibilities ceded in practice. Any political

¹³ This is the best case to be made for the Lakota Nation given the historical failure of the US government to look after the interests of its people.

body whatsoever could put forward the claim to take over the responsibility of serving those interests, and this claim would be assessed in relation to the other bodies putting forward a similar claim; the responsibility would be provisionally (and only provisionally) assigned to whichever body appeared to have the best means at its disposal for addressing the interests of the people.¹⁴

¹⁴ What about cases in which no sovereign body puts forward a claim for the responsibility to procure a people's interests? Frankly, our framework cannot address such a possibility. All that we can hope is that such cases will be mitigated as much as is possible by the practical recognition that interests are always intertwined in a chain. That is to say, while we would have no means to identify the hypothetical case of a people whose interests are not referenced at all in the interests of another people with a recognized political body (the subaltern, as it were) we certainly can address the interests of people that have yet to take on a political body when those interests are already affecting the interests of others. In addressing the interests of their own people, a sovereign body will discover that there is an impediment that is beyond its present responsibility but that the impediment will need to be addressed in order for the sovereign to fulfill its responsibility. For example, a body accorded the responsibility to procure the interests of dental hygiene among a particular population may very well discover that it can only properly address those interests by first improving the quality of the foods ingested by such a population. In this case, when the body of dental hygienists recognizes that these interests are not being addressed, it may try to address them itself (for example, by educating its population to change its eating habits). However, it is entirely possible that the extent of the problem extends beyond that of the body that recognizes this impediment. In this case, while the body may not be able to effectively address the problem itself, it certainly may act to bring that problem to the attention of others. For example, suppose it is discovered that the population simply cannot get any better food. The dental hygienists should then contest the ability of the current food-suppliers to fulfill their assigned responsibility and to demand that the food suppliers must either address the problem or cede responsibility of the problem to someone that can. Also, at any moment a new group may be formed which takes a specific problem yet to be directly addressed as its unique responsibility. So, for instance, you could have a body dedicated exclusively to the relationship

And this brings us to another one of the familiar deadlocks of international law: what if a given political body is not fulfilling the interests of its people that it exists to fulfill, but it refuses to cede that responsibility to another political body? We cannot claim that this framework will prevent all such cases from arising, nor that it will definitively forestall the suffering of the people in such a case, nor that it will definitively prevent the most inexcusable of all moral errors (war) from occurring as a result of such disputes. However, we do believe that this framework would help to avoid many such cases, and if such a case were to occur then the framework would help to mitigate the people's suffering, and if such a dispute proved irresolvable and resulted in the abomination of war then the framework would help to reduce that conflict in both intensity and duration.

The fundamental shift in the nature of the claims addressed by this global framework as opposed to the current framework of international law is that we are replacing the metaphysical and *a priori* concept of *rights* with the empirical and *a posteriori* fact of actual *results*. In our framework, no political body has a right to do anything other than dissolve itself as a political body.¹⁵ Either a political body is able to do something for its

between diet and dental health.

¹⁵ We believe this to be true even down to the individual level. That is to say, there is nothing that stops an "individual" from putting forward him- or herself as the sovereign body over his or her own interests. However, by the same token, this claim will be assessed only with respect to the ability of that body to procure the interests that it claims as its responsibility. In and of itself, this claim is regarded as being no more *nor less* fundamental than any other sorts of claims put forward. The only exception to this is the same exception which is common to all political bodies and of which we will have more to say later. Like any other recognized sovereign body, the individual has the right (and this is the only right of any such body) to terminate the terms of its political partnership. But what about the interests that go unfulfilled when a given sovereign dissolves itself? There can be no denying that these interests will go temporarily unfulfilled in the process of their being assigned to another sovereign body. However, we find that (falsibly and probabilistically speaking) the more serious problem than

people or it is not. If it can procure the interests in question, then good. If not, then it ought to let another political body have a try. It is true that a provisional allowance (and perhaps more importantly, *responsibility*) is accorded to a given political body that acts in fulfilling the interests of its people when its ability to do so has not yet been contested. However, the most essential function of our global framework is to *encourage* such contestations and to regard political bodies as legitimate (and truly sovereign) only when they prove themselves worthy of recognition in the face of their being contested. Because a body's recognition can only be achieved in the course of the *process* of its contestation, then the legitimacy of such a body ceases at the very instant in which it is no longer contested.

In no way does this proposed framework conjure sovereignty as a substantial property which is either present or not for a given political community. Rather, it proposes that sovereignty can be used as a framework to assign responsibility to a particular body for a given set of interests insofar as that responsibility is under perpetual contestation. Recognizing sovereignty's referential nullity, some have sought to do away with it as a model for political partnerships. By contrast, we see the referential nullity of sovereignty as its only advantage. When this nullity of the concept is properly acknowledged, it turns the process of political inquiry away from determining whether claims are rightfully assigned—no claim is ever truly rightful, anymore than sovereignty really exists—and towards determining simply which claimant(s) can satisfy those claims most effectively.

the one posed by the vacuum of interests left by the dissolution of political bodies is the problem posed by political bodies that can no longer fulfill the interests of their constituencies but are not willing to dissolve themselves. All political partnerships someday come to an end just as they all have a time when they *ought* to end which usually precedes their actually doing so. Accordingly, the fact of these dissolutions should be neither denied nor feared; rather dissolution should be embraced. It is only with the relinquishing of the old and dysfunctional that new and more functional arrangements can emerge.

Accordingly, the usefulness of sovereignty for political inquiry depends upon the *absolute doubt* of both its existence and its usefulness. By questioning whether sovereignty exists, we demand the presentation of evidence to that effect. By questioning whether sovereignty works, we demand the presentation of cases in which its practical usefulness can be demonstrated. With each case presented, we shall ceaselessly question the results and demand other better results. If this inquiry ever succeeded in producing a result that “proved” that a given assignment of sovereignty was definitive and legitimate, such a result would simultaneously invalidate the very process of inquiry by which that result was found. Conceived as a result which would disprove itself, sovereignty is an *undecidability*. *Critique* is the name given to any inquiry which pursues the undecidability of itself as an inquiry. Thus, the *critique of sovereignty* can neither be shown to exist or not to exist. Fortunately, the practical usefulness of *critique* in no way depends upon its existence, but only upon the active questioning of its usefulness. It works, but only insofar as we examine how it doesn’t work.

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